

# DECENTRALIZED AUTONOMOUS ORGANIZATIONS AND REGULATORY COMPETITION: A RACE WITHOUT A CAUSE

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## ABSTRACT

Several states have enacted specialized limited liability company legislation in an attempt to attract decentralized autonomous organizations. In this way, the regulatory competition debate surrounding states such as Wyoming, Tennessee, and Vermont, attempting to dethrone Delaware, has found a new battleground. According to Professor Lynn LoPucki, this will entail a regulatory race to the bottom, that is, a race to “laxity.” I disagree. In fact, deregulation has already been achieved in the traditional limited liability company form. The decentralized autonomous organization limited liability company is no laxer or more attractive to investors, who will likely prefer the traditional limited liability company or even other entity forms, given the diversity of investors’ needs and aims. Moreover, some decentralized autonomous organization organizers may wish not to incorporate at all, hoping to avoid the law altogether. While increasingly risky, this strategy rests on the belief in the a legality liability shield, further diminishing the impact of the *lex specialis* approach. After analyzing the statutory developments and the scholarly and industrial commentary, I conclude that in decentralized autonomous organizations, as elsewhere, the regulatory race to the bottom is a fad.

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## I. INTRODUCTION

Professor Lynn LoPucki argued that states will compete for decentralized autonomous organizations’ (“DAOs”) incorporation by providing lax regulatory standards.<sup>1</sup> This would be a deregulatory “race to the bottom.”<sup>2</sup> I disagree. Deregulation of DAOs is already here in the form of the traditional limited liability company (“LLC”) structure,<sup>3</sup> while no-regulation has not lost its alegal charm yet.<sup>4</sup> Thus, although we can see challenger states like Wyoming, Tennessee, and Vermont attempt to dethrone Delaware with their specialized legislative solutions, this will fail to yield results, just like it generally has in corporate law.<sup>5</sup>

Decentralized autonomous organizations present an alternative to traditional forms of business organization.<sup>6</sup> In simple terms, DAOs offer “a

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1. See Lynn M. LoPucki, *Algorithmic Entities*, 95 WASH. U. L. REV. 887, 889 (2018); Lynn M. LoPucki, *Corporate Charter Competition*, 102 MINN. L. REV. 2101, 2103-04 (2018). See also Carla L. Reyes, *Autonomous Business Reality*, 21 NEV. L.J. 437, 456 (2021).

2. See William Magnuson, *The Race to the Middle*, 95 NOTRE DAME L. REV. 1183, 1193 (2020) (“[S]tates compete with other states by offering laws that are *more corporation friendly* . . . . Race-to-the-bottom scholars argue that this is precisely what happens in practice.” (footnotes omitted)).

3. See generally Shawn Bayern, *Are Autonomous Entities Possible?*, 114 NW. U. L. REV. ONLINE 23 (2019).

4. Aaron Wright, *The Rise of Decentralized Autonomous Organizations: Opportunities and Challenges*, 4 STAN. J. BLOCKCHAIN L. & POL’Y 152, 166 (2021) (“DAOs . . . remain outside of traditional systems, limiting [their] ability . . . to transact with more traditional legal enterprises.”).

5. Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 STAN. L. REV. 679, 684 (2002) (“[T]he very notion that states compete for incorporations is a myth. Other than Delaware, no state is engaged in significant efforts to attract incorporations of public companies.”).

6. See generally PRIMAVERA DE FILIPPI & AARON WRIGHT, *BLOCKCHAIN AND THE LAW: THE RULE OF CODE* 131-155 (2018); Wright, *supra* note 4.

way to convene people on the Internet to create an organization, agree on its mission, and set up its governing rules,” quite like companies, nonprofits, or groups, but encoded on the blockchain and usually more decentralized and automated than traditional organizations.<sup>7</sup> They are utilized for various purposes, both for-profit and otherwise, to “make investments, network around common interests and even advance the [environmental, social and governance] agenda,” with some predicting exponential increase of DAOs’ economic importance.<sup>8</sup> There are over 19,000 DAOs already in existence, with the total treasury valued at over seventeen billion dollars.<sup>9</sup> The biggest DAOs are valued at billions while at the same time having hundreds of thousands of governance token holders.<sup>10</sup> DAOs have been used for many other purposes, such as raising money for war efforts,<sup>11</sup> legal costs,<sup>12</sup> or, famously, to crowdfund an attempted purchase one of the original copies of the U.S. Constitution.<sup>13</sup> Most importantly, they are used to govern decentralized finance protocols.<sup>14</sup>

DAOs differ from traditional entities in one crucial respect: DAOs are often created in an alegal paradigm without regard to legacy solutions of corporate law and with governance token-holders trading their shares constantly and instantaneously.<sup>15</sup> Founders and governance token-holders attempting to avoid the classification of the DAO as a general partnership—

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7. Edward Lee, *Virtual Governments*, 27 UCLA J.L. & TECH. 1, 16 (2022).

8. David Gogel et al., *Decentralized Autonomous Organizations: Beyond the Hype*, 1, 4 (2022) [https://www3.weforum.org/docs/WEF\\_Decentralized\\_Autonomous\\_Organizations\\_Beyond\\_the\\_Hype\\_2022.pdf](https://www3.weforum.org/docs/WEF_Decentralized_Autonomous_Organizations_Beyond_the_Hype_2022.pdf) [<https://perma.cc/RFN9-UPLF>].

9. *Organizations*, DEEPDAO (Oct. 7, 2023, 11:00 AM), <https://deepdao.io/organizations> [<https://perma.cc/FQ26-WAKH>].

10. *Id.*

11. Taylor Locke, *Ethereum’s Russian-born Cofounder has been Quietly Supporting a DAO that Raised \$8 Million in Crypto for Ukraine. His Dad is Even More Involved*, FORTUNE (Mar. 31, 2022, 1:39 PM) <https://fortune.com/crypto/2022/03/31/ukraine-dao-crypto-donations-vitalik-buterin/> [<https://perma.cc/MRN7-XUAZ>].

12. Daniel Kuhn, *AssangeDAO Raised \$56M and Quickly Split Up. Was It Still a Success?*, COINDESK (Mar. 11, 2023 11:25 AM) <https://www.coindesk.com/layer2/2022/03/08/assangedao-raised-56m-and-quickly-split-up-was-it-still-a-success/> [<https://perma.cc/9LFV-NH8W>].

