American CryptoFed

April 16, 2025

Via Electronic Email

Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Daniel Singh, Daniel.Singh@wyoleg.gov
All Members of Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

CC:
Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

**Re: Regulatory Clarity for Wyoming DAOs' Intrastate Token Issuance**

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

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony at the session of the Decentralized Autonomous Organizations (DAOs) scheduled at 3:30 PM – 4:30 PM during the Select Committee's May 14, 2024 meeting. Scott Moeller and Xiaomeng Zhou will attend the session in person to provide oral public comments, based on this written testimony. Since 2023, CryptoFed has communicated with the Wyoming Secretary of State's Office, seeking for regulatory clarification on CryptoFed's intrastate token issuance within the State of Wyoming. The tenth letter to the Wyoming Secretary of State's Office ("SoS Office") dated April 11, 2025 is attached herein as Exhibit A. This tenth letter also includes its own Exhibits 1 through Exhibit 11 which are referenced in this testimony from time to time. This testimony is to petition this Select Committee to revise the following laws so that

Wyoming DAOs can be functional. CryptoFed also hopes that the SoS Office can provide constructive input, including its opposition.

1. **W.S. 17-4-605(d)**

The SoS' Office repeatedly declined to provide regulatory clarity in 2023 and 2024 (Exhibit 1 and Exhibit 1A) to CryptoFed, violating the fair notice requirement of the due process of both the US and Wyoming Constitutions. W.S. 17-4-605(d) can be improved to foreclose this constitutional violation. In *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), the Supreme Court of Wyoming stated (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**."

Although the SoS Office repeatedly declined to answer CryptoFed's questions for regulatory clarity, in its Response to CryptoFed's Motion to Dismiss filed with the Wyoming Laramie County District Court (Exhibit 10, p.4), the SoS Office emphasized in bad faith, "resolving a dispute about whether the Locke token is a security requires no agency expertise."

2. **W.S.17-4-604 and W.S.17-4-603**

Wyoming Uniform Securities Act authorizes two methodologies of enforcement by the SoS Office. One method is Administrative Enforcement under W.S.17-4-604 within the executive branch. The other is Civil Enforcement under W.S.17-4-603 in the court.

Instead of providing regulatory clarity, the SoS Office chose to threaten CryptoFed with an **administrative** enforcement under W.S.17-4-604 in its SoS Legal Analysis Letter dated October 17, 2024, stating, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604." (Exhibit 2, p.5). This threat of enforcement action without providing regulatory clarity has resulted in a chilling effect on those who would want to utilize Wyoming Decentralized Autonomous Organization Supplement ("DAO Legislation"). Furthermore, to date, the SoS Office still has not answered the nine questions, raised for the purpose of regulatory clarity, in CryptoFed's letter dated October 28, 2024 rebutting the SoS Legal Analysis Letter (Exhibit 3, p.10, p.13-14, p.16, p.19, p.21, p.24, and p. 27).

To make matters worse, because it was unable to answer CryptoFed's nine questions, the SoS Office chose not to abide by its own rules to follow through with the **administrative** enforcement under W.S.17-4-604 specified in its own SoS Legal Analysis Letter (Exhibit 3, p.5). Instead, the SoS Office switched to a **civil** enforcement under W.S.17-4-603 in the Wyoming Laramie County District Court (Exhibit 8) for further unlawful prosecution. "The failure of an agency to abide by its rules is per se arbitrary and capricious." *State ex rel. Wyoming Workers' Compensation Div. v. Brown*, 1991 WY 10, 805 P.2d 830 (Wyo. 1991). An arbitrary and capricious enforcement violates Wyoming Constitution Art. 1, §§ 6-7 (No Absolute, Arbitrary Power and Due Process of Law) and the U.S. Constitution (Due Process Clause of the Fourteenth Amendment), which can be foreclosed as below.

- Both W.S.17-4-604 and W.S.17-4-603 can be improved by requiring the SoS Office to answer questions raised for the purpose of regulatory clarity before instituting either an **administrative** or a **civil** enforcement.

- Both W.S.17-4-604 and W.S.17-4-603 can be further improved by requiring the SoS Office to follow through its own letter/notice/announcement regarding enforcement, and by preventing the SoS from arbitrarily and unlawfully switching from W.S.17-4-604 to W.S.17-4-603. Currently, the SoS Office has instituted two enforcements against CryptoFed in parallel under both W.S.17-4-604 and W.S.17-4-603, abusing its discretionary power and creating unnecessary legal uncertainties and legal expense burdens for both CryptoFed and the State. Even if the Wyoming Laramie County District Court dismisses the enforcement under W.S.17-4-603 against CryptoFed, the enforcement under W.S.17-4-604 remains. Therefore, CryptoFed has had to repeatedly send the SoS a weekly letter, beseeching the SoS to fulfill its legal obligation under W.S.17-4-604 to follow through with the **administrative** enforcement process, because the SoS' **civil** enforcement under W.S.17-4-603 in the Court can not cancel the SoS's existing legal obligation under W.S.17-4-604 specified in the SoS Legal Analysis Letter (Exhibit 2, p.5).

**3. <u>Wyoming Decentralized Autonomous Organization Supplement</u>**

The DAO Legislation enables Wyoming DAOs to exist fundamentally different from an entity formed under the Wyoming Limited Liability Company Act ("LLC Act").

- The DAO Legislation's W. S. § 17-31-110 states, "no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member," while the LLC Act's W.S. § 17-29-409 requires fiduciary duty.
- The DAO Legislation's W. S. § 17-31-104 (c) states, "The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies."

- The DAO Legislation's W. S. § 17-31-103(a) states, "The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations to the extent not inconsistent with the provisions of this chapter…"

These core provisions of the DAO Legislation are the controlling authority in law enforcement related to Wyoming DAOs. "In *Jorgenson v. County of Volusia*, 846 F.2d 1350 (11th Cir. 1988), we affirmed the imposition of sanctions when the appellants deliberately failed to cite controlling authority contrary to their position." *Davis v. Carl*, 906 F.2d 533, 538 (11th Cir. 1990).

Both the SoS Legal Analysis Letter instituting administrative enforcement under W.S.17-4-604 (Exhibit 2), and the SoS lawsuit against CryptoFed under W.S.17-4-603 (Exhibit 8) completely disregarded these core provisions of the DAO Legislation. The SoS Legal Analysis Letter stated in bad faith, "The Wyoming DAO is merely an instance of a Limited Liability Company." (Exhibit 2, p. 2). In its Response to CryptoFed's Motion to Dismiss filed with the Wyoming Laramie County District Court, the SoS even emphasized in bad faith, "There is no indication that this matter is any different." (Exhibit 10, p.4). Therefore, the SoS Office has willfully and knowingly eviscerated the DAO Legislation by disregarding its core provisions. Therefore, the DAO Legislation can be improved by

- making it mandatory to cite these core provisions of the DAO Legislation as controlling authority in SoS Office's enforcement actions against Wyoming DAOs, and
- incorporating the Wyoming Rules of Civil Procedure 11, so that individual attorneys (not the government agencies) working for the SoS Office and Attorney General's Office, can be sanctioned for their disregard of these core provisions of the DAO Legislation.

**4. W.S. 17-4-102(a) (xxviii) (E)**

In *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024 (available at https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf ), finding the followings:

- Distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey* (pp. 26-27),
- Selling tokens on digital asset exchanges "programmatically," or through the use of trading algorithms, do not satisfy the third prong of *Howey.* (pp. 22-25).

Both the order of Judge Analisa Torres in *SEC v. Ripple Labs* (p. 26), and the SoS Legal Analysis Letter (p. 3) cited the very same case of the US Supreme Court opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but they reached opposite conclusions. CryptoFed raised the question to the SoS Office as to how this disparity could occur (Exhibit 3, p.19), but the SoS Office did not respond. The SoS Legal Analysis Letter even referred Judge Torres' description of "programmatic sales" as artifice (Exhibit 2, p. 5, note 8). However, Judge Torres's opinion in *SEC v. Ripple Labs* is now becoming final and legally binding, as Reuters reported on March 19, 2025, that the SEC "ended its appeal from a court ruling that the regulator's prior chief had said would make it harder to oversee cryptocurrency markets." (available at https://www.reuters.com/legal/ripple-ceo-says-us-sec-will-drop-appeal-against-crypto-firm-2025-03-19/ ). Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent, Judge Torres's ruling should be respected by the SoS Office. The disparity in applying the same case of the US Supreme Court to Wyoming DAOs matters,

because Wyoming DAOs will be left behind. Thus, instead of deferring to SoS Office's mistaken interpretation of investment contract, for the purpose of regulatory clarity, W.S. 17-4-102(a)(xxviii) (E) of the Wyoming Uniform Securities Act can be improved by incorporating Judge Torres's opinion in *SEC v. Ripple Labs* as to what token transactions are and what token transactions are not included in the definition of an investment contract.

## 5. Conclusion

CryptoFed's experience has proved that the SoS Office has taken a DAO-unfriendly position of arbitrary and discriminatory enforcements, demonstrating its willful and intentional violation of Wyoming Constitution Art. 1, §§ 6-7 (No Absolute, Arbitrary Power and Due Process of Law) and the U.S. Constitution (Due Process Clause of the Fourteenth Amendment). To prevent further unconstitutional weaponization of the SoS' Office and the Attorney General's Office against Wyoming DAOs in the future, CryptoFed petitions the Select Committee to revise the Wyoming Uniform Securities Act and Wyoming Decentralized Autonomous Organization Supplement as discussed in this testimony, while seeking the SoS Office's constructive input.

