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ARTICLE

CAN A NOT-FOR-PROFIT MEMBERSHIP CORPORATION BE CREATED AS A “SHELL” CORPORATION?

Wm. Dennis Huber[†]

I. INTRODUCTION

Can a not-for-profit corporation whose articles of incorporation create unrestricted membership (i.e., membership that is open to anyone who wishes to join by merely paying membership fees), and whose members have an unrestricted right to vote for a governing body and who elected members of a governing body for several years during which time the corporation received income from members' fees, subsequently claim it never had any members because it was only a “shell” corporation and never became operational? While at first glance the question may seem curious, the question is more than an academic exercise and the answer has important and potentially serious consequences not only for matters of corporate governance and the members of not-for-profit corporations, but also for the public. The question is important for all jurisdictions because there are risks of fraud and worse for the Federal government, for state and local governments, for creditors, and for members.

This paper discusses the creation and governance of not-for-profit corporations and the potentially serious consequences of creating open membership not-for-profit corporations as shell corporations. To frame the issue, it is necessary to first consider the creation of not-for-profit corporations and the conditions and rights of members, as well as the governance and conditions for dissolution of not-for-profit corporations. To that end, Delaware's not-for-profit corporation law and Illinois' not-for-profit corporation law will be examined as they represent opposite ends of the spectrum.¹ The Illinois not-for-profit corporation laws are compared to the Model Nonprofit Corporation Act (“MNCA”).²

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1. See generally 805 ILL. COMP. STAT. ANN. 105 (West 1986); DEL. CODE ANN. tit. 8, §§ 101-398 (West 1953).

2. MODEL NONPROFIT CORP. ACT (AM. BAR ASS'N 2008).

Delaware was chosen to examine the issues first because Delaware has no specific not-for-profit corporation law. Rather, not-for-profit corporations are governed by the General Corporation Law of the State of Delaware (“DGCL”).³ Delaware was also chosen because Delaware has been called the “U.S. ‘Shell Corporation’ Capital.”⁴

Illinois was chosen because it has a comprehensive not-for-profit corporation law, the General Not For Profit Corporation Act of 1986 (“GNFPCA”),⁵ particularly with respect to the creation, governance, and dissolution of not-for-profit corporations. Second, as discussed in section IV.C, *infra*, a recent case in Illinois has addressed the question where a member of a not-for-profit corporation petitioned the court to dissolve the corporation and the respondent corporation raised the argument it was only a shell corporation with no members and therefore the petitioner was not a member and thus had no standing.

The rest of this paper is organized as follows. The following section reviews the General Corporation Law of the State of Delaware. Section III discusses the Illinois General Not For Profit Corporation Act of 1986.⁶ Both the DGCL and the GNFPCA will be compared to the MNCA. Next, the question of not-for-profit membership shell corporations is examined. Section V examines “the bad, the worse, and the ugly” of not-for-profit membership shell corporations. Conclusions and recommendations follow.

II. THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

Delaware is considered the “U.S. Shell Corporation Capital.”⁷ Delaware’s corporation laws require the least amount of information for incorporating and reporting, making it attractive for companies from around the world to incorporate there whether legitimate or otherwise.⁸ One of the Financial Action Task Force’s recommendations is that countries should ensure that not-for-profit corporations cannot be used by terrorist organizations posing as legitimate not-for-profit corporations to exploit legitimate not-for-profit corporations or to conceal or obscure the diversion of funds intended for

3. DEL. CODE ANN. tit. 8, §§ 101-398 (West 1953).

4. Carey L. Biron, *Delaware To Remain U.S. “Shell Corporation” Capital*, MINTPRESS NEWS (June 19, 2014), <http://www.mintpressnews.com/delaware-remain-u-s-shell-corporation-capital/192674/>.

5. 805 ILL. COMP. STAT. ANN. 105/101.01 (West 1986).