13. Abram Brown, *Crypto Investors Wanted to Buy the Constitution. Instead, They Birthed Another Hyped-Up Meme Coin*, FORBES (Dec 1, 2021, 10:39 AM), <https://www.forbes.com/sites/abrambrown/2021/12/01/crypto-tokens-people-constitution-dao-ether-redeem-refund/> [<https://perma.cc/JX82-FGFE>]. See also Wulf A. Kaal, *How Decentralized Autonomous Organizations Optimize Charitable Giving* (U. St. Thomas Legal Stud. Rsch., Working Paper No. 22-16, 2021), <https://ssrn.com/abstract=3981021> [<http://dx.doi.org/10.2139/ssrn.3981021>]. See generally Gogel et al., *supra* note 8, at 13 (presenting a taxonomy of nine different types of DAOs, categorized by means and objective pursued).

14. See generally Christopher J. Brummer & Rodrigo Seira, *Legal Wrappers and DAOs* (Working Paper) (July 7, 2022), <https://ssrn.com/abstract=4123737> [<http://dx.doi.org/10.2139/ssrn.4123737>].

15. See generally DE FILIPPI & WRIGHT, *supra* note 6.

and the consequent joint and several liability should things go wrong<sup>16</sup>—decide for a “legal wrap,” incorporation in the form of a legal entity that offers a liability shield, but at the same time, imposes formalities and a governance model which may deviate from what the technology promises.<sup>17</sup> I address these developments in Section II of this article.

Currently, there is no federal legislation specifically dealing with DAOs.<sup>18</sup> Several states, namely Wyoming,<sup>19</sup> Vermont,<sup>20</sup> and Tennessee,<sup>21</sup> have introduced specialized legislation providing for DAO LLC formation, filling the regulatory void.<sup>22</sup> These states’ legislation will be examined in Section III. Internationally, a similar development has taken place in Malta,<sup>23</sup> Marshall Islands,<sup>24</sup> and the Cayman Islands.<sup>25</sup> These jurisdictions attempt to compete with the hegemony of Delaware and attract innovative investors by

16. See *Commodity Futures Trading Comm’n v. Ooki DAO*, No. 3:22-cv-05416-WHO, 2022 WL 17822445 (N.D. Cal. Dec. 20, 2022); *Sarcuni v. bZx DAO*, No. 22-cv-618-LAB-DEB, 2023 WL 2657633 (S.D. Cal. March 27, 2023).

17. See generally Brummer & Seira, *supra* note 14, at 3-5.

18. *But see* S.4356, 117th Cong. 2d Sess. § 204 (as introduced to Senate, June 7, 2022).

19. WYO. STAT. ANN. § 17-31-101 (West 2021).

20. VT. STAT. ANN. tit. 11, § 4173 (West 2018).

21. TENN. CODE ANN. § 48-250-101 to -115 (West 2022).

22. Although Wyoming, Vermont, and Tennessee were the first, they do not remain the only states to have introduced specialized DAO legislation. They have been joined by Ohio, which introduced an analogous DAO LLC bill, but it failed to make it out of a house committee. H.B. 585, 134th Gen. Assemb., Reg. Sess. (Ohio 2022). New Jersey’s attempt first also failed to make it out of committee in 2021. S.B. 4163, 219th Legis. (N.J. 2021). However, it was reintroduced in 2022 and currently is in committee. S.B. 1267, 220th Legis. (N.J. 2022). Moreover, both Texas and California introduced bills which attempt to use the “decentralized unincorporated association” form. H.B. 3768, 88th Legis. Sess. (Tex. 2023); Assemb. AB. 1229, Reg. Sess. (Cal. 2023). Although they use a different organizational form, they are not different in respect to the supposed regulatory competition, and both the line of argument and the article’s conclusions apply *mutatis mutandis*. Finally, Utah has recently enacted the Decentralized Autonomous Organization Act. UTAH CODE ANN. § 48-5-101 to -406 (West 2023) (effective Jan. 1, 2024). The Utah law introduces a new legal entity type for DAOs, the Limited Liability DAO (LLD), initially following the ambitious Coalition of Automated Legal Applications model law, from which it departed in several ways. See Jason Finger & Peter Cramer, *Part II: With New DAO Law on the Books, Utah Joins Race with Wyoming and Tennessee to Become U.S. “Crypto Capital,”* PROSKAUER (May 31, 2023), <https://www.blockchainandthelaw.com/2023/05/part-ii-with-new-dao-law-on-the-books-utah-joins-race-with-wyoming-and-tennessee-to-become-u-s-crypto-capital/> [<https://perma.cc/7MJY-XE84>]. Cf. MODEL LAW FOR DECENTRALIZED AUTONOMOUS ORGANIZATIONS, (COAL. AUTOMATED LEGAL APPLICATIONS 2021), <https://coala.global/wp-content/uploads/2021/06/DAO-Model-Law.pdf> [<https://perma.cc/77WD-8YJG>]. While the Act is interesting, and so is the most recently introduced New Hampshire bill, its full examination is beyond the scope of this article. Crucially, given its final shape, the conclusions reached apply once again *mutatis mutandis* and no race to the bottom is observed. See also H.B. 649, 2023 Sess. (N.H. 2023). See generally Stefanie Boss, *DAOs: Legal and Empirical Review* (Amsterdam L. Sch. Rsch., Working Paper No. 2023-06, 2023), <https://ssrn.com/abstract=4503234> [<http://dx.doi.org/10.2139/ssrn.4503234>].

23. Innovative Technology Arrangements and Services Act, 2020 (Act No. 33/2018) (Malta).

24. Non-Profit Entities (Amendment) Act 2021, 18 MIRC ch. 2 (2021) (Marsh. Is.).

25. Bradley Kruger, *The Foundation Company as a Decentralised Autonomous Organisation (DAO) in the Cayman Islands*, OGIER (Mar. 31, 2020), <https://www.ogier.com/publications/the-foundation-company-as-a-decentralised-autonomous-organisation-dao-in-the-cayman-islands> [<https://perma.cc/PFL6-U2JH>].

providing a safe harbor for DAO incorporation<sup>26</sup> and thus regulating early, despite technological and jurisprudential challenges.<sup>27</sup> Seemingly, both developments demonstrate that genuine regulatory competition is emerging. As I will explain in Section IV, it is not so.<sup>28</sup>

A common belief of U.S. corporate law is that states are laboratories competing to supply corporate law to firms, motivated by the economic benefits of having charters and headquarters located in their state.<sup>29</sup> One of the key questions of U.S. corporate law is whether this presents a regulatory race to the top<sup>30</sup> or to the bottom<sup>31</sup> and what exactly those terms mean.<sup>32</sup> While different conceptualizations have been offered, my starting point is the famous dissent of Justice Brandeis: “Companies were early formed to provide charters for corporations in states where the cost was lowest and the laws least restrictive. The states joined in advertising their wares. The race was one not of diligence but of laxity.”<sup>33</sup>

In DAOs, where owners (token holders) and managers are one and the same,<sup>34</sup> the concern is mainly about the deregulatory nature of the race, recently emphasized by LoPucki.<sup>35</sup> Smaller states, like Wyoming, offer a more lenient, permissive regulatory standard than dominant jurisdictions,

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26. See Pierluigi Matera, *Delaware’s Dominance, Wyoming’s Dare: New Challenge, Same Outcome?*, 27 *FORDHAM J. CORP. & FIN. L.* 73, 130-31 (2022). See also William J. Moon, *Delaware’s Global Competitiveness*, 106 *IOWA L. REV.* 1683 (2021).