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

American CryptoFed

April 11, 2025
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Daniel Singh, Daniel.Singh@wyoleg.gov
All Members of Wyoming Legislature 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,

This is **the tenth letter** requesting the Wyoming Secretary of State ("SoS") to fulfill its legal obligation under W.S.17-4-604. **This tenth letter is identical to the sixth, seventh, eighth and ninth letters** dated March 10, 2025, March 18, 2025, March 25, 2025 and April 3, 2025, respectively. **The first five (5) letters** attached as Exhibits 3-7 were sent to the SoS' Office on October 28, 2024, November 17, 2024, November 28, 2024, December 6, 2024 and December 15, 2024, respectively. In addition, this letter shall provide additional information to the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Blockchain Committee") which stated in its September 16-17,

2024 meeting minutes: "Chairman Rothfuss noted the Select Committee may consider revising the state's securities laws to address the concerns presented by the American CryptoFed DAO."[1]

## I. THE SOS LEGAL ANALYSIS LETTER'S LEGALLY BINDING FORCE

The SoS' Office repeatedly declined to provide regulatory clarity in 2023 and 2024 (Exhibit 1 and Exhibit 1A) to American CryptoFed DAO ("CryptoFed"), violating the fair notice requirement of the due process of both the US and Wyoming Constitutions. When, and only when CryptoFed raised this issue of lack of regulatory clarity at the September 16, 2024 meeting of the Select Blockchain Committee, did the SoS' Office send CryptoFed a legal analysis letter a month later on October 17, 2024 ("SoS Legal Analysis Letter"), stating, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604." (Exhibit 2, p.5). This SoS Legal Analysis Letter was legally binding and enforceable, and **has established the due process for resolving this matter** since October 17, 2024. Therefore, CryptoFed has repeatedly requested that the SoS' Office follow through with its stated intent and due process to issue a cease-and-desist order under W.S. 17-4-604 (a)(i) (p.3 of Exhibit 3; p. 2 of Exhibits 4-7), and with a public hearing conducted by and before the Office of Administrative Hearings ("OAH"). The SoS' Office can fulfill its obligation via the OAH process under W.S. 17-4-604, given that in its Response to CryptoFed's Motion to Dismiss, attached as Exhibit 10 at p.4, the SoS emphasized, "resolving a dispute about whether the Locke token is a security requires no agency expertise."[2]

[1] Available at p.5, https://wyoleg.gov/InterimCommittee/2024/S19-20240916830MeetingMinutes.pdf .

[2] The SoS filed a lawsuit pursuant to W.S. 17-4-603 against CryptoFed. The Court filings of both parties are attached as Exhibits 8-11 of this sixth letter. In addition, the Court filings themselves have Exhibits which are listed as Exhibits 1-7 of this sixth letter.

## II. UNNECESSARY DELAY AND NEEDLESS COSTS

Under the legally binding force of the SoS Legal Analysis Letter, the only theoretical scenario in which the two enforcement processes of W.S. 17-4-604 and W.S. 17-4-603 could legally simultaneously coexist, was a combination of a cease and desist order issued under W.S. 17-4-604 with a temporary injunction under W.S. 17-4-603. No other scenario was even possible in theory. However, the SoS could not even request the Court to issue a temporary injunction in its Petition for Permanent Injunction ("Petition") under W.S. 17-4-603 attached as Exhibit 8, because the SoS' option for a temporary injunction had effectively been foreclosed by the proactive requests of CryptoFed for a cease-and-desist order under W. S. § 17-4-604 (a)(i). (p.3 of Exhibit 3; p. 2 of Exhibits 4-7).

The OAH process under W.S. 17-4-604 shall be the sole due process remaining and can definitely eliminate the unnecessary delay and needless costs caused by the SoS' Petition under W.S. 17-4-603, given that the following four (4) facts will comprise most of the time and costs imposed to resolve this matter.

i. **Discovery:** The SoS Legal Analysis Letter summarized the characteristics of the CryptoFed's Locke token distribution and relevant elements (Exhibit 2, pp.1-2), to which CryptoFed had already agreed (Exhibit 3, p.3). Thus, there is no need for discovery in the OAH process under W.S. 17-4-604.

ii. **Jury Trial:** There will be no jury trial in the OAH process under W.S. 17-4-604.

iii. **Compulsory Counterclaims:** There are no Compulsory Counterclaims in the OAH process under W.S. 17-4-604. The time and costs borne by both the State of Wyoming and CryptoFed for the related discovery, hearing, jury trial and appeal can completely be eliminated.

iv. **Pro Se Appearance Permission:** CryptoFed already notified the SoS' Office of its pro se appearance in the OAH process under W.S. 17-4-604 (Exhibit 3, p.4), saving all its legal fees.

The Wyoming Rules of Civil Procedure 11(b)(1) prohibits an attorney, including the Attorney General Office ("AG Office"), from filing a pleading "for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." "Because Wyoming's Rule 11 parallels Rule 11 in the Federal Rules of Civil Procedure, federal precedent offers able guidance in review of decisions concerning Rule 11." *Meyer v. Mulligan*, 889 P.2d 509, 517 (Wyo. 1995). "[T]he rule reaches [those pleadings] which, although *not without merit*, constitute an abuse of legal purpose because brought for an improper purpose such as causing harassment, unnecessary delay or needless increase in the cost of litigation. As the Advisory Committee Notes state, the rule 'should discourage dilatory or abusive tactics and help . . . streamline the litigation process.'" *FDIC v. Maxxam*, 523 F.3d 566, 577 (5th Cir. 2012).(emphasis in original).

## III. CONTROLLING AUTHORITY

CryptoFed was formed on July 1, 2021, under the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law"). The DAO Law has enabled CryptoFed to exist fundamentally different from an entity formed under the Wyoming Limited Liability Company Act ("LLC Act"). The DAO Law's W. S. § 17-31-110 states, "no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member," while the LLC Act's W.S. § 17-29-409 requires fiduciary duty. "The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies." W. S. § 17-31-104 (c). "The Wyoming Limited Liability Company Act

applies to decentralized autonomous organizations to the extent not inconsistent with the provisions of this chapter…" W. S. § 17-31-103(a). Nowhere in the SoS' Petition was the DAO Law cited, although CryptoFed provided the SoS' Office with the citations of these core provisions of the DAO Law in five (5) separate letters (PP. 4-11 of Exhibit 3; pp.5-16 of Exhibits 4-7), and repeatedly outlined the essential differences between CryptoFed as a Wyoming DAO and an entity formed under LLC Act. However, in its Response to CryptoFed's Motion to Dismiss, the SoS further disregarded the DAO Law and emphasized, "There is no indication that this matter is any different." (Exhibit 10, p.4).

The Wyoming Rules of Civil Procedure 11(b)(2) prohibits an attorney, including the Attorney General Office ("AG Office"), from filing claims, defenses, and other legal contentions which are not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Therefore, "In *Jorgenson v. County of Volusia*, 846 F.2d 1350 (11th Cir. 1988), we affirmed the imposition of sanctions when the appellants deliberately failed to cite controlling authority contrary to their position." *Davis v. Carl*, 906 F.2d 533, 538 (11th Cir. 1990).

## IV. CONCLUSION

After repeatedly declining to answer CryptoFed's question for regulatory clarity, for over a year, the SoS' Office first threatened CryptoFed with an administrative enforcement under W.S.17-4-604 (Exhibit 2), and then arbitrarily switched to a civil enforcement under W.S.17-4-603 (Exhibit 8). "An agency action is arbitrary or capricious if it is not based on a consideration of the relevant factors." *Tri-State Generation and Transmission Ass'n, Inc. v. Environmental Quality Council*, 590 P.2d 1324, 1330-31 (Wyo. 1979). The due process of the administrative enforcement under W.S.17-4-604 specified by the SoS Legal Analysis Letter was "the relevant

factor[]" *ibid*. Without consideration of and compliance with its own SoS Legal Analysis Letter to issue a cease-and-desist order under W.S. 17-4-604 (a)(i), the SoS intentionally weaponized the SoS' Office and AG's Office against CryptoFed, knowingly and willfully violating both the Wyoming Constitution Art. 1, §§ 6-7 (No Absolute, Arbitrary Power and Due Process of Law) and the U.S. Constitution (Due Process Clause of the Fourteenth Amendment). In order to save Wyoming DAOs in general and CryptoFed in particular from this unconstitutional weaponization, CryptoFed will request that the Select Blockchain Committee consider incorporating the Wyoming Rules of Civil Procedure 11 into the Wyoming Decentralized Autonomous Organization Supplement or the Wyoming Uniform Securities Act.

If the SoS' Office agrees to this CryptoFed's conclusion, please issue a cease-and-desist order under W.S. 17-4-604 (a)(i) **on or before April 18, 2025.** If the SoS' Office opposes this CryptoFed's conclusion, decides to disregard its own stated intent and due process under W.S. 17-4-604 established by the SoS Legal Analysis Letter, and chooses to futher ignore its legal obligation to issue a cease-and-desist order under W.S. 17-4-604 (a)(i), please formally provide CryptoFed with its legal arguments in writing, **on or before April 18, 2025**.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

# TABLE OF EXHIBITS

## CryptoFed's Letter to the Wyoming Secretary of State

# Exhibit 1

## December 8, 2023 WY SoS Email to CryptoFed

**Exhibit 1**

---------- Forwarded message ---------
From: **Jesse Naiman** <jesse.naiman1@wyo.gov>
Date: Fri, Dec 8, 2023 at 4:22 PM
Subject: Re: American CryptoFed's Launch Schedule for ERC 20 Locke Tokens
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, <colin.crossman@wyo.gov>, <chuck.gray@wyo.gov>, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Gentlemen,

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.

Should you desire to register your tokens, apply for the FinTech Sandbox, or have any issues concerning your DAO's registration with our office, we are happy to help you.

Sincerely,

Jesse Naiman

# Exhibit 1A

## August 1, 2024 WY SoS Email to CryptoFed

**Exhibit 1A**

---------- 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

--
**Jesse Naiman**
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

# Exhibit 2

# October 17, 2024 WY SoS Letter to CryptoFed

# Wyoming Secretary of State

October 17, 2024

American CryptoFed DAO LLC
1607 Capitol Ave.
Suite 327
Cheyenne, WY 82001

Dear Mr. Moeller and Mr. Zhou:

American CryptoFed DAO LLC ("CryptoFed") has requested numerous times that the Wyoming Secretary of State issue a no-action letter pursuant to W.S. 17-4-605(d), relating to issuance of its Locke token.