6. *Id.*

7. See Biron, *supra* note 4.

8. J.W. Verret, *Terrorism Finance, Business Associations, and the “Incorporation Transparency Act”*, 70 LA. L. REV. 857, 857-58, 909-10 (2010).

legitimate purposes to terrorist organizations.⁹ But lax domestic policies facilitate the formation of anonymous shell companies.¹⁰ “Delaware is the state that requires the least amount of information,” and its approach to incorporation and LLC formation attracts companies from around the world—legitimate and otherwise.¹¹

A. *Formation of Delaware Not-For-Profit Corporations*

Forming a not-for-profit corporation in Delaware is governed by General Corporation Law of the State of Delaware.¹² Forming a not-for-profit corporation in Delaware is easily accomplished:

(a) Any person, partnership, association or corporation, singly or jointly with others, and without regard to such person's or entity's residence, domicile or state of incorporation, may incorporate or organize a corporation under this chapter by filing with the Division of Corporations in the Department of State a certificate of incorporation which shall be executed, acknowledged and filed in accordance with § 103 of this title.

(b) A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this State.¹³

In the case of a non-stock¹⁴ corporation, the fact that it is not authorized to issue capital stock must be stated in the certificate of incorporation.¹⁵ Furthermore, the conditions or other criteria of membership of a non-stock corporation must be stated in the certificate of incorporation or the

9. See generally PAUL ALLAN SCHOTT, REFERENCE GUIDE TO ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (2d ed. 2006).

10. Lynnley Browning, *Delaware Laws, Helpful to Arms Trafficker, to Be Scrutinized*, N.Y. TIMES (Nov. 4, 2009), http://www.nytimes.com/2009/11/05/business/05tax.html?scp=1&sq=Delaware%25&_r=0.

11. Leslie Wayne, *How Delaware Thrives as a Corporate Tax Haven*, N.Y. TIMES (June 30, 2012), <http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html>.

12. DEL. CODE ANN. tit. 8, §§ 101-398 (West 1953).

13. *Id.* § 101.

14. The General corporation law uses the term “nonstock”, whereas here it is spelled as “non-stock” except in direct quotes. See *id.* § 102(b)(1).

15. *Id.* § 102(a)(4).

bylaws.¹⁶ “Nonstock corporations shall have members, but failure to have members shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation.”¹⁷

A “nonprofit nonstock corporation” is defined as “a nonstock corporation that does not have membership interests.”¹⁸ A membership interest is defined as “a member’s share of the profits and losses of a nonstock corporation, or a member’s right to receive distributions of the nonstock corporation’s assets.”¹⁹ A non-profit²⁰ non-stock corporation that is exempt from taxation under § 501(c)(3) of the United States Internal Revenue Code is a “charitable nonstock corporation.”²¹

Upon filing the certificate of incorporation with the Secretary of State, the incorporators who signed the certificate of incorporation constitute the corporate body beginning from the date the certificate was filed.²² “If the persons who are to serve as directors until the first annual meeting of stockholders²³ have not been named in the certificate of incorporation, the . . . incorporators . . . manage the affairs of the corporation [until the directors are elected by the stockholders at the first annual meeting], including the adoption of the original bylaws of the corporation and the election of directors.”²⁴

B. *Governance of Delaware Not-For-Profit Corporations*

After the certificate of incorporation is filed, an organization meeting of the incorporators (or the board of directors if the initial directors were named in the certificate of incorporation) must be held for the purposes of adopting bylaws and electing directors (if the meeting is of the incorporators) to serve or hold office until the first annual meeting of stockholders.²⁵ In the case of a non-stock corporation, the members who are

16. *Id.* § 102(a)(4).

17. *Id.* § 102(a)(4).

18. *Id.* § 114(d)(3).

19. *Id.* § 114(d)(2).

20. Title 8 uses the term “nonprofit.” *See, e.g.*, 8 DEL. CODE ANN. tit. 8, § 102(a)(1) (West 1953). Here, the terms “nonprofit”, “non-profit”, and “not-for-profit” are used interchangeably.