27. See generally Wulf A. Kaal & Erik P.M. Vermeulen, *How to Regulate Disruptive Innovation—From Facts to Data*, 57 *JURIMETRICS* 169 (2017).

28. See Richard Yan, *Motion: DAOs are Better Than Corporations (Kain Warwick vs. Edmund Schuster)*, BLOCKCHAIN DEBATE PODCAST, at 01:00:23 - 01:03:20 (Oct. 13, 2021) (arguing this is a mere “branding exercise”), <https://blockdebate.buzzsprout.com/767033/9358172-motion-daos-are-better-than-corporations-kain-warwick-vs-edmund-schuster> [<https://perma.cc/382U-65RU>].

29. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (“[A] single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). See also William J. Moon, *Delaware’s New Competition*, 114 *NW. U. L. REV.* 1403, 1412 (2020); Jens Dammann, *State Competition for Corporate Headquarters and Corporate Law: An Empirical Analysis*, 80 *MD. L. REV.* 214, 232 (2020).

30. Lucian Bebchuk et al., *Does the Evidence Favor State Competition in Corporate Law?*, 90 *CAL. L. REV.* 1775, 1778 (2002) (“The dominant view among corporate law scholars has been the ‘race to the top’ school of thought.”).

31. William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 *YALE L.J.* 663, 705 (1974).

32. Guhan Subramanian, *The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the “Race” Debate and Antitakeover Overreaching*, 150 *U. PA. L. REV.* 1795, 1797 (2002).

33. *Liggett Co. v. Lee*, 288 U.S. 517, 558-59 (1933) (Brandeis, J., dissenting) (footnotes omitted).

34. Cf. Cary *supra* note 31, at 685-86 (arguing that race to the bottom means that states adopt management-friendly and shareholder-hostile regulations).

35. LoPucki, *Algorithmic*, *supra* note 1, at 890 (“[C]harter competition’s function is to deregulate corporations and insulate that deregulation from democratic control. That is, in a system in which corporations do not want regulation at all and can choose their regulators, the race will be neither to the top nor the bottom. The race will be to no meaningful regulation at all.” (footnotes omitted)).

like Delaware, to attract investors. This is a race to the bottom or to “laxity,” well known in tax and environmental jurisprudence,<sup>36</sup> where states reduce control to attract capital and gain profit from selling charters in the hope for higher wages and innovation.<sup>37</sup> Supposedly, if one state sets stringent standards, another will offer laxer ones and attract industrial migration; if one sets lax standards, the other will follow.<sup>38</sup>

In Section III, I describe how Wyoming, Tennessee, and Vermont have attempted to dethrone Delaware by introducing specialized legislation with seemingly lax standards for “DAO LLCs.” Wyoming was the first to do so with Tennessee and Vermont following suit, and now more joining in the pursuit. The story does not end there, however. Although these states have joined a competition for investment, like in corporate law in general, the race is largely meaningless.<sup>39</sup>

I argue that we will not see a meaningful race to deregulate DAOs as a way for challenger states to detract investment from Delaware. Indeed, the race is a doctrinal exercise in futility: the general LLC form is the pinnacle of deregulation, and specialized legislation cannot offer a more attractive environment for investment. In fact, as Section IV’s analysis of the *lex specialis* solutions will show, the DAO LLC forms are less permissive, not more. A meaningful race would also be problematic given how diverse DAOs are: the organizers have a variety of entity forms to choose from, each suiting their needs.<sup>40</sup> Finally, although the recent Commodity and Futures Trading Commission (“CFTC”) proceedings against the Ooki DAO, a similar class action in California, and the threat of incurring joint and several liability by DAO organizers provide a strong incentive to incorporate,<sup>41</sup> there still seems

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36. See Peter P. Swire, *The Race to Laxity and the Race to Undesirability: Explaining Failures in Competition Among Jurisdictions in Environmental Law*, 14 YALE L. & POL’Y REV. 67 (1996); see also Wallace E. Oates & Robert M. Schwab, *Economic Competition Among Jurisdictions: Efficiency Enhancing or Distortion Inducing?*, 35 J. PUB. ECON. 333 (1988).

37. Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 841-42 (1995) (“States . . . have monetary incentives to produce value-maximizing corporate law with which to attract firms.”).

38. See Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the “Race-To-the-Bottom” Rationale for Federal Environmental Regulation*, 67 NYU L. REV. 1210, 1218 (1992).

39. Kahan & Kamar, *supra* note 5, at 684.

40. See generally Brummer & Seira, *supra* note 14. See also David Kerr & Miles Jennings, *A Legal Framework for Decentralized Autonomous Organizations*, ANDREESSEN HOROWITZ (2022), <https://a16zcrypto.com/wp-content/uploads/2022/06/dao-legal-framework-part-1.pdf> [<https://perma.cc/4WJF-7L92>]; Miles Jennings & David Kerr, *A Legal Framework for Decentralized Autonomous Organizations Part II: Entity Selection Framework*, ANDREESSEN HOROWITZ (2022) 1, 3, <https://a16zcrypto.com/wp-content/uploads/2022/06/dao-legal-framework-part-2.pdf> [<https://perma.cc/GPQ5-KQGA>].

41. See Commodity Futures Trading Comm’n v. Ooki DAO, No. 3:22-CV-05416-WHO, 2023 WL 5321527, at \*1-2 (N.D. Cal. June 8, 2023) (The court granted a motion for default judgment against the Ooki DAO, an unincorporated organization. As the Commodity Futures Trading Commission alleged, the founders “believed that transition to a DAO would insulate the bZx

to exist a belief among some DAOs that they are under the protection of the legality liability shield, i.e., that the state will not be able to enforce against them even if it tried.<sup>42</sup> Therefore, despite states' engagement in regulatory competition, like some corporate<sup>43</sup> and environmental<sup>44</sup> scholars, I believe that there will be no meaningful race to the bottom, and the challenger states will fail to usurp the Delaware throne. However, this does not mean a race to stringency, rather, deregulation is already here in the form of a traditional LLC.