Although our office has repeatedly voiced our opinion on this issue, this recently came to a head at the September 16, 2024 meeting of the Wyoming Select Committee on Blockchain, Financial Technology and Digital Innovation Technology. Our office maintains that W.S. 17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law. However, based on your testimony during the Blockchain Committee's meeting on September 16, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee.[1]

Specifically, CryptoFed requests a response to 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 then proposes a distribution of Locke tokens with the following characteristics:

1. CryptoFed creates Locke tokens in ERC-20 format.
2. 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.
3. 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.
4. 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.

CryptoFed Letter of July 31, 2024, page 3.

[1] This letter is not an opinion issued under W.S. 17-4-605(d).

Breaking the plan down into several discrete relevant elements:

1. CryptoFed's Locke tokens are governance tokens (point 4);
2. The tokens are distributed "free of charge" (point 2);
3. Determination of distribution is related in some fashion to "non-monetary contributions" (point 2);
4. Token holders are expected to form and/or participate in a secondary market (point 3);
5. CryptoFed's distribution shall be limited to Wyoming persons (residents or entities) (point 2);
6. CryptoFed will have no control or rights to oversee the tokens once released (point 4); and
7. CryptoFed will use the ERC-20 format (point 1).

Based on the plan, as it stands, the Wyoming Secretary of State cannot issue a favorable opinion to the benefit of CryptoFed. We shall now address the primary areas of analysis below.

## Governance/Utility Token Analysis

A governance token, which provides a holder with voting rights or other powers to determine a distributed system's policy or direction, is not a utility token as defined under W.S. 34-29-106. In order to be a utility token, a token must *predominantly serve a consumptive* purpose.[2]

A token holder's capacity to vote on policy or direction by virtue of holding a token is neither consumptive, nor is a vote the receipt of, or access to, services, software, content, or real or tangible property.

CryptoFed explicitly defines the Locke tokens as governance tokens (element 1). Therefore, there is no need to proceed further under W.S. 34-29-106, as the Locke tokens are not utility tokens under Wyoming law.

## Security Analysis

Under W.S. 17-4-102(a)(xxviii), a "security" includes an "investment contract," which itself includes both a variant of the *Howey* test, **and also** "an interest in a ... limited liability company…".[3]

## An interest in an LLC is *Per Se* a Security

The Wyoming DAO is merely an instance of a Limited Liability Company (W.S. 17-31-102(a)(ii)). As such, an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E).

An interest in a limited liability company need not be economic in nature. It is an extremely common practice in the LLC world to classify membership interests, resulting in the bifurcation of LLC interests into voting (governance) rights and economic rights. CryptoFed has explicitly defined the Locke token as a governance token (element 1), which seems to imply that there has been a severing of at least some of the economic interest.

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[2] W.S. 34-29-106(g)(ii) defines consumptive as "a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property[.]".

[3] W.S. 17-4-102(a)(xxviii)(D): "Includes as an 'investment contract' an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a 'common enterprise' means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors[.]"
W.S. 17-4-102(a)(xxviii)(E): "Includes as an 'investment contract,' among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement."

Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights.

## The *Howey* Test

While the *per-se* analysis above is itself dispositive of the need to register as a security, we now turn to a *Howey* test analysis.

CryptoFed may object that the *Howey* test, as an interpretation of federal law, does not apply to an entirely intrastate Wyoming analysis. However, this argument is unconvincing for two reasons. First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)). Second, the *Howey* analysis remains relevant as the majority of CryptoFed's communications and arguments have centered around different interpretations of this very test, and CryptoFed has explicitly requested this analysis be conducted.

Much of CryptoFed's argumentation revolves around the "investment of money" prong of the *Howey* test. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). The purpose of the *Howey* test is to determine if a particular construct or investment contract is a security. That test, as originally stated, is: "a contract, transaction or scheme 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... [.]" *Id.*

While we agree with CryptoFed that, under their proposed scheme (element 2), the "[c]ontributors do not invest money by providing fiat or other assets in exchange for Locke token[s]," we disagree as to the relevance of this under the *Howey* test.

Under *Howey*, while the test did mention an "investment of money" as a prong of the test, "this definition 'embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.' " *SEC v. Edwards*, 540 U.S. 389, 393 (2004) (quoting *Howey* at 299).

That flexibility has been interpreted to incorporate situations where the "investment of money" is any exchange of value, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 n.12 (1979) ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."); *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976) (" 'an investment of money' means only that the investor must commit his assets to the enterprise in such a manner as to subject himself to financial loss").

As CryptoFed admits that the distributions of the Locke tokens will be to those "who have made, are making and will make non-monetary contributions," (element 3) the token distribution clearly is being made in exchange for some value received. Therefore we do not agree that the first prong of *Howey* is avoided by their "free of charge" distribution.

In its letter of September 30, 2024, CryptoFed claims that offering the Locke token for services then allows it to avoid the third prong of the federal *Howey* test. This is not so. While the test does read "profits solely from the efforts" of

others, subsequent cases have interpreted this, in connection with the flexible principle language immediately following the test in *Howey*, as not warranting a strict application.[4]

Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added). As these elements are all satisfied in the somewhat stricter federal *Howey* test, it is easy to see how all elements of Wyoming's statutory version are similarly satisfied.

## Registration Requirement

Since the Locke token is a security, as defined under Wyoming law, it clearly requires registration under W.S. 17-4-301, unless it qualifies for an exemption under W.S. 17-4-201. We do not find any exemptions which appear to apply to the Locke token; therefore registration would be required.[5] Alternatively, and mentioned in more detail below, CryptoFed may avail itself of the FinTech Sandbox.

## Sale of Securities

Since the Locke token is a security under both a *Howey* and a Wyoming statutory analysis, and requires registration, we turn to the "free" distribution aspects of CryptoFed's plan (element 2). Clearly, as above, exchanging the Locke token for services rendered by contributors is not "free of charge" distribution, since the token is in that case essentially just itself payment. Therefore, as proposed, the distribution would be viewed as a constructive sale of a security.

CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop."

However, several instances of "free" security or token distributions have demonstrated that the "value received" by the issuer may simply be creation of a secondary market in said securities or tokens. CryptoFed has explicitly laid out that its plan is for the recipients to create a secondary market for the Locke token (element 4).

By stating so explicitly that the entire goal is to stimulate the creation of a secondary market, CryptoFed has admitted that the airdrop is not without the exchange of value. *SEC v. Sierra Brokerage Servs., Inc.*, 608 F. Supp. 2d 923, 940-943 (S.D. Ohio 2009) ("[W]here a gift is followed by widespread downstream sales of those securities, **these would-be gifts may be characterized as a subterfuge** to evade registration." emphasis added).[6]

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[4] *See Hocking v. Dubois*, 885 F.2d 1449, 1455 (9th Cir. 1989) ("we have dropped the term 'solely'..."); *Securities & Exchange Commission v. Glenn W. Turner Enterprises Inc.*, 474 F.2d 476, 482 (9th Cir. 1973) ("the Supreme Court's admonitions that the definition of securities should be a flexible one, the word 'solely' should not be read as a strict or literal limitation on the definition of an investment contract, but rather must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities."); *see also United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 n.16 (1975).

[5] We note that under W.S. 17-4-306(a)(iii), there may be a prohibition on registration due to the SEC's pending stop order. However, as CryptoFed is not seeking registration at this time, we do not reach that analysis.

[6] *See also, In re Joe Loofbourrow*, Securities Act Release No. 7700 (July 21, 1999), https://www.sec.gov/litigation/admin/34-41631.htm; *In re Web Works Marketing.com, Inc. and Trace D. Cornell*, Securities Act Release No. 7703 (July 21, 1999), https://www.sec.gov/litigation/admin/34-41632.htm; *In re Wowauction.com Inc. and Steven Michael Gaddis*, Securities Act Release No. 7702 (July 21, 1999), https://www.sec.gov/litigation/admin/33-7702.htm; and *In re Theodore Sotirakis*, Securities Act Release No. 7701 (July 21, 1999), https://www.sec.gov/litigation/admin/33-7701.htm.

Furthermore, styling the airdrop as a "gift" does not provide any relief. *See In re UniversalScience.com, Inc. and Rene Perez*, Securities Act Release No. 7879 (Aug. 8, 2000), https://www.sec.gov/litigation/admin/33-7702.htm ("Thus, a gift of stock is a 'sale' within the meaning of the Securities Act when the purpose of the 'gift' is to advance the donor's economic objectives rather than to make a gift for simple reasons of generosity.").[7] [8]

## Conclusion

For at least the above reasons, the Wyoming Secretary of State maintains that it cannot, at this time, issue the requested opinion letter to CryptoFed. Such a letter would require our office to declare that the Locke token is not a security, and therefore does not require registration prior to the sale or disposition of the tokens. As it stands under the parameters presented by CryptoFed, the Locke token would be a security, and would require registration in Wyoming.

While the Locke token, as described, is a security, CryptoFed has the option, ***and has been repeatedly invited***, to apply for the Financial Technology Sandbox under W.S. 40-29-101, *et seq.* This letter does not provide any analysis of the potential of success under such a filing, and such a filing would not allow a waiver from the determination that the Locke token is a security. It may, however, allow the consideration of a waiver of some registration requirements under W.S. 17-4-300, *et seq*.

While this letter is not being issued in accordance with W.S. 17-4-605(d), this analysis is being provided following CryptoFed's statements at the Blockchain Committee meeting, specifically the statements regarding CryptoFed's intent to begin issuing the Locke token as soon as November 2024. We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S. 17-4-604.[9]

Sincerely,

Jesse Naiman
Deputy Secretary of State

[7] *See also, In re Tomahawk Exploration LLC and David Thompson Laurance*, Securities Act Release No. 10530 (Aug. 14, 2018), https://www.sec.gov/litigation/admin/2018/33-10530.pdf ("Tomahawk's issuance of tokens under the Bounty Program constituted an offer and sale of securities because the Company provided TOM to investors in exchange for services designed to advance Tomahawk's economic interests and foster a trading market for its securities.").