21. *Id.* § 114(d)(1).

22. *Id.* § 106.

23. For not-for-profit, non-stock corporations, the term “member” is substituted for the term “stockholders.” *Id.* § 114(a)(1), (4).

24. *Id.* § 107.

25. *Id.* § 108(a).

entitled to vote have the power to adopt, amend, or repeal bylaws.²⁶ However, a non-stock corporation may “confer the power to adopt, amend or repeal bylaws . . . upon its governing body.”²⁷ The bylaws may contain any provision that is not inconsistent with either the law or its certificate of incorporation.²⁸ Thus, bylaws are subordinate to the certificate of incorporation. If any provision of the bylaws is inconsistent with the certificate of incorporation, then that particular bylaw is invalid.²⁹ If any provision of the bylaws is contrary to state law, then that particular bylaw is invalid.³⁰ If the bylaws are revised, either by members of the corporation or by the directors if there are no members, and the revised bylaws are inconsistent with the certificate of incorporation or are contrary to state laws, then the revised bylaws are not valid.³¹ Furthermore, if an action by the board violates either the certificate of incorporation or the bylaws, that action is void.³²

Except as otherwise provided by the DGCL or its certificate of incorporation, every corporation must be managed by or under the direction of a board of directors.³³ The board of directors shall consist of one or more members.³⁴ An annual meeting of the stockholders must be held on a date and time designated by and in the manner provided in the bylaws for the election of directors.³⁵ When used in reference to a non-stock corporation, “board of directors” refers to the governing body.³⁶ For non-profit non-stock corporations, references to “stockholders” refer to members of the corporation.³⁷

Every corporation created under the DGCL shall also have officers with titles and duties as stated either in the bylaws or in a resolution of the board

26. *Id.* § 109.

27. *Id.* § 109(a).

28. *Id.* § 109(b).

29. *Id.* § 109(b).

30. *Id.* § 109(b).

31. *Id.* § 109(b).

32. GEORGE D. WEBSTER & HUGH K. WEBSTER, *THE LAW OF ASSOCIATIONS: AN OPERATING LEGAL MANUAL FOR EXECUTIVES AND COUNSEL* § 2A.03 (2010).

33. DEL. CODE ANN. tit. 8, § 141(a) (West 1953).

34. *Id.* § 141(b).

35. *Id.* § 211(b). Directors may be elected by written consent in lieu of an annual meeting. *Id.* § 211 (b).

36. *Id.* § 141(j).

37. *Id.*

of directors if not inconsistent with the bylaws.³⁸ The officers are elected or otherwise chosen and hold their offices for the terms as prescribed by the bylaws or determined by the governing body.³⁹ Each officer holds office until a successor is elected.⁴⁰ However, “a failure to elect officers [does] not dissolve or otherwise affect the corporation.”⁴¹

C. *Dissolution of Delaware Not-For-Profit Corporations*

A non-stock corporation may be voluntarily dissolved when the governing body of the corporation performs all the acts necessary for dissolution required to be performed by the board of directors of a corporation having capital stock.⁴² However, if members of a non-stock corporation are entitled to vote for members of its governing body, or are entitled to vote for dissolution under the certificate of incorporation or the bylaws of the corporation, then the voting members shall perform all the acts necessary for dissolution which are required to be performed by the stockholders of a corporation having capital stock.⁴³ A non-stock corporation may be involuntarily dissolved by a Court of Chancery for “abuse, misuse or nonuse of its corporate powers, privileges or franchises” either by a motion by the Attorney General or upon a motion of a proper party.⁴⁴

The next section analyzes the Illinois “General Not For Profit Corporation Act of 1986”⁴⁵ and compares it to the General Corporation Law of the State of Delaware and the Model Nonprofit Corporation Act. The GNFPCL is much more comprehensive than either the DGCL or the MNCA in both creation of the corporation and governance and dissolution.