## II. DAOS, LEX CRYPTOGRAPHIA, AND THE PARENTHSHIP THREAT AS AN INCENTIVE TO INCORPORATE

To restate, DAOs are decentralized organizations deployed as smart contracts on top of an existing blockchain network, which allow people to coordinate and govern themselves in a way mediated through the smart contract rules.<sup>45</sup> It is often proclaimed that the biggest obstacle to DAOs' success is regulatory uncertainty, brought by several levels of private law doctrine undermined by DAOs and the slow reaction of legislatures and legal enforcement.<sup>46</sup>

Similar to smart contracts, DAOs are structured beyond the legal realm, they are alegal. By default, they are created without a legal structure and “operate without any formal legal recognition, eschewing dependence on governmental authority for their existence, and resisting the rigidity imposed on them by regulations. The result: pseudonymous, distributed, and ad hoc organizational structures.”<sup>47</sup> Some write that DAOs are creatures of the market existing in cyberspace, “a new frontier in which conventional law does not (yet) reach.”<sup>48</sup>

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Protocol from regulatory oversight and accountability for compliance with U.S. law due to its structure and built-in anonymity of users.” (citations omitted)).

42. See e.g., Usha R. Rodrigues, *Law and the Blockchain*, 149 IOWA L. REV. 679 (2019).

43. See Kahan & Kamar *supra* note 5.

44. See Revesz, *supra* note 38.

45. Samer Hassan & Primavera De Filippi, *Decentralized Autonomous Organization*, 10 INTERNET POL'Y REV. 1, 2 (2021), <https://policyreview.info/glossary/DAO> [<https://doi.org/10.14763/2021.2.1556>]; see also Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017) (“[A] DAO is . . . a ‘virtual’ organization embodied in computer code and executed on a distributed ledger or blockchain.”).

46. Wulf A. Kaal, *Decentralized Autonomous Organizations – Internal Governance and External Legal Design* 23 (University of St. Thomas Legal Stud. Rsch., Working Paper No. 20-14, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3652481](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3652481) [<http://dx.doi.org/10.2139/ssrn.3652481>].

47. Brummer & Seira, *supra* note 14, at 3-4 (footnote omitted).

48. J.G. Allen, *Bodies Without Organs: Law, Economics, and Decentralised Governance*, 4 STAN. J. BLOCKCHAIN L. & POL'Y 53, 73 (2020).

A disjoint between the technological and legal realities can be problematic. Indeed, meaningful implementation of blockchain-based organizations, which involves interaction with the off-chain world and creation of legal relations, must face the *lex societatis* and thus conform to the legacy solutions to social problems the law has created. Otherwise, DAOs risk “falling into oblivion.”<sup>49</sup> There emerges a “mismatch between technological promise and legal reality is . . . a constituent feature of the new world of blockchain.”<sup>50</sup> The law cannot tolerate this and needs to step in.

Since the law limits the number of types of right-bearing legal persons, regardless if the founders of a DAO do not choose a formal legal structure, the courts will recognize or impose one thereon.<sup>51</sup> A general partnership, the default legal structure for companies with two or more owners, carries significant organizational disadvantages, most importantly, joint and several liability.<sup>52</sup> Recently, a district court ruling<sup>53</sup> and proceedings initiated by the CFTC<sup>54</sup> operated under this theory of liability. This default rule provides an economic incentive for DAOs: if token holders do not want to be considered general partners, the DAO must incorporate, or attempt to remain elusive to the law.

Thus, to avoid “falling into oblivion” or being categorized as a general partnership, many entities choose to be “legally wrapped,” set up a legally compliant entity organized and registered according to the laws of a state (“LAOs”), which can be contrasted with unregistered entities existing with an unclear legal status. Not only does there exist a virtual tokenized structure but also a traditional incorporated entity. Attempting to capitalize on this

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49. Edmund Schuster, *Cloud Crypto Land*, 84 MOD. L. REV. 974, 1003-04 (2020).

50. Philipp Hacker et al., *Regulating Blockchain Techno-Social and Legal Challenges – An Introduction*, in REGULATING BLOCKCHAIN TECHNO-SOCIAL AND LEGAL CHALLENGES 1, 2 (Philipp Hacker et al. eds., 2019), <https://ssrn.com/abstract=3247150> [<https://perma.cc/FJP9-U6KK>]. See also Schuster, *supra* note 49; Kelvin F. K. Low & Eliza Mik, *Pause the Blockchain Legal Revolution*, 69 INT’L & COMPAR. L.Q. 135 (2020).

51. Stephen D. Palley, *How to Sue a Decentralized Autonomous Organization*, COINDESK (Mar. 6, 2023, 9:11 AM), <https://www.coindesk.com/markets/2016/03/20/how-to-sue-a-decentralized-autonomous-organization/> [<https://perma.cc/4TSQ-CJDU>].

52. Carla L. Reyes, *If Rockefeller Were a Coder*, 87 GEO. WASH. L. REV. 373, 391 (2019); Larry E. Ribstein, *Limited Liability and Theories of the Corporation*, 50 MD. L. REV. 80, 108 (1991) (“Any company that has not been formally organized under a nonpartnership statute could be considered a partnership.”); Rodrigues, *supra* note 42, at 688 (speaking of the “penalty default nature of the partnership form”).

53. *Sarcuni v. bZx DAO*, No. 22-CV-618-LAB-DEB, 2023 WL 2657633, at \*9 (S.D. Cal. Mar. 27, 2023) (finding that a general partnership existed among the tokenholders of a DAO). See also Stuart D. Levi & Anita Oh, *Putative Class Action Lawsuit Alleges DAO Members are Jointly and Severally Liable for a Cryptocurrency Hack*, SKADDEN (May 24, 2022), <https://www.skadden.com/insights/publications/2022/05/putative-class-action-lawsuit-alleges-dao-members> [<https://perma.cc/B5XM-3FHF>].

54. See *supra* note 41.

momentum, Wyoming, Tennessee, and Vermont have introduced specialized legislation providing for DAO LLC entity formation.