[8] We also note that, once a secondary market is created (and hence the value of that service has accrued to CryptoFed), the natural follow-on argument will be that CryptoFed itself can sell into that secondary market, attempting to avail itself of the "programmatic sale" artifice described by Judge Torres in *SEC v. Ripple Labs, et al.*, 20-cv-10832, Dkt #874, p.22 (July 13, 2023, S.D.N.Y.). CryptoFed cannot evade federal securities regulation in this manner.

[9] As this letter is not being issued under W.S. 17-4-605(d), and because this analysis is highly specific to the facts of CryptoFed's intended plan, this letter should not be understood to be binding on other projects that have unique facts which would not closely mirror those proposed by CryptoFed for this analysis.

# Exhibit 3

## October 28, 2024 CryptoFed's Follow-up Letter

October 28, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Deputy Attorney General, Brandi Monger, brandi.monger@wyo.gov
Supervising Attorney General, Mackenzie Williams, mackenzie.williams@wyo.gov

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislature 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 for the legal analysis dated October 17, 2024 (“SoS Legal Analysis”) which was sent to American CryptoFed DAO (“CryptoFed”) by Deputy Secretary Naiman via email.

The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

## I
## Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed

can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.
5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).
6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

[1] Available at https://oah.wyo.gov/

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

## II
## The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

### 1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

**This is not so,** to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act. Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

**2) An Interest in an LLC under the DAO Law**

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

### 3) Elimination of Locke Token's Interest in CryptoFed

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).

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[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]

> **A Token is a digital representation of value or rights,**
> (i) that has a transaction history that:
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
> (B) has transactions confirmed through an independently verifiable process; and
> (C) cannot be modified;
> (ii) that is capable of being transferred between persons without an intermediary party; and
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).
>
> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

**4) Membership Interest, Voting Right and Economic Right**

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S.

147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

**Question 1:**

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

**The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

## III
## The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

### 1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court 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**." (emphasis added). Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).

Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test"

(p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

**A) The First Prong – An Investment**

No "**investment"** in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

**Question 2:**

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

**Question 3:**

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

**B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others**

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 4**

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to

expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming

[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 5**

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

**2) The Ruling of *SEC v. Ripple Labs***

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an

investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).
>
> "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent,

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[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf

[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

**Question 6**

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

**3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors**

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but

[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

**Question 7**

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

## IV
## The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

**This is not so.**

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS 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**."

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

**Question 8**

Can the Secretary of State's Office provide **at least one legally 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 law to decline to provide CryptoFed with clarity regarding state laws and regulations?

## V
## Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts 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 SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

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**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, 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 SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS 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 SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] 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. 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).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate 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 legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

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[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

As a result, an essential question must inevitably be raised as below.

**Question 9**

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, 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 SoS Office?

## VI
## Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform

Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

# Exhibit 4

## November 17, 2024 CryptoFed's Follow-up Letter

November 17, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Deputy Attorney General, Brandi Monger, brandi.monger@wyo.gov
Supervising Attorney General, Mackenzie Williams, mackenzie.williams@wyo.gov

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislature 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,

This is **the second letter** about this matter. To date, we have not yet received any response to American CryptoFed DAO's letter dated October 28, 2024 ("CryptoFed October 28, 2024 Letter") which, for your convenience, is copied and pasted below, starting at page 3 of this correspondence. The pupose of the CryptoFed October 28, 2024 Letter was to completely rebut the Wyoming Secretary of State Office's legal analysis dated October 17, 2024 ("SoS Legal Analysis"). The SoS Legal Analysis at page 5 states, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming

Uniform Securities Act under W.S.17-4-604." Thus, in the CryptoFed October 28, 2024 Letter at page 3, American CryptoFed DAO ("CryptoFed") requested Wyoming Secretary of State's Office ("SoS Office") to issue a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024, unless the SoS Office and CryptoFed reached an agreement.

However, as of today, November 17, 2024, the SoS Office has not issued a **cease and desist** order pursuant to Wyo. Stat. § 17-4-604 (a)(i). The only justification for the SoS Office's failing to issue a **cease and desist order** is that the CryptoFed's Locke token distribution in question is not an investment transaction or a security under the SoS Office's jurisdiction. Therefore, currently, the SoS Legal Analysis not only has been violating the Due Process Law of Article 1, § 6, of the Wyoming Constitution stating "No person shall be deprived of life, liberty or property without due process of law," but also has been violating the Due Process Clause of the Fourteenth Amendment of the US Constitution stating "nor shall any State deprive any person of life, liberty, or property, without due process of law." The default is freedom under both the Wyoming Constitution and the US Constitution. Wyomingites have historicaly relied on the right to be left alone by the government, especialy when it comes to their fundamental rights guaranteed by the Wyoming Constitution.

For all the reasons set forth above, CryptoFed should have freedom from the SoS Office's unconstitutional interference and will enjoy its constitutional rights "of life, liberty, or property" by launching CryptoFed Locke tokens in December 2024, unless the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 27, 2024. Furthermore, CryptoFed urges the SoS Office to issue a no-action letter on or before November 27, 2024 to nullify the damaging and chilling effects of the SoS Office's false and unlawful enforcement threat which was formally announced in the SoS Legal Analysis.

**For convenience, the full text of the CryptoFed October 28, 2024 Letter is included below.**

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Thank you for the legal analysis dated October 17, 2024 ("SoS Legal Analysis") which was sent to American CryptoFed DAO ("CryptoFed") by Deputy Secretary Naiman via email. The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an

employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

## I
## Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial

[1] Available at https://oah.wyo.gov/

hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.

5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).

6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

## II
## The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

### 1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

**This is not so,** to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act. Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

**2) An Interest in an LLC under the DAO Law**

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

**3) Elimination of Locke Token's Interest in CryptoFed**

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating**

[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

**agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).
>
> A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]
>
> **A Token is a digital representation of value or rights,**
>
> (i) that has a transaction history that:
>
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
>
> (B) has transactions confirmed through an independently verifiable process; and
>
> (C) cannot be modified;
>
> (ii) that is capable of being transferred between persons without an intermediary party; and
>
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).
>
> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

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[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

**4) Membership Interest, Voting Right and Economic Right**

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S. 147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the

SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

**Question 1:**

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

**The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

## III
## The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

### 1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court 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**." (emphasis added).

Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

> First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).
>
> Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test" (p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

## A) The First Prong – An Investment

No "**investment**" in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

**Question 2:**

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

**Question 3:**

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

**B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others**

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be

effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 4**

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 5**

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[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

**2) The Ruling of *SEC v. Ripple Labs***

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).

[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf


> "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent, Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory

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[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

**Question 6**

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

**3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors**

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market

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[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

**Question 7**

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

## IV
## The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

**This is not so.**

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law

to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS 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**.

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

**Question 8**

Can the Secretary of State's Office provide **at least one legally 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 law to decline to provide CryptoFed with clarity regarding state laws and regulations?

## V
## Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts 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 SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

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**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, 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 SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS 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 SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] 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. 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

[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

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).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate 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 legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

As a result, an essential question must inevitably be raised as below.

**Question 9**

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, because the Wyoming Uniform

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office?

## VI
## Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the

SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

***

Sincerely,

/s/ Scott Moeller
DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou
Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

# Exhibit 5

## November 28, 2024 CryptoFed's Follow-up Letter

November 28, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Deputy Attorney General, Brandi Monger, brandi.monger@wyo.gov
Supervising Attorney General, Mackenzie Williams, mackenzie.williams@wyo.gov

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislature 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,

This is **the third letter** about this matter. To date, we have not yet received any response to American CryptoFed DAO's letter dated October 28, 2024 ("CryptoFed October 28, 2024 Letter") which, for your convenience, is copied and pasted below, starting at page 3 of this correspondence. The purpose of the CryptoFed October 28, 2024 Letter was to completely rebut the Wyoming Secretary of State Office's legal analysis dated October 17, 2024 ("SoS Legal Analysis"). The SoS Legal Analysis at page 5 states, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming

Uniform Securities Act under W.S.17-4-604." Thus, in the CryptoFed October 28, 2024 Letter at page 3, American CryptoFed DAO ("CryptoFed") requested Wyoming Secretary of State's Office ("SoS Office") to issue a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024, unless the SoS Office and CryptoFed reached an agreement.

However, as of today, November 28, 2024, the SoS Office has not issued a **cease and desist** order pursuant to Wyo. Stat. § 17-4-604 (a)(i). The only justification for the SoS Office's failing to issue a **cease and desist order** is that the CryptoFed's Locke token distribution in question is not an investment transaction or a security under the SoS Office's jurisdiction. Therefore, currently, the SoS Legal Analysis not only has been violating the Due Process Law of Article 1, § 6, of the Wyoming Constitution stating "No person shall be deprived of life, liberty or property without due process of law," but also has been violating the Due Process Clause of the Fourteenth Amendment of the US Constitution stating "nor shall any State deprive any person of life, liberty, or property, without due process of law." The default is freedom under both the Wyoming Constitution and the US Constitution. Wyomingites have historicaly relied on the right to be left alone by the government, especialy when it comes to their fundamental rights guaranteed by the Wyoming Constitution.

For all the reasons set forth above, CryptoFed should have freedom from the SoS Office's unconstitutional interference and will enjoy its constitutional rights "of life, liberty, or property" by launching CryptoFed Locke tokens in December 2024, unless the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before December 5, 2024. Furthermore, CryptoFed urges the SoS Office to issue a no-action letter on or before December 5, 2024 to nullify the damaging and chilling effects of the SoS Office's false and unlawful enforcement threat which was formally announced in the SoS Legal Analysis.

**For convenience, the full text of the CryptoFed October 28, 2024 Letter is included below.**

***

Thank you for the legal analysis dated October 17, 2024 ("SoS Legal Analysis") which was sent to American CryptoFed DAO ("CryptoFed") by Deputy Secretary Naiman via email. The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an

employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

## I
## Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial

[1] Available at https://oah.wyo.gov/

hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.

5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).