III. ILLINOIS GENERAL NOT-FOR-PROFIT CORPORATION ACT OF 1986

The Illinois General Not-For-Profit Corporation Act of 1986 governs the formation, administration and governance, and dissolution of not-for-

38. *Id.* § 142(a). According to DEL. CODE ANN. tit. 8, § 109(b) (West 1953), the manner of choosing officers and their terms of office also cannot contradict the articles of incorporation.

39. *Id.* § 142(b).

40. *Id.* § 142(b).

41. *Id.* § 142(d).

42. *Id.* § 275.

43. *Id.* § 276(a).

44. *Id.* § 284(a).

45. 805 ILL. COMP. STAT. ANN. 105/101.01 (West 1986).

profit corporations.⁴⁶ The GNFPFA is more comprehensive than the GNFPFA. It begins by defining many important terms.⁴⁷ More terms are defined in the GNFPFA than in the DGCL.⁴⁸

Sec. 101.80.

(d) “Board of directors” means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.⁴⁹

(e) “Bylaws” means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.⁵⁰

(k) “Member” means a person or any organization, whether not for profit or otherwise, having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.⁵¹

46. *Id.*

47. *Id.* § 101.80.

48. *See generally id.*

49. *Cf.*

“Board” or “board of directors” means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:

(i) the powers, functions, or authority of the board have been vested in, or are exercised by, the designated body; and

(ii) the provision of this [act] in which the term appears is relevant to the discharge by the designated body of its powers, functions, or authority.

MODEL NONPROFIT CORP. ACT § 1.04(2) (AM. BAR. ASS’N 2008).

50. “Bylaws” means the code or codes of rules (other than the articles of incorporation) adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules. *Id.* at § 1.04(4).

51. “Member” means (i) A person who has the right, in accordance with the articles of incorporation or bylaws and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction. *Id.* at § 1.04(37).

(m) “Not-for-profit corporation” means a corporation subject to this Act and organized solely for one or more of the purposes authorized by Section 103.05 of this Act.^{52, 53}

A. *Formation of Illinois Not-For-Profit Corporations*

A not-for-profit corporation may be formed in Illinois in one of two ways: either with members, or without members.⁵⁴ Whether it is a membership or a non-membership corporation must be specified in the articles of incorporation or the bylaws.⁵⁵ If the corporation has members, the members have a right to vote for the directors and any other issue unless the articles of incorporation explicitly prohibit members from voting or limit their right to vote.⁵⁶

The articles of incorporation *must*⁵⁷ set forth the specific purpose or purposes for which the corporation is organized, from among the purposes authorized in Section 103.05 of the GNFPCL⁵⁸ and the number and names of directors constituting the first board of directors.⁵⁹ The articles of incorporation *may*⁶⁰ set forth any provision that is not inconsistent with law

52. 805 ILL. COMP. STAT. ANN. 105/101.80 (West 1986).

53. There are 34 purposes for which an Illinois not-for-profit corporation may be formed which are given in 805 ILL. COMP. STAT. ANN. 105/103.05 (West 1986).

54. *Id.* § 107.03(a).

55. *Id.* § 107.03(c).

56. *See id.* § 107.40(a).

57. *Cf.* The articles of incorporation *must* set forth:

- (1) a name for the nonprofit corporation that satisfies the requirements of Section 4.01;
- (2) the street address of the corporation’s initial registered office and the name of its initial registered agent at that office;
- (3) that the corporation is incorporated under this [act]; and
- (4) the name of each incorporator. (emphasis added).

MODEL NONPROFIT CORP. ACT § 2.02(a) (AM. BAR. ASS’N 2008) (emphasis added).

58. 805 ILL. COMP. STAT. ANN. 105/102.10(a)(2) (West 1986).

59. *Id.* at § 102.10(5).