### III. RACING OUT OF THE VOID: THE STATE LEGISLATION

According to LoPucki, DAOs or “algorithmic entities” stimulate regulatory competition.<sup>55</sup> “Chartering artificial entities is a highly profitable business,”<sup>56</sup> while the “natural culmination” of the deregulatory race is “a system that does not restrict at all.”<sup>57</sup> Indeed, Wyoming, Tennessee, and Vermont enacted DAO LLC statutes expressly ascribing legal personality to the new class of entities, seemingly allowing them to “be perceived as friendly to this new type of business organization and thus may attract entrepreneurs and capital investment as . . . early mover[s] in this space.”<sup>58</sup> In addition to addressing the perceived difficulty of applying existing legal doctrines to DAOs,<sup>59</sup> the DAO friendliness of *lex specialis* states is expected to “incentivize tech companies to elect this jurisdiction as their home state,” given that federal legislation regarding DAOs in the United States is “unlikely.”<sup>60</sup> Legislative intent mirrors this as well.<sup>61</sup>

#### A. WYOMING

Wyoming was the first state to allow organization of DAOs as LLCs.<sup>62</sup> To register, the articles of organization must “conspicuously” designate the LLC as a “decentralized autonomous organization”<sup>63</sup> and include an appropriate designation in the name.<sup>64</sup> Furthermore, the articles must establish the mode of governance: to what extent the LLC is managed by its members or algorithmically.<sup>65</sup> While the operating agreement can be a smart contract,<sup>66</sup> the DAO LLC must include a “publicly available identifier of any

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55. LoPucki, *Algorithmic*, *supra* note 1, at 891-96.

56. *Id.* at 895.

57. *Id.* at 952.

58. Kyle A. Conway, *Blockchain Technology: Limited Liability Companies and the Need for North Carolina Legislation*, 45 CAMPBELL L. REV. 127, 130 (2022) (proposing for North Carolina to adopt analogous legislation). *See also* Alex Dolphin, *Scaling DAOs Through Fiduciary Duties*, 48 BYU L. REV. 977, 1010 (2022) (noting Wyoming and Tennessee have engaged in a race to the bottom).

59. *See* Michael Huertas & Aylin Hikl, *Non-fungible tokens (NFTs) - New Opportunities but do They Need New EU Regulations?*, 37 J. INT’L BANKING L. & REGUL. 132, 143 (2022).

60. Matera, *supra* note 26, at 131.

61. *See* Nate DiCamillo, *State Lawmaker Explains Wyoming’s Newly Passed DAO LLC Law*, COINDESK (Sept. 24, 2021, 7:45 AM), <https://www.coindesk.com/policy/2021/04/22/state-lawmaker-explains-wyomings-newly-passed-dao-llc-law/> [<https://perma.cc/N362-X9JY>].

62. WYO. STAT. ANN. tit. 17, ch. 31 (West 2023).

63. *Id.* § 17-31-104(c) (West 2022).

64. *Id.* § 17-31-104(d) (“DAO, LAO, or DAO LLC”) (punctuation omitted).

65. *Id.* § 17-31-104(e).

66. *Id.* § 17-31-108.

smart contract directly used to manage, facilitate or operate” the entity.<sup>67</sup> These smart contracts must be capable of being updated, modified, or otherwise upgraded,<sup>68</sup> which may require “deploying entirely new smart contracts [and] amending the articles of organization to add the new contract address.”<sup>69</sup> Similar to Tennessee’s legislation,<sup>70</sup> the statute expressly provides that purchasing relevant digital assets, voting tokens, is the default mode of becoming a member of the LLC.<sup>71</sup> The person forming the entity does not have to be its member, but the entity needs to maintain an in-state registered agent.<sup>72</sup> The members of the LLCs do not possess default fiduciary duties.<sup>73</sup> Finally, the DAO LLC, unlike traditional LLCs, is dissolved by statute if the entity either has failed to approve any proposals, failed to take any actions for one year, or if it has stopped being under the control of at least one natural person.<sup>74</sup> In this way, it seems more restrictive than the general LLC, which, according to Shawn Bayern, allows for the creation of memberless LLCs.<sup>75</sup> American CryptoFed DAO LLC was the first recognized DAO LLC in Wyoming and several hundred having been created since.<sup>76</sup>

## B. TENNESSEE

Closely following Wyoming’s lead, Tennessee allows for the establishment of decentralized organizations (“DO LLCs”), which are LLCs whose “articles of organization contain a statement that the company is a decentralized organization.”<sup>77</sup> The rationale behind this legislation was to increase investment and create new jobs “[j]ust as Delaware became a hub

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67. *Id.* § 17-31-106(b).

68. *Id.* § 17-31-109.

69. Joshua Durham, *Wyoming Built a Home for DAOs—Why They Won’t Come*, WAKE FOREST J. BUS. INTELL. PROP. L. (June 30, 2021), <https://jbipl.pubpub.org/pub/vxjtug4t> [<https://perma.cc/P4L8-GUES>].

70. *Infra* Section II.B.

71. WYO STAT. ANN. § 17-31-113(d)(i) (West 2022).

72. *Id.* § 17-31-105(a)-(b).

73. *Id.* § 17-31-110 (2021).

74. *Id.* § 17-31-114(a) (2022).

75. See Bayern, *supra* note 3; Shawn Bayern et al., *Company Law and Autonomous Systems: A Blueprint for Lawyers, Entrepreneurs, and Regulators*, 9 HASTINGS SCI. & TECH. L.J. 135, 136-39 (2017); Shawn Bayern, *The Implications of Modern Business-Entity Law for the Regulation of Autonomous Systems*, 7 EUR. J. RISK REG. 297 (2016); Shawn Bayern, *Of Bitcoins, Independently Wealthy Software, and the Zero-Member LLC*, 108 NW. U. L. REV. ONLINE 257 (2014).

76. American CryptoFed DAO, *The American CryptoFed DAO is Legally Recognized by the State of Wyoming as the First Decentralized Autonomous Organization (DAO) in the United States*, PR NEWSWIRE (July 4, 2021, 1:14 PM), <https://www.prnewswire.com/news-releases/the-american-cryptofed-dao-is-legally-recognized-by-the-state-of-wyoming-as-the-first-decentralized-autonomous-organization-dao-in-the-united-states-301325384.html> [<https://perma.cc/45JC-798L>].