6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

## II
## The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

### 1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

**This is not so,** to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act. Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

**2) An Interest in an LLC under the DAO Law**

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

**3) Elimination of Locke Token's Interest in CryptoFed**

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating**

[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

**agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).
>
> A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]
>
> **A Token is a digital representation of value or rights,**
>
> (i) that has a transaction history that:
>
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
>
> (B) has transactions confirmed through an independently verifiable process; and
>
> (C) cannot be modified;
>
> (ii) that is capable of being transferred between persons without an intermediary party; and
>
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).
>
> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

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[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

**4) Membership Interest, Voting Right and Economic Right**

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S. 147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the

SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

**Question 1:**

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

**The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

## III
## The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

### 1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court 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**." (emphasis added).

Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

> First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).
>
> Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test" (p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

## A) The First Prong – An Investment

No "**investment**" in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

**Question 2:**

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**


CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

**Question 3:**

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

**B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others**

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be

effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 4**

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 5**

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[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

**2) The Ruling of *SEC v. Ripple Labs***

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).

[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf


> "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent, Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory

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[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

**Question 6**

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

### 3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market

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[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

**Question 7**

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

## IV
## The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

**This is not so.**

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law

to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS 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**.

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

**Question 8**

Can the Secretary of State's Office provide **at least one legally 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 law to decline to provide CryptoFed with clarity regarding state laws and regulations?

## V
## Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts 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 SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

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**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, 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 SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS 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 SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] 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. 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

[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

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).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate 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 legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

As a result, an essential question must inevitably be raised as below.

**Question 9**

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, because the Wyoming Uniform

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office?

## VI
## Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the

SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

***

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

# Exhibit 6

## December 6, 2024 CryptoFed's Follow-up Letter

December 6, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Deputy Attorney General, Brandi Monger, brandi.monger@wyo.gov
Supervising Attorney General, Mackenzie Williams, mackenzie.williams@wyo.gov

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislature 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,

This is **the fourth letter** about this matter. To date, we have not yet received any response to American CryptoFed DAO's letter dated October 28, 2024 ("CryptoFed October 28, 2024 Letter") which, for your convenience, is copied and pasted below, starting at page 3 of this correspondence. The purpose of the CryptoFed October 28, 2024 Letter was to completely rebut the Wyoming Secretary of State Office's legal analysis dated October 17, 2024 ("SoS Legal Analysis"). The SoS Legal Analysis at page 5 states, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming

Uniform Securities Act under W.S.17-4-604." Thus, in the CryptoFed October 28, 2024 Letter at page 3, American CryptoFed DAO ("CryptoFed") requested Wyoming Secretary of State's Office ("SoS Office") to issue a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024, unless the SoS Office and CryptoFed reached an agreement.

However, as of today, December 6, 2024, the SoS Office has not issued a **cease and desist** order pursuant to Wyo. Stat. § 17-4-604 (a)(i). The only justification for the SoS Office's failing to issue a **cease and desist order** is that the CryptoFed's Locke token distribution in question is not an investment transaction or a security under the SoS Office's jurisdiction. Therefore, currently, the SoS Legal Analysis not only has been violating the Due Process Law of Article 1, § 6, of the Wyoming Constitution stating "No person shall be deprived of life, liberty or property without due process of law," but also has been violating the Due Process Clause of the Fourteenth Amendment of the US Constitution stating "nor shall any State deprive any person of life, liberty, or property, without due process of law." The default is freedom under both the Wyoming Constitution and the US Constitution. Wyomingites have historicaly relied on the right to be left alone by the government, especialy when it comes to their fundamental rights guaranteed by the Wyoming Constitution.

For all the reasons set forth above, CryptoFed should have freedom from the SoS Office's unconstitutional interference and will enjoy its constitutional rights "of life, liberty, or property" by launching CryptoFed Locke tokens in December 2024, unless the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before December 13, 2024. Furthermore, CryptoFed urges the SoS Office to issue a no-action letter on or before December 13, 2024 to nullify the damaging and chilling effects of the SoS Office's false and unlawful enforcement threat which was formally announced in the SoS Legal Analysis.

**For convenience, the full text of the CryptoFed October 28, 2024 Letter is included below.**

***

Thank you for the legal analysis dated October 17, 2024 ("SoS Legal Analysis") which was sent to American CryptoFed DAO ("CryptoFed") by Deputy Secretary Naiman via email. The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an

employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

## I
## Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial

[1] Available at https://oah.wyo.gov/

hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.

5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).

6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

## II
## The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

### 1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

**This is not so,** to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act.

Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

**2) An Interest in an LLC under the DAO Law**

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

**3) Elimination of Locke Token's Interest in CryptoFed**

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating**

[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

**agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).
>
> A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]
>
> **A Token is a digital representation of value or rights,**
>
> (i) that has a transaction history that:
>
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
>
> (B) has transactions confirmed through an independently verifiable process; and
>
> (C) cannot be modified;
>
> (ii) that is capable of being transferred between persons without an intermediary party; and
>
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).
>
> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

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[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

**4) Membership Interest, Voting Right and Economic Right**

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S. 147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the

SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

**Question 1:**

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

**The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

## III
## The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

### 1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court 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**." (emphasis added).

Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

> First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).
>
> Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test" (p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

## A) The First Prong – An Investment

No "**investment**" in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

**Question 2:**

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

**Question 3:**

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

**B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others**

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be

effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 4**

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 5**

[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

**2) The Ruling of *SEC v. Ripple Labs***

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).

[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf


"In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).

Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent, Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory

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[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

**Question 6**

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

### 3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market

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[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

**Question 7**

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

## IV
## The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

**This is not so.**

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law

to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS 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**.

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

**Question 8**

Can the Secretary of State's Office provide **at least one legally 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 law to decline to provide CryptoFed with clarity regarding state laws and regulations?

## V
## Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts 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 SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

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**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, 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 SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS 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 SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] 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. 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

[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

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).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate 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 legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

As a result, an essential question must inevitably be raised as below.

**Question 9**

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, because the Wyoming Uniform

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office?

## VI
## Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the

SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

***

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

# Exhibit 7

## December 15, 2024 CryptoFed's Follow-up Letter

December 15, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 West 25th St.
Suites 100 and 101, Cheyenne, WY 82002-0020

CC:
Chief Policy Officer/General Counsel, Joe Rubino, joe.rubino1@wyo.gov
Deputy Attorney General, Brandi Monger, brandi.monger@wyo.gov
Supervising Attorney General, Mackenzie Williams, mackenzie.williams@wyo.gov

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislature 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,

This is **the fifth letter** about this matter. To date, we have not yet received any response to American CryptoFed DAO's letter dated October 28, 2024 ("CryptoFed October 28, 2024 Letter") which, for your convenience, is copied and pasted below, starting at page 3 of this correspondence. The purpose of the CryptoFed October 28, 2024 Letter was to completely rebut the Wyoming Secretary of State Office's legal analysis dated October 17, 2024 ("SoS Legal Analysis"). The SoS Legal Analysis at page 5 states, "We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming

Uniform Securities Act under W.S.17-4-604." Thus, in the CryptoFed October 28, 2024 Letter at page 3, American CryptoFed DAO ("CryptoFed") requested Wyoming Secretary of State's Office ("SoS Office") to issue a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024, unless the SoS Office and CryptoFed reached an agreement.

However, as of today, December 15, 2024, the SoS Office has not issued a **cease and desist** order pursuant to Wyo. Stat. § 17-4-604 (a)(i). The only justification for the SoS Office's failing to issue a **cease and desist order** is that the CryptoFed's Locke token distribution in question is not an investment transaction or a security under the SoS Office's jurisdiction. Therefore, currently, the SoS Legal Analysis not only has been violating the Due Process Law of Article 1, § 6, of the Wyoming Constitution stating "No person shall be deprived of life, liberty or property without due process of law," but also has been violating the Due Process Clause of the Fourteenth Amendment of the US Constitution stating "nor shall any State deprive any person of life, liberty, or property, without due process of law." The default is freedom under both the Wyoming Constitution and the US Constitution. Wyomingites have historicaly relied on the right to be left alone by the government, especialy when it comes to their fundamental rights guaranteed by the Wyoming Constitution.

For all the reasons set forth above, CryptoFed should have freedom from the SoS Office's unconstitutional interference and will enjoy its constitutional rights "of life, liberty, or property" by launching CryptoFed Locke tokens in December 2024, unless the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before December 20, 2024. Furthermore, CryptoFed urges the SoS Office to issue a no-action letter on or before December 20, 2024 to nullify the damaging and chilling effects of the SoS Office's false and unlawful enforcement threat which was formally announced in the SoS Legal Analysis.

**For convenience, the full text of the CryptoFed October 28, 2024 Letter is included below.**

***

Thank you for the legal analysis dated October 17, 2024 ("SoS Legal Analysis") which was sent to American CryptoFed DAO ("CryptoFed") by Deputy Secretary Naiman via email. The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an

employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

## I
## Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial

[1] Available at https://oah.wyo.gov/

hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.

5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).

6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

## II
## The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

### 1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

**This is not so,** to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act. Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

**2) An Interest in an LLC under the DAO Law**

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

**3) Elimination of Locke Token's Interest in CryptoFed**

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating**

[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

**agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).
>
> A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]
>
> **A Token is a digital representation of value or rights,**
>
> (i) that has a transaction history that:
>
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
>
> (B) has transactions confirmed through an independently verifiable process; and
>
> (C) cannot be modified;
>
> (ii) that is capable of being transferred between persons without an intermediary party; and
>
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).
>
> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

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[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

**4) Membership Interest, Voting Right and Economic Right**

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S. 147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the

SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

**Question 1:**

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

**The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

## III
## The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

### 1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court 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**." (emphasis added).

Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

> First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).
>
> Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test" (p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

## A) The First Prong – An Investment

No "**investment**" in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

**Question 2:**

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

**Question 3:**

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

**B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others**

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be

effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 4**

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:


> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

**Question 5**

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[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

**2) The Ruling of *SEC v. Ripple Labs***

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).

[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf


"In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).

Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent, Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory

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[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

**Question 6**

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

### 3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market

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[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

**Question 7**

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

## IV
## The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

**This is not so.**

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law

to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS 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**.

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

**Question 8**

Can the Secretary of State's Office provide **at least one legally 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 law to decline to provide CryptoFed with clarity regarding state laws and regulations?

## V
## Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts 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 SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

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**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, 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 SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS 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 SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] 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. 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

[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

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).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate 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 legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

As a result, an essential question must inevitably be raised as below.

**Question 9**

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, because the Wyoming Uniform

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office?

## VI
## Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the

SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

***

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

Exhibit 8

December 17, 2024, The SoS's Petition for Permanent Injunction

**IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT STATE OF WYOMING, COUNTY OF LARAMIE**

| | |
|---|---|
| CHUCK GRAY, Wyoming Secretary of State,<br><br>Petitioner,<br><br>v.<br><br>AMERICAN CRYPTOFED DAO, LLC,<br><br>Respondent. | Civil Action No: |

## PETITION FOR PERMANENT INJUNCTION

Chuck Gray, the Wyoming Secretary of State, brings this action to enjoin Respondent American CryptoFed DAO, LLC (CryptoFed), from issuing blockchain tokens in Wyoming, The Secretary is responsible for administering the Wyoming Uniform Securities Act, Wyo. Stat. Ann. §§ 17-4-101 through -613 ("Act"). The Act prohibits, among other activities, issuing unregistered securities unless an exception applies. CryptoFed asserted that it intends to issue blockchain tokens in Wyoming that meet the definition of securities under the Act. It intends to issue these securities without registering them as the Act requires. In this action, the Secretary requests that this Court prohibit CryptoFed from issuing unregistered securities.

## PARTIES

1. Petitioner Chuck Gray is the Wyoming Secretary of State.

2. Respondent American CryptoFed DAO, LLC, is a Wyoming limited liability company initially formed on July 1, 2021. Its principal office is located at 1607 Capitol Ave., Suite 327, Cheyenne, WY 82001.

## JURISDICTION AND VENUE

3. CryptoFed is a domestic Wyoming LLC in good standing with a principal office and registered agent located in Cheyenne, Wyoming.

4. CryptoFed is about to issue blockchain tokens that meet the definition of securities under the Uniform Securities Act. By issuing those tokens, CryptoFed would violate the Act because the Act requires securities to be registered unless those securities meet certain exceptions articulated in the Act.

5. CryptoFed's tokens are securities and do not meet any exception under the Act.

6. Secretary Gray is empowered under the Act to maintain an action in Wyoming district court to enjoin persons who are about to engage in activities or courses of action that would violate the Act. The action may seek an injunction preventing a person from engaging in those activities or courses of action. Wyo. Stat. Ann. § 17-4-603.

7. Accordingly, this Court has jurisdiction to consider Secretary Gray's petition requesting relief.

8. This cause of action arose in Laramie County, Wyoming.

9. Venue is proper in Laramie County, Wyoming because the cause of action arose here.

## FACTS

10. Respondent American CryptoFed DAO, LLC, formed as a Wyoming domestic LLC on July 1, 2021.

11. CryptoFed intends to issue two blockchain tokens, called Locke and Ducat tokens in Wyoming.

12. CryptoFed does not intend to issue the Ducat token until 2027, and therefore the Ducat token is not currently the subject of this petition.

13. According to a letter from CryptoFed to the Secretary of State's office dated December 15, 2024, CryptoFed intends to issue Locke tokens on December 20, 2024, compelling the Secretary to take immediate action to prevent CryptoFed from offering unregistered securities.

14. CryptoFed will issue Locke tokens to Wyoming companies or individual residents who have made or are making non-monetary contributions to CryptoFed.

15. CryptoFed will distribute Locke tokens to persons giving value to CryptoFed. Accordingly, CryptoFed distributing Locke tokens to investors will constitute sales of securities.

16. Once distributed, Locke token owners will be able to transfer their Locke tokens to others, who may in turn transfer Locke tokens.

17. By virtue of owners being able to transfer their Locke tokens, CryptoFed intends that a market for Locke tokens will form.

18. Locke token owners will be entitled to participate in CryptoFed's governance by virtue of owning Locke tokens. CryptoFed refers to Locke tokens as a "governance token."

19. By providing owners with governance rights, Locke tokens will constitute interests in a limited liability company, specifically, CryptoFed. Interests in limited liability companies constitute investment contracts, and therefore securities. Wyo. Stat. Ann. § 17-4-102(a)(xxviii)(E).

20. CryptoFed and its plan to issue Locke and Ducat tokens constitute a common enterprise between CryptoFed, Locke token owners, and eventually Ducat token owners.

21. Owners of Locke tokens will acquire those tokens hoping to gain profit by virtue of their ownership because there will be a secondary market for Locke tokens and initial owners may sell Locke tokens for monetary value.

22. Locke tokens are securities under Wyoming law and are required to be registered in Wyoming or meet a registration exception. *See* Wyo. Stat. Ann. §§ 17-4-102(a)(xxviii) and 17-4-301.

23. CryptoFed has not registered the Locke token as a security under the Act.

24. No exception to the Act's security registration requirements apply to the Locke token.

25. If CryptoFed issues the Locke token, that action will violate the Act.

## RELIEF REQUESTED

26. The Secretary requests that this Court enter an injunction prohibiting CryptoFed or its members, officers, or agents from issuing Locke tokens as currently

contemplated without registering the Locke token as a security in conformance with the Act.

27. The Secretary requests that Respondent pay costs and attorney fees to the extent permitted by law.

28. The Secretary additionally requests any further relief this Court deems appropriate including, but not limited to, civil penalties if CryptoFed violates the Act by issuing Locke tokens before being enjoined by this Court.

Dated this __17__ day of _December_____, 2024__.

_/s/Mackenzie Williams_____
Mackenzie Williams
Petitioner's Attorney
Senior Assistant Attorney General
109 State Capitol
Cheyenne, WY 82002
307-777-7886
mackenzie.williams@wyo.gov

Exhibit 9

January 10, 2025, CryptoFed’s Motion to Dismiss

L. Cooper Overstreet, #7-4996
OVERSTREET HOMAR & KUKER
Attorneys-at-Law
2922 Central Avenue
Cheyenne, Wyoming 82001
307.274-4444 telephone
307.274-4443 facsimile
www.ohklegal.com
*Attorneys for Respondent*

**IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT**
**COUNTY OF LARAMIE, STATE OF WYOMING**

**Docket No. 2024-CV-0202917**

| | |
|---|---|
| CHUCK GRAY, Wyoming Secretary of State | ) |
| | ) |
| Petitioner, | ) |
| | ) |
| vs. | ) |
| | ) |
| AMERICAN CRYPTOFED DAO, LLC | ) |
| | ) |
| Respondent. | ) |

**MOTION TO DISMISS PETITION FOR PERMANENT INJUNCTION PURSUANT TO W.R.C.P. 12(b)(1)**

**COMES NOW** Respondent, American Cryptofed DAO, LLC (hereinafter "CryptoFed"), by and through its counsel, L. Cooper Overstreet of Overstreet Homar & Kuker, and hereby files its *Motion to Dismiss Petition for Permanent Injunction Pursuant to W.R.C.P. 12(b)(1)* ("*Motion to Dismiss*") and asks the Court to decline jurisdiction based upon the Primary Jurisdiction doctrine as follows:

## INTRODUCTION

1. In his *Petition for Permanent Injunction*, Petitioner seeks a permanent injunction pursuant to W.S. § 17-4-603, to prevent CryptoFed from issuing blockchain tokens. Petitioner alleges that the tokens sought to be issued by CryptoFed meet the definition of securities under the Uniform Securities Act, and that immediate action is required to prevent CryptoFed from offering unregisterd securities.

2. CryptoFed is a Wyoming entity formed on July 1, 2021, under the Wyoming Decentralized Autonomous Organization Supplement.

3. CryptoFed has persistently sought clarification pursuant to W.S. § 17-4-605(d) from the Wyoming Secretary of State ("SOS") as to whether it could distribute its Locke tokens

to its contributors within the State of Wyoming free of charge. In an email dated December 8, 2023, the SOS' office declined to answer the question (See Exhibit 1).

4. On August 1, 2024, seven (7) months later, the SOS Office further refused to provide statutory clarity, emphasizing in an email, "I would note that we previously declined to answer this question, per my email dated December 8, 2023." (Exhibit 1A).

5. When, and only when CryptoFed raised this issue of lack of statutory clarity at the September 16, 2024 meeting of the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology, the SOS Office informed CryptoFed in writing with legal analysis on October 17, 2024 that CryptoFed Locke tokens are securities (Exhibit 2, p.1 and p.5).

6. In the October 17, 2024 letter, it stated that the SOS Office was "currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S. § 17-4-604" (W.S. § 17-4-604 provides for the administrative enforcement of the Wyoming Uniform Securities Act).

7. In response to the October 17, 2024 letter, CryptoFed sent a rebuttal letter on October 28, 2024, requesting clarity and answers to nine questions (Exhibit 3). Additionally, the letter requested that the SOS Office issue a cease-and-desist order pursuant to W.S. § 17-4-604(a)(i) to allow the parties to pursue the administrative process provided by statute.

8. The SOS office did not respond to the letter. Additionally, CryptoFd sent four follow up letters dated November 17, 2024, November 28, 2024, December 6, 2024, and December 15, 2024 (Exhibits 4-7). Included in those letters was the requests that the SOS Office issue a cease-and-desist order pursuant to W.S. § 17-4-604(a)(i) to allow the parties to pursue the administrative process provided by statute.

**STANDARD FOR MOTION TO DISMISS**

A district court is vested with the discretion to decline jurisdiction over a matter pursuant to the primary jurisdiction doctrine. *Thomas Gilcrease Found. for Gilcrease Hoback One Charitable Tr. v. Cavallaro*, 397 P.3d 166, 169 (Wyo. 2017).