60. *Cf.* The articles of incorporation *may* set forth:

- (1) the names of the individuals who are to serve as the initial directors;
- (2) provisions creating one or more designated bodies; (3) the names of the initial members of a designated body; (4) whether the corporation will have members; (5) the names of the initial members, if any; (6) provisions not inconsistent with law regarding: (i) the purpose or purposes for which the nonprofit corporation is organized; (ii) managing the business and regulating the affairs of the corporation; (iii) defining, limiting, and regulating the powers of the corporation, its board of

with respect to managing and regulating the affairs of the corporation,⁶¹ “[p]roviding that the corporation shall have no members or one or more classes of members,”⁶² “[l]imiting, enlarging or denying the rights of members of any class . . . to vote,”⁶³ “[d]efining, limiting, [or] regulating the rights, powers, and duties of the corporation, its officers, [its] directors, [or its] members.”⁶⁴ Subsequent to filing the articles of incorporation, the initial board of directors named in the articles of incorporation must meet to adopt bylaws and elect the initial officers.⁶⁵

A not-for-profit corporation is not required to have members to operate in the same way a for-profit corporation is required to have shareholders to operate. Furthermore, unlike a for-profit corporation, if a not-for-profit corporation has members, the rights of members to vote for directors or other matters may be restricted. “A [not-for-profit] corporation may have one or more classes of members or may have no members.”⁶⁶ “If the

directors, any designated body, and the members, if any; (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or (v) the distribution of assets on dissolution; . . . and (9) provisions required if the corporation is to be exempt from taxation under federal, state, or local law. (emphasis added).

MODEL NONPROFIT CORP. ACT § 2.02(b) (AM. BAR. ASS’N 2008).

61. 805 ILL. COMP. STAT. ANN. 105/102.10(b)(1)(i) (West 1986).

62. *Id.* § 102.10(b)(1)(ii).

63. *Id.* § 102.10(b)(1)(iii).

64. *Id.* § 102.10(b)(1)(iv).

65. 805 ILL. COMP. STAT. ANN. 105/102.20 (West 1986).

After incorporation: (1) if initial directors or members of a designated body are named in the articles of incorporation, those persons must hold an organizational meeting, as appropriate, at the call of a majority of them, to complete the organization of the nonprofit corporation by electing directors (when the organization of the corporation is to be completed by a designated body), appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; (2) if initial directors or members of a designated body are not named in the articles, the incorporator or incorporators must hold an organizational meeting at the call of a majority of the incorporators: (i) to elect directors and complete the organization of the nonprofit corporation; or (ii) to elect a board of directors who shall complete the organization of the corporation.

MODEL NONPROFIT CORP. ACT § 2.05(a) (AM. BAR. ASS’N 2008).

66. 805 ILL. COMP. STAT. ANN. 105/107.03(a) (West 1986). *Cf.* MODEL NONPROFIT CORP. ACT § 6.01 (AM. BAR. ASS’N 2008):

(a) A nonprofit corporation is not required to have members.

corporation has . . . classes of members, the designation of [each] class . . . and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws.”⁶⁷ “If the corporation is to have no members, that fact [must] be set forth in the articles of incorporation or the bylaws.”⁶⁸

Every for-profit corporation is required to have at least one shareholder who votes for the director(s).⁶⁹ A for-profit corporation must have at least one director and may have only one director.⁷⁰ Thus, if there are no shareholders, there can be no board of directors. Every Illinois not-for-profit corporation must have a board of directors consisting of not less than three directors.⁷¹ However, since not-for-profit corporations are not required to have members, the directors are not required to be elected by members. Thus, if there are no members, the directors may be appointed or elected according to the articles of incorporation or the bylaws.⁷² “The

(b) Where the articles of incorporation or bylaws of a nonprofit corporation do not provide that it shall have members, or where a corporation has in fact no members entitled to vote on a matter, any provision of this [act] or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members of the corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a designated body of the corporation.

Id.

67. *Id.* § 107.03(b).

68. *Id.* § 107.03(c).

69. *See id.* §§ 1.80, 7.40.

70. *Id.* § 8.10(a).