77. TENN. CODE ANN. § 48-250-103 (West 2022) (the registered name must also include wording of DO, DAO, DO LLC, or DAO LLC).

for traditional LLCs.”<sup>78</sup> DO LLCs can be for profit or nonprofit and either member-managed or smart contract-managed,<sup>79</sup> provided the smart contracts can be amended<sup>80</sup> and the LLC maintains a registered in-state agent,<sup>81</sup> though the person forming the organization does not need to be its member.<sup>82</sup> Tennessee law imposes further requirements of the articles of organization<sup>83</sup> but removes the default fiduciary duty of members.<sup>84</sup> Controversially, the default Tennessee voting quorum requires a majority of members (token-holders), which is practically unlikely given the typically low participation.<sup>85</sup> It is unclear how minimal members’ involvement must be for the entity to be smart-contract managed, nor what it means for the smart contract to be capable of being “amended.”<sup>86</sup> Moreover, if a DAO does not “approve” proposals or “take actions” for a year, the DAO is automatically dissolved.<sup>87</sup> Curiously, foreign DAOs may apply for a certificate of authority, but not if such DAOs are “based outside the United States.”<sup>88</sup> Some commentators have responded positively to the legal certainty and the limitation of liability offered by the this new legislation.<sup>89</sup>

### C. VERMONT

As described above, Wyoming and Tennessee have presented almost identical legislative solutions; as did Vermont, though it offered some conceptual variation with seemingly more cumbersome requirements. Vermont law allows LLCs that “utilize blockchain technology for a material portion” of their operation to be registered as blockchain-based limited liability companies (“BLLCs”).<sup>90</sup> The LLCs must specify this entity form

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78. Gene Marks, *Will Tennessee Become the Next Tech Hub for Web3 Entrepreneurs?*, GUARDIAN (May 1, 2022, 6:00 AM) (statement of Rep. Jason Powell, Tenn.), <https://www.theguardian.com/business/2022/may/01/tennessee-next-tech-hub-blockchain-web3> [<https://perma.cc/8GA4-WYUQ>].

79. TENN. CODE ANN. § 48-250-103(e) (2022).

80. *Id.* § 48-250-104(d).

81. *Id.* § 48-250-104(b).

82. *Id.* § 48-250-104(a).

83. *See id.* §§ 48-250-105 to -106.

84. *Id.* § 48-250-109.

85. *See* Jordan Teague, *Starting a DAO in the USA? Steer Clear of DAO Legislation*, DEFIANT (June 7, 2022), <https://thedefiant.io/starting-a-dao-in-the-usa-steer-clear-of-dao-legislation/> [<https://perma.cc/G9D3-SMSB>].

86. *Id.*

87. TENN. CODE ANN. § 48-250-113(a)(4) (West 2022).

88. *Id.* § 48-250-115.

89. Vivien Peaden & Chris Sloan, *Tennessee’s DAO Statute: A Trendsetter for Blockchain-Based Corporate Governance*, JD SUPRA (May 10, 2022), <https://www.jdsupra.com/legalnews/tennessee-s-dao-statute-a-trendsetter-8896789/> [<https://perma.cc/FK8B-2YZB>].

90. VT. STAT. ANN. tit. 11, § 4172 (West 2018).

in their articles of organization.<sup>91</sup> In addition to the requirement of blockchain-based governance, Vermont has a series of formality requirements: the BLLC must provide a summary description of its mission or purpose, specify the degree of decentralization, what kind of a blockchain it is based on, and “the extent of participants” access to information and read and write permissions with respect to protocols.”<sup>92</sup> Additionally, the BLLC must adopt voting procedures which may involve smart contracts, but also protocols that “respond to system security breaches or other unauthorized actions that affect the integrity of the blockchain technology,” and specify how one becomes a member and what rights members acquire.<sup>93</sup> Furthermore, the statute allows for “reasonable algorithmic means” of achieving consensus validating records.<sup>94</sup> Unlike Wyoming and Tennessee, BLLCs’ smart contracts do not “need” to but “may” be modifiable.<sup>95</sup> Finally, the statutory design requires the presence of human involvement, which provides for fiduciary duty and agency concerns and addresses the contact person problem, an “administrative member.”<sup>96</sup> Indeed, unlike Wyoming and Tennessee, Vermont does not appear to remove fiduciary duties from the BLLCs by default.<sup>97</sup> An example of a BLLC DAO is dOrg LLC, a workers’ cooperative owned and managed by humans.<sup>98</sup>

#### IV. RACING TO NOWHERE: ASSESSMENT

Having examined the specialized DAO LLC form, I will now explain how it is not more permissive than the traditional LLC,<sup>99</sup> disproving that a deregulatory race is taking place. Even scholars who have welcomed the development of the DAO *lex specialis* on other grounds noted that “this sort of legislation clarifies the status of something that is already permitted—arguably, there is nothing in currently existing LLC statutes that would prohibit a code-based operating agreement.”<sup>100</sup>

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91. *Id.*

92. *Id.* § 4173.

93. *Id.*

94. *Id.* § 4175.

95. *Id.*

96. Reyes, *supra* note 1, at 454-55.

97. Conway, *supra* note 58, at 136 (“Interestingly, the Vermont Legislature provided that ‘this subchapter does not exempt a BLLC from any other judicial, statutory, or regulatory provision of Vermont law . . .’ This raises the question of how traditional concepts such as fiduciary duties will apply to organizations that are primarily autonomous.”).

98. Reyes, *supra* note 1, at 442; see *dOrgTech/LL-DAO: Limited Liability DAOs*, GITHUB (Sept. 10, 2019), <https://github.com/dOrgTech/LL-DAO> [<https://perma.cc/GSX5-2EVS>].

99. See Megan Wischmeier Shaner, *Interpreting Organizational “Contracts” and the Private Ordering of Public Company Governance*, 60 WM. & MARY L. REV. 985, 988-89 (2019) (examining the permissiveness of LLCs, especially in Delaware).

100. Wright, *supra* note 4, at 167.

Indeed, the laws providing for traditional LLCs, especially in Delaware, “declare as public policy the goal of granting the broadest contractual freedom possible, and permit the parties to the governing instrument to waive any of the statutory or common law default principles of law and to shape their own relationships.”<sup>101</sup> This includes contracting out of fiduciary duties<sup>102</sup> but also extends even to the creation of fully autonomous DAOs, as Shawn Bayern has argued.<sup>103</sup> Indeed, LLCs can be “governed *exclusively* by an operating agreement that defers major decisions to a running algorithm,” which is as simple as setting up a traditional LLC and requiring the sole member to withdraw.<sup>104</sup> This possibility should not be surprising since LLCs are “in many ways built[] for decentralized governance.”<sup>105</sup> Although fiduciary duty waiver is even more important and deregulatory in DAOs, where the members may often remain anonymous, traditional LLC legislation always allowed for an affirmative waiver in operating agreements. The reversal of burden, while notable, is unlikely to prove practically significant in assessing the potentiality of a race to the bottom.