**DISCUSSION**

The Wyoming Supreme Court has stated:

> The primary jurisdiction doctrine is apt when there is a basis for judicial action independent of agency proceedings, but where courts refer certain issues to the agency charged with primary responsibility for governmental supervision or control of the particular industry or activity involved. ("The doctrine

> of primary jurisdiction applies where there is an agency that has been created by statute or regulation to deal with particular technical questions requiring a special expertise."). "Primary jurisdiction is a doctrine of common law, wholly court-made, that is designed to guide a court in determining whether and when it should refrain from or postpone the exercise of its own jurisdiction so that an agency may first answer some question presented."

*Thomas Gilcrease Found. for Gilcrease Hoback One Charitable Tr. v. Cavallaro*, 2017 WY 67, ¶ 14, 397 P.3d 166, 170–71 (Wyo. 2017)

CryptoFed has consistently sought clarification from the SOS Office as to its issuance of the Locke blockchain token and the applicability and interpretation of the Wyoming Uniform Securities Act to its intended actions. While the SOS Office has provided some legal analysis, it has failed to follow W.S. § 17-4-604 and allow CrpytoFed to pursue its administrative remedies.

The Wyoming SOS Office has special expertise to allow it to answer the particular technical questions raised by CryptoFed, and it has the procedures in place pursuant to W.S. § 17-6-604. By filing its *Petition for Permanent Injunction* instead of seeking a temporary injunction or restraining order, Petitioner is essentially seeking a declaratory action, asking the Court to rule on technical questions regarding whether the tokens are securities subject to regulation, for which there is a body better suited to address the issues. Additionally, the SOS Office is charged with the primary responsibility for governmental supervision or control of the particular activity involved.

CryptoFed has already stated that it shall refrain from issuing Locke tokens upon receipt of a cease-and-desist letter pursuant to W.S. § 17-4-604(a)(i), rendering an injunction unnecessary during the administrative process available.

## CONCLUSION

The Court is vested with discretion to decline jurisdiction in this matter and to allow the parties to seek resolution via an established statutory administrative procedure. Given that the SOS Office is charged with primary responsibility for governmental supervision and control of the particular activity involved and has special expertise to allow it to answer the technical questions raised by CryptoFed, the Court should decline jurisdiction in this matter.

**WHEREFORE** Respondent, American Cryptofed DAO, LLC, prays that the Court issue an Order dismissing *Petitioner's Petition for Permanent Injunction*, that Petitioner takes nothing thereby, and such other and further relief as this Court may require.

**RESPECTFULLY SUBMITTED** this 10th day of January 2025.

**AMERICAN CRYPTOFED DAO, LLC,**
***Respondent***

*/s/ L. Cooper Overstreet*
L. Cooper Overstreet, Wyo. Bar #7-4996
Overstreet Homar & Kuker
2922 Central Avenue
Cheyenne, Wyoming 82001
Telephone: (307) 274-4444
Fax: (307) 274-4443
cooper@kukerlaw.com
***Attorneys for Respondent***

**CERTIFICATE OF SERVICE**

This is to certify that on the 10th day of January 2025 a true and correct copy of the foregoing was served via File & ServeXpress on the following:

Mackenzie Williams
Senior Assistant Attorney General
109 State Capitol
Cheyenne, WY 82002
307-777-7886
Mackenzie.williams@wyo.gov
*Attorney for Petitioner*

*/s/ L. Cooper Overstreet*
OVERSTREET HOMAR & KUKER

# Exhibit 10

## January 28, 2025, The SoS's Response to CryptoFed's Motion to Dismiss

**IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT STATE OF WYOMING, COUNTY OF LARAMIE**

| | |
|---|---|
| CHUCK GRAY, Wyoming Secretary of State,<br><br>Petitioner,<br><br>v.<br><br>AMERICAN CRYPTOFED DAO, LLC,<br><br>Respondent. | Civil Action No: 2024-CV-0202917 |

## RESPONSE TO CRYPTOFED'S MOTION TO DISMISS

Chuck Gray, through the Wyoming Attorney General's Office, responds to CryptoFed's motion to dismiss for lack of subject-matter jurisdiction under Wyo. R. Civ. P. 12(b)(1).

CryptoFed asks this Court to dismiss this case and require the agency to make an administrative determination. This argument lacks merit. First, nothing in CryptoFed's argument suggests that this Court does not have jurisdiction to entertain this action, as would be necessary to dismiss under Wyo. R. Civ. P. 12(b)(1). In fact, Wyo. Stat. Ann.

§ 17-4-603 specifically authorizes this action. Second, to the extent CryptoFed is asking this Court to dismiss as a prudential matter under the primary jurisdiction doctrine, that doctrine does not apply because the question of whether CryptoFed's proposed Locke token is a security does not require special expertise that only the Secretary's office has. In addition, the primary jurisdiction doctrine does not apply when the agency itself initiates the action. In sum, the Secretary has chosen a valid enforcement method provided by the Legislature. CryptoFed is improperly attempting to force its preferred enforcement mechanism. This Court should deny CryptoFed's motion and allow this case to proceed in the Secretary's chosen forum.

## BACKGROUND

The Wyoming Uniform Securities Act imposes a number of requirements on those offering securities. Wyo. Stat. Ann. §§ 17-4-101 through 17-4-701. But the obligation at issue in this case is relatively simple: barring an exemption, no person may offer or sell a security in Wyoming without registering the security with the Secretary of State. Wyo. Stat. Ann. § 17-4-301. The Secretary alleges that CryptoFed is about to issue a security without registering it. (*Pet.* ¶¶ 5, 13, 22, 23.)

The Secretary has two mechanisms to enforce the Act. The first, set out in Wyo. Stat. Ann. § 17-4-603, allows the Secretary to file a court action. Wyo. Stat. Ann. § 17-4-603(a). The second, set out in Wyo. Stat. Ann. § 17-4-604, allows the secretary to initiate an administrative proceeding by issuing an administrative order. Wyo. Stat. Ann. § 17-4-604(a)(i) through (iii).

## ARGUMENT

### I. This Court has subject-matter jurisdiction pursuant to this Court's general jurisdiction and Wyo. Stat. Ann. § 17-4-603.

CryptoFed filed its motion to dismiss under Wyo. R. Civ. P. 12(b)(1). (*CryptoFed Mot. to Dismiss* at 1.) That provision states that a party may assert by motion that the court does not have subject-matter jurisdiction. Wyo. R. Civ. P. 12(b)(1). Subject-matter jurisdiction is the power to hear cases of the general type under consideration. *E.g. Linch v. Linch*, 2015 WY 141, ¶ 17, 361 P.3d 308, 313-14 (Wyo. 2015).

Wyoming district courts are courts of general jurisdiction, which means they have jurisdiction to hear "all cases in which jurisdiction is not specifically vested in some court of limited jurisdiction." *Matter of Larsen*, 770 P.2d 1089, 1092 (Wyo. 1989). No other Wyoming court is granted jurisdiction to issue injunctions prohibiting entities from issuing unregistered securities. Moreover, the Secretary is explicitly authorized to "maintain an action in the Wyoming district court to enjoin" violations of the Act. Wyo. Stat. Ann. § 17-4-603(a). Accordingly, this Court has subject-matter jurisdiction to hear the Secretary's petition and should not dismiss the matter under Wyo. R. Civ. P. 12(b)(1).

### II. The primary jurisdiction doctrine does not apply.

As explained in dicta from the case CryptoFed relies on to support its motion, the primary jurisdiction doctrine is a prudential rule that allows a court to refrain from deciding certain issues when an executive agency has primary responsibility for the particular

question.[1] *Thomas Gilcrease Found. v. Cavallaro*, 2017 WY 67, ¶ 14, 397 P.3d 166, 170-71 (Wyo. 2017). While primary jurisdiction is not subject to mathematical precision, courts generally consider whether the legislative body has placed the question requiring an answer in the hands of a regulatory authority pursuant to a comprehensive regulatory scheme that requires expertise or uniformity. *E.g.*, *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 910 (9th Cir. 2019).

In Wyoming, the Act is a regulatory scheme, but resolving a dispute about whether the Locke token is a security requires no agency expertise. The act defines a "security," so this matter will be resolved by applying that definition to the facts that will eventually be before the Court. Wyo. Stat. Ann. § 17-4-102(a)(xxviii). This process is no different than many other cases before the Wyoming district courts, and may be simpler than most.

Indeed, the definition of "security" is similar to that established by the U.S. Supreme Court in *SEC v. W.J. Howey Co.*, nearly 80 years ago, when it determined that sales and service contracts at issue in that case were securities under federal law. 328 U.S. 293, 297-300 (1946). Since that time, many courts have relied on *Howey* and its progeny to decide securities cases, and the Wyoming Supreme Court has relied on *Howey* on at least two occasions. *E.g.*, *Klein v. Roe*, 76 F.4th 1020, 1035 (10th Cir. 2023), *U.S. v. Leonard*, 529 F.3d 83, 87-91 (2d Cir. 2008), *SEC v. Arcturus Corp.*, 928 F.3d 400, 409-11 (5th Cir. 2019); *Gaudina v. Haberman*, 644 P.2d 159, 165-67, *Shepperd v. Boettcher & Co., Inc.*, 756 P.2d 182, 186-89 (Wyo. 1988). There is no indication that this matter is any different.

[1] The Wyoming Supreme Court ultimately decided the matter based on the exhaustion doctrine, not the primary jurisdiction doctrine. *Thomas Gilcrease Found.* ¶ 15.

Applying the primary jurisdiction doctrine in this case would not further its fundamental purpose. The doctrine exists to ensure that an executive agency responsible for administering a regulatory scheme is afforded the opportunity to resolve technical questions in the first instance. *E.g.*, *Robles*, 913 F.3d at 910. Consequently, the doctrine may apply when a regulated entity attempts to seek relief from a court rather than the executive agency. *See Thomas Gilcrease Found.* ¶ 8.