Furthermore, the DAO laws have been under stark criticism from professionals and scholars, who called them a “disaster” and advised to “steer clear.”<sup>106</sup> The critique centers on the argument that the specialized legislation imposes “additional burdens on DAOs without conferring any real benefits in exchange,” mostly additional formalities, which supposedly stem from a “misunderstanding of blockchain technology and how DAOs really function.”<sup>107</sup>

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101. Leo E. Strine, Jr. & J. Travis Laster, *The Siren Song of Unlimited Contractual Freedom* 1 (Harv. L. Sch. John M. Olin Ctr., Working Paper No. 789 2014) (footnote omitted), <https://ssrn.com/abstract=2481039> [<https://perma.cc/YW8Q-B3PJ>].

102. Dolphin, *supra* note 58, at 989 (“A Wrapped-DAO is treated like any other LLC for fiduciary duty purposes. Most important, the default rule under Delaware law is that LLC members and managers owe full fiduciary duties to one another. This differs from the default rule in Wyoming’s and Tennessee’s DAO LLC laws. Even so, Delaware allows LLCs to affirmatively waive fiduciary duties in their operating agreements.” (footnotes omitted)).

103. Bayern, *supra* note 3, at 24.

104. *Id.* at 58.

105. Brummer & Seira, *supra* note 14, at 10.

106. Teague, *supra* note 85.

107. *Id.* See also Durham, *supra* note 69 (“Wyoming’s bill creates—rather than solves—more problems for DAOs since it was drafted with misunderstandings of both the technology and industry around DAOs.”); Biyan Mienert, *How Can a Decentralized Autonomous Organization (DAO) Be Legally Structured?*, LEGAL REVOLUTIONARY J. 1, 9 (2021), <https://ssrn.com/abstract=3992329> [<http://dx.doi.org/10.2139/ssrn.3992329>] (“While Wyoming’s law is most true to the DAO structure, it also requires the most information and paperwork . . . . For comparison in Delaware, the setup of the LLC is quite fast and cheap and provides a lot of flexibility.”); Jennings & Kerr, *supra* note 40, at 5 n.2 (“[T]he current form of these laws is ultimately more restrictive than what exists under the general LLC statutes available in many states and such restrictions could hinder decentralization. For instance, certain of the statutes require DAOs to select banks, disclose location of smart contracts, make DAO smart contracts amendable, or dissolve if no activity after a year has taken place.”).

For example, the requirement in Wyoming and Tennessee (but absent in Vermont) that smart contracts be updatable has raised criticism from authors noting it may “impact the [entity’s] efficiency.”<sup>108</sup> Moreover, the laws prohibiting professional management may be detrimental to DAOs in the transitory, start-up stage, which aims to progressively automate.<sup>109</sup>

While a quantitative study is needed to evaluate the efficacy of these solutions, commentators have noted several prominent decentralized projects registered as “Delaware LLCs that utilize Delaware’s flexible LLC governance rules and respect for freedom of contract to define how members of the LLC should use the accompanying smart contract as a funds escrow and voting tool.”<sup>110</sup>

This mirrors the debate over the regulatory race to the bottom more broadly. Putting aside the question of whether states have incentives to compete with Delaware for incorporation,<sup>111</sup> scholars have failed to notice the emergence of any significant competition to Delaware despite proclamations to this effect.<sup>112</sup> Rather, state legislators (should) have observed the futility of competing with Delaware<sup>113</sup> since “Delaware’s competitors have lagged so far behind that some scholars have declared the competition to be over and Delaware the winner.”<sup>114</sup> To an extent, this is for the same reason: the quality of Delaware’s legislative and judicial branches.<sup>115</sup> In the case of DAOs, this is striking because, while Professor LoPucki anticipated a race to laxity (concerningly), deregulation had already been achieved with the tried and trusted LLC form.

There is an additional reason why the DAO LLC race has proven ill-conceived. DAOs, as a nascent and diverse organizational technology, are difficult to accommodate adequately. The specialized legislation turns out to mostly be a branding exercise since DAO LLCs arguably do not “fit the

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108. Conway, *supra* note 58, at 137. Nonetheless, Conway proceeds to praise this requirement as “preventing the entry of uncontrollable DAOs into the state’s economy” and claiming that the requisite human involvement “will enhance their adoptability by reducing some of these risks.” *Id.*

109. Durham, *supra* note 69.

110. Gabriel Shapiro & Sydney Abualy, *Wyoming’s Legal DAO-saster*, LEX\_NODE’S OFFICIAL CRYPTO-LAW NEWSLETTER (Apr. 9, 2021), <https://lexnode.substack.com/p/wyomings-legal-dao-saster> [https://perma.cc/B5B8-BU9Z].

111. Kahan & Kamar, *supra* note 5, at 748 (“Even if they attracted a substantial number of public corporations, they would neither earn meaningful additional franchise taxes under their current tax structures nor profit significantly from an increase in legal business. Accordingly, they do precisely little to attract incorporations.”).

112. *See generally id.*

113. Bernard S. Black, *Is Corporate Law Trivial?: A Political and Economic Analysis*, 84 NW. U. L. REV. 542, 589 (1990).

114. LoPucki, *Corporate*, *supra* note 1, at 2102. *See also* Mark J. Roe, *Is Delaware’s Corporate Law Too Big To Fail?*, 74 BROOK. L. REV. 75, 77 (2008).

115. Black, *supra* note 113, at 591.

description or our kind of working definition of a DAO in any conceivable sense. It's an LLC that is called a DAO.”<sup>116</sup>

Moreover, there are numerous legal wrappers available to DAO organizers, each possessing its own advantages.<sup>117</sup> In practice, some DAOs may employ a complex combination of domestic and foreign traditional and decentralized legal structures, which attempt to creatively contract around the problem with traditional legal entities.<sup>118</sup> For example, Dash DAO, which exemplifies “high levels of operational and managerial automation—with managerial automation based on the technology that powers the organization and reinforced by a creative legal structure,” involves a group structure composed of Dash Core Group, Inc., a C-corporation established in Delaware and The Dash DAO Irrevocable Trust established in New Zealand.<sup>119</sup> The choice will thus be tailored to the specific needs of the undertaking, further undermining the possibility of a race to the bottom through the enactment of specialized legislation.

Finally, the allure of alegality limits the possibility of regulatory competition. It is generally well established that “[t]he law permits the incorporation of a business for the very purpose of enabling its proprietors to escape personal liability”;<sup>120</sup> however, traditional business organizations purport to be DAOs to avoid any liability, hoping that their alegality will be a de facto liability shield.<sup>121</sup> This is because many organizers value decentralization, anonymity, and not being readily identifiable by the regulators for various reasons.<sup>122</sup> These organizations can be either legitimate

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116. The Blockchain Debate Podcast, *supra* note 28 (“But ultimately you can have that with most LLC certainly, most LLCs in other countries . . . . But in terms of its legal significance, I would say it’s basically non-existent.”).

117. See Brummer & Seira, *supra* note 14. See also Delphi Labs, *Assimilating the BORG: A New Framework for CryptoLaw Entities*, MEDIUM (Apr. 20, 2023), [https://delphilabs.medium.com/\[https://perma.cc/2ZSB-J93S\]](https://delphilabs.medium.com/[https://perma.cc/2ZSB-J93S]).

118. See Delphi Labs, *supra* note 117. But see Jason Gottlieb et al., *How to Do Business as a DAO*, COINDESK (May 11, 2023 10:22 AM), <https://www.coindesk.com/policy/2021/10/20/how-to-do-business-as-a-dao/> [<https://perma.cc/X6UR-KX3C>] (“One solution is for the DAO to authorize . . . an individual or a group . . . to create and capitalize a traditional corporate entity for the limited purpose of entering a corporate arrangement on behalf of the DAO. Nevertheless, using such a ‘bridge entity’ is inefficient, cumbersome and sacrifices many of [DAOs benefits].” The authors further propose to amend the existing laws so that DAOs are “free to enter into a contract directly, either through delegated authority or by passing a formal proposal.”).

119. Reyes, *supra* note 1, at 467.

120. *Walkovszky v. Carlton*, 223 N.E.2d 6, 7 (1966).

121. See Kevin S. Schwartz et al., *Wachtell Lipton Discusses Legal Considerations for Decentralized Autonomous Organizations*, COLUM. L. SCHOOL BLUE SKY BLOG (July 12, 2022), <https://clsbluesky.law.columbia.edu/2022/07/12/wachtell-lipton-discusses-legal-considerations-for-decentralized-autonomous-organizations/> [<https://perma.cc/JF9T-J6GW>] (“This unusual general partnership theory is not a central aspect of the lawsuit and has not yet been addressed by the court. Nevertheless, the theory bears close attention as investors who participate actively in a DAO’s governance may face greater risk of unlimited liability as constructive general partners.”).

122. M. Ridgway Barker & Joseph Bambara, *On the Rise: Distributed Autonomous Organizations (“DAOs”)*, WHITHERSWORLDWIDE (July 6, 2021),

or not: there have been cases where plaintiffs alleged that the self-proclaimed DAOs were not decentralized at all,<sup>123</sup> indicating a possible strategy to use self-proclaimed decentralization as a shield from liability.<sup>124</sup> This further limits the potentiality of the race to the bottom: some may choose no regulation over little regulation.<sup>125</sup>

## V. CONCLUSION

Several states have enacted specialized DAO LLC legislation in an attempt to attract investment and compete with Delaware. Some expected this race to the bottom to end up with regulatory laxity. The DAO race to the bottom is a failure since the traditional LLC structure, which had been long passed in Delaware, is, in fact, less restrictive. Additionally, DAOs are difficult to regulate, being nascent, diverse, and, at least sometimes, attempting to avoid regulation altogether. The traditional Delaware LLC will, seemingly, reign supreme. This development mirrors the broader corporate law scholarship, which has failed to observe the results of the supposed race to the bottom.

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<https://www.withersworldwide.com/en-gb/insight/on-the-rise-distributed-autonomous-organizations-daos> [<https://perma.cc/6WJ5-WKVJ>] (“Concerns can be raised on the issue of whether registration as a Wyoming LLC tempers the fundamental “decentralized” aspect of DAOs.”); Miles P. Jennings et al., *Decentralized Autonomous Organizations Find a Home in Wyoming*, LATHAM & WATKINS (Apr. 23, 2021), <https://www.fintechanddigitalassets.com/2021/04/decentralized-autonomous-organizations-find-a-home-in-wyoming/> [<https://perma.cc/WW8C-HSNS>].

123. First Amended Complaint at ¶ 32, *EDGE196, LLC v. Jointer, Inc.*, No. 4:20-cv-003417, (S.D. Tex. Dec. 31, 2020), 2020 WL 10354090 (“In reality, there is nothing decentralized about it; the company is entirely controlled by Regev who is the only sitting member of the Board of Directors.”); Plaintiff Reply Memorandum at \*23, *SEC v. Kik Interactive Inc.*, No. 19-cv-5244 (AKH), (S.D.N.Y. May 8, 2020), 2020 WL 2899001.

124. See, e.g., *Hon. Order Of Ky. Colonels, Inc. v. Ky. Colonels Int’l*, No. 3:20-cv-132-RGJ, 2020 WL 11272177 (W.D. Ky. Aug. 13, 2020) (A corporation sued for trademark infringement attempted to “offshore [their] international decentralized autonomous organization.”); *Johnson v. Maker Ecosystem Growth Holdings, Inc.*, No. 20-CV-02569-MMC, 2023 WL 2191214 (N.D. Cal. Feb. 22, 2023). See also Krisztian Sandor, *Crypto Investors’ \$28M ‘Black Thursday’ Lawsuit Against DeFi Giant Maker Dismissed by US Judge*, COINDESK (Feb. 24, 2023 5:00 PM), <https://www.coindesk.com/policy/2023/02/24/crypto-investors-28m-black-thursday-lawsuit-against-defi-giant-maker-dismissed-by-us-judge/> [<https://perma.cc/9FZB-9LKW>]; Jeff Wilser, *ShapeShift, DAOs and the Future of Work*, COINDESK (Sept. 14, 2021, 8:41 AM), <https://www.coindesk.com/markets/2021/08/18/shapeshift-daos-and-the-future-of-work/> [<https://perma.cc/96Y4-F975>] (As the Shapeshift founder once said, announcing the company would cease to exist, “After this transformation, there is no corp. No CEO. No board . . . No shareholders. No employees. No banks. No office. No statist OSHA posters.”).

125. Admittedly, this option may soon prove completely untenable, given the recent litigation. See *supra* note 14. Nonetheless, it seems to be continuously pursued in litigation. Recently, Maker DAO, responding to a patent infringement action, filed a letter saying that “MakerDAO, by its organisation and terms, cannot respond to American court proceedings, and our cryptocurrency activities are outside the reach of regulators. Our decentralisation orthodoxy has proved to be our strongest moat against regulatory oversight and unwelcome legal enforcement.” Letter from Maker DAOdai, *True Return Systems, LLC v. MakerDAO*, (No. 1:22-cv-08478-VSB), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.587363/gov.uscourts.nysd.587363.15.0.pdf> [<https://perma.cc/K4NB-ZFYJ>].