The same considerations do not apply when it is the agency itself seeking relief. Federal courts have recognized that referring a matter to an agency where the agency is the plaintiff would merely be a "delaying formalism." *C.A.B. v. Aeromatic Travel Corp.*, 489 F.2d 251, 254 (2d Cir. 1973). This is why courts have—without much additional discussion—simply held that applying primary jurisdiction "makes little sense in the context of an enforcement proceeding initiated by the agency." *U.S. v. Alcon Labs.*, 636 F.2d 876, 888 (1st Cir. 1981).

The same concept applies here. The Secretary has already asserted his position that Locke tokens are securities and must be registered accordingly. (*Pet.* ¶ 5.) There is no purpose to be served by requiring him to engage in an administrative process. Because the Secretary initiated this action, the primary jurisdiction does not apply as a matter of law, and this Court should continue to adjudicate this case.

## CONCLUSION

For the reasons stated above, the Secretary asks that this Court deny CryptoFed's motion to dismiss this matter.

Dated this 28 day of January, 2025.

/s/ Mackenzie Williams
Mackenzie Williams, Bar No. 6-4250
Senior Assistant Attorney General
109 State Capitol
Cheyenne, WY 82002
307-777-8781
mackenzie.williams@wyo.gov

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28 day of February, 2025, the foregoing was served on the following using the indicated methods:

FileAndServeXpress:

L. Cooper Overstreet
Overstreet Homar & Kuker
2922 Central Ave.
Cheyenne, WY 82001
cooper@kukerlaw.com

Courtesy Copy for Chambers
Hon. Catherine R. Rogers

/s/ Mackenzie Williams
Office of the Attorney General

# Exhibit 11

## February 11, 2025, CryptoFed's Reply to the SoS's Response

Exhibit 11

L. Cooper Overstreet, #7-4996
OVERSTREET HOMAR & KUKER
Attorneys-at-Law
2922 Central Avenue
Cheyenne, Wyoming 82001
307.274-4444 telephone
307.274-4443 facsimile
www.ohklegal.com
*Attorneys for Respondent*

**IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT**
**COUNTY OF LARAMIE, STATE OF WYOMING**

**Docket No. 2024-CV-0202917**

| | |
|---|---|
| CHUCK GRAY, Wyoming Secretary of State | ) |
| | ) |
| Petitioner, | ) |
| | ) |
| vs. | ) |
| | ) |
| AMERICAN CRYPTOFED DAO, LLC | ) |
| | ) |
| Respondent. | ) |

**AMERICAN CRYPTOFED DAO, LLC'S REPLY TO RESPONSE TO CRYPTOFED'S MOTION TO DISMISS**

**COMES NOW** Respondent, American CryptoFed DAO, LLC (hereinafter "CryptoFed"), by and through its counsel, L. Cooper Overstreet of Overstreet Homar & Kuker, and hereby files its *American CryptoFed DAO, LLC's Reply to Response to CryptoFed's Motion to Dismiss* ("*Reply*") and asks the Court to decline jurisdiction based upon the Primary Jurisdiction doctrine as follows:

## ARGUMENT

In Petitioner's *Response to CryptoFed's Motion to Dismiss* ("Response"), Petitioner correctly states that "primary jurisdiction doctrine is a prudential rule that allows a court to refrain

from deciding certain issues when an executive agency has primary responsibility for the particular question." *See Response, pg. 3*. Pursuant to W.S. 17-4-601, the secretary of state is charged with administering the Wyoming Uniform Securities Act.

Petitioner asserts that resolving a dispute about whether the issuance of the Locke token is a security requires no agency expertise. CryptoFed sought an answer from Petitioner as to whether the Locke token was a security requiring registration in December of 2023 (Exhibit 1). Through September 2024, Petitioner declined to answer the inquiry and continued to refuse to do so, despite multiple requests from CryptoFed. Finally, on October 17, 2024, Petitioner provided a letter stating that it could not provide an opinion that the Locke token was not a security because it believed that it was, and that Petitioner was engaging with the Wyoming Attorney General's Office about this issue, and Petitioner's authority to enforce the Wyoming Uniform Securities Act under W.S. 17-4-604 (Exhibit 2). If this were an issue that requires no agency expertise, it would not have taken a year to provide a response or five pages of analysis. Additionally, Petitioner has refused to provide clarification to the analysis sought by CryptoFed following the October 17, 2024 letter (Exhibit 3), although the letter established the due process for resolving this matter.

Next, Petitioner's Response cites to the United States Supreme Court *Howey* case, and two Wyoming Supreme Court's that rely upon the *Howey* case. The *Howey* case was decided nearly 80 years ago and the two Wyoming Supreme Court cases were decided in 1982 and 1988 respectively. Finally, Petitioner asserts that "There is no indication that this matter is any different." *See Response, pg. 6*.

Contrary to Petitioner's assertion, this matter is very different than the cases cited in the *Response* because a Wyoming DAO is a unique and new type of entity which do not fit squarely into the *Howey* analysis. On July 1, 2021, Wyoming became the first state to legally recognize

DAOs as a separate entity and the law and regulations surrounding them are still emerging. Furthermore, a Wyoming DAO without any fiduciary duty to the organization or any member, such as CryptoFed, is a fundamental indication of difference because the entities considered under *Howey* and the cases cited require a centralized management to fulfil the fiduciary duty to the organization or members.

The doctrine of Primary Jurisdiction exists to ensure that an executive agency responsible for administering a regulatory scheme is afforded the opportunity to resolve technical questions in the first instance. *E.g., Robles*, 913 F.3d at 910. When CryptoFed sought clarification from Petitioner regarding its regulation of the Locke token by seeking answers to nine technical questions specific to the regulation of Wyoming DAO's and issuance of tokens, Petitioner failed to do so. (See Exhibit 3).

The Wyoming Secretary of State's Office is designated as the agency with responsibility for administering the Act, and is in a unique position to answer the technical questions applying the Act to Wyoming DAOs. As stated by the United States District Court, District of Columbia:

> But that being said, it is worth noting that intangible digital assets do not fit neatly into the rubric set forth in the mere seven pages that comprise the *Howey* opinion. Also, the agency's decision to oversee this billion dollar industry through litigation – case by case, coin by coin, court after court – is probably not an efficient way to proceed, and it risks inconsistent results that may leave the relevant parties and their potential customers without clear guidance.

Sec. & Exch. Comm'n v. Binance Holdings Ltd., 738 F. Supp. 3d 20, 44 (D.D.C. 2024)

Similarly here, it does not make sense for the Wyoming Secretary of State's Office to fail to provide a clear regulatory scheme for the benefit of those seeking to utilize Wyoming's innovative DAO and digital statutes, and instead litigate case by case, token by token, throughout the courts of Wyoming. With nine Judicial Districts and twenty-four district court judges, litigating

the same issues in multiple courts without addressing the underlying issues through the administrative process and providing a clear regulatory scheme will result in confusion, conflicting results, and chilling effect on those wanting to utilize Wyoming's innovative approach to entities and blockchain law.

The Wyoming Secretary of State's Office, through its October 17, 2024, letter, took the position that the Locke tokens were securities requiring registration, but asserted that the letter was not being issued pursuant to W.S. 17-4-605(d) because the "analysis is highly specific to the facts of CryptoFed's intended plan" (Exhibit 2, pg. 5, note 9). As a result, the letter was intended to be binding on CryptoFed's project, and further, the letter stated that Petitioner was "currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S. 17-4-604" (*Id*.). The letter expressly stated that the Wyoming Attorney General's Office was pursuing W.S. 17-4-604 as its due process for resolving the matter, without mentioning W.S. 17-4-603.

Had Wyoming Secretary of State's Office followed through with its stated intent and due process to pursue the issue through the administrative process provided under W.S. 17-4-604, it would have saved CryptoFed (pro se appearance), Petitioner, and the State, costly litigation and utilized the statutory administrative process in place to address these highly technical questions.

While Petitioner did initiate this action before the Court, previously it had initiated a legally binding letter "to enforce the Wyoming Uniform Securities Act under W.S. 17-4-604. Thus, beginning in October of 2024 CrpytoFed requested that Petitioner abide by its own letter specifying administrative action under W.S. 17-4-604 as the due process for resolving the matter. Through repeated letters and inquiries CryptoFed sought a cease-and-desist letter/order from Petitioner pursuant to W.S. 17-4-604. Now, Petitioner attempts to assert that the Primary

Jurisdiction should not apply because Petitioner initiated the action, despite both Petitioner's legally binding letter and CryptoFed's attempt to do so through the administrative process. Essentially, Petitioner's argument is that due to Petitioner's own complacency to follow through on enforcing its own process, Petitioner should be allowed to choose the forum and disregard its own legally binding letter specifying W.S. 17-4-604 as the due process for resolving the matter.

## CONCLUSION

The Court is vested with discretion to decline jurisdiction in this matter and to allow the parties to seek resolution via an established statutory administrative procedure. Given that the Wyoming Secretary of State's Office is charged with primary responsibility for governmental supervision and control of the particular activity involved and has special expertise to allow it to answer the technical questions raised by CryptoFed, the Court should decline jurisdiction in this matter.

**WHEREFORE** Respondent, American CryptoFed DAO, LLC, prays that the Court issue an Order dismissing *Petitioner's Petition for Permanent Injunction*, that Petitioner takes nothing thereby, and such other and further relief as this Court may require.

**RESPECTFULLY SUBMITTED** this 11th day of February 2025.

**AMERICAN CRYPTOFED DAO, LLC,**
***Respondent***

*/s/ L. Cooper Overstreet*
L. Cooper Overstreet, Wyo. Bar #7-4996
Overstreet Homar & Kuker
2922 Central Avenue
Cheyenne, Wyoming 82001
Telephone: (307) 274-4444
Fax: (307) 274-4443
cooper@kukerlaw.com
***Attorneys for Respondent***

**CERTIFICATE OF SERVICE**

This is to certify that on the 11th day of February 2025 a true and correct copy of the foregoing was served via File & ServeXpress on the following:

Mackenzie Williams
Senior Assistant Attorney General
109 State Capitol
Cheyenne, WY 82002
307-777-7886
Mackenzie.williams@wyo.gov
*Attorney for Petitioner*

*/s/ L. Cooper Overstreet*
OVERSTREET HOMAR & KUKER