71. *Id.* § 108.10. The DGCL requires only one director. DEL. CODE ANN. tit. 8, § 141(b) (West 1967).

72. *Cf.* MODEL NONPROFIT CORP. ACT § 6.01(b) (AM. BAR. ASS’N 2008):

Where the articles of incorporation or bylaws of a nonprofit corporation do not provide that it shall have members, or where a corporation has in fact no members entitled to vote on a matter, any provision of this [act] or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members of the corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a designated body of the corporation.

Id.

The directors of a nonmembership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than any initial directors) shall be elected by the board.

MODEL NONPROFIT CORP. ACT § 8.04(b) (AM. BAR. ASS’N 2008).

bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation⁷³ in which case the board of directors may be self-sustaining,⁷⁴ i.e., the directors may appoint or elect themselves as directors.⁷⁵ However, if it is a membership corporation then the directors can only be elected by the members unless the articles of incorporation explicitly state that members may not vote for directors.⁷⁶

B. Governance of Illinois Not-For-Profit Corporations

Every not-for-profit corporation is required to have bylaws.⁷⁷ The bylaws are the basis for governing the corporation.⁷⁸ The initial bylaws of a corporation are adopted by its board of directors.⁷⁹ The power to alter, amend or repeal the bylaws, or adopt new bylaws is to be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws.⁸⁰ “The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.”⁸¹

If the not-for-profit corporation has members, the members may not have the right to vote if the articles of incorporation prohibit or limit members from voting. The rights of member, or any class of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws.⁸² Unless the right to vote is limited, enlarged, or denied, each member—regardless of membership class—is entitled to one vote on each matter submitted to a vote of the members.⁸³ “If

73. 805 ILL. COMP. STAT. ANN. 105/102.25. (West 1986).

74. Matthew D. Caudill, *Piercing the Corporate Veil of a New York Not-For-Profit Corporation*, 8 FORDHAM J. CORP. & FIN. 449, 481 (2003).

75. 805 ILL. COMP. STAT. ANN. 105/107.03(f) (West 1986).

76. *Id.* § 107.40.

77. *Id.* § 102.20.

78. *Id.* § 102.25.

79. *Id.*

80. 805 ILL. COMP. STAT. ANN. 105/102.25 (West 1986).

81. *Id.* § 102.25. “The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.” MODEL NONPROFIT CORP. ACT § 2.06(b) (AM. BAR. ASS’N 2008).

82. 805 ILL. COMP. STAT. ANN. 105/102.10(b) (West 1986).

83. *Id.* § 107.40(a). “Except as otherwise provided in the articles of incorporation or bylaws, each member of a membership corporation has the same rights and obligations as

[the] corporation has no members or its members have no right to vote . . . the directors shall have the sole voting power”⁸⁴ Every not-for-profit corporation must have a “board of directors, and except as [otherwise] provided in [its] articles of incorporation, the affairs of the corporation shall be managed by or under the direction of the board of directors.”⁸⁵ “The board of directors of a [not-for-profit] corporation shall consist of three or more directors.”⁸⁶ “The terms of all directors expire at the next meeting for the election of directors following their election”⁸⁷

every other member with respect to voting, dissolution, membership transfer, and other matters.” MODEL NONPROFIT CORP. ACT § 6.10(a) (AM. BAR. ASS’N 2008). “Except as provided in the articles of incorporation or bylaws, each member is entitled to one vote on each matter voted on by the members.” *Id.* § 7.21. “Except as provided in the articles of incorporation or bylaws, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.” *Id.* § 7.27(a).

84. 805 ILL. COMP. STAT. ANN. 105/107.40(c) (West 1986).

85. *Id.* § 108.05.

86. *Id.* § 108.10(a). *Cf.* MODEL NONPROFIT CORP. ACT § 8.03 (AM. BAR. ASS’N 2008):

- (a) A board of directors must consist of three or more directors, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

Id.

- (a) The directors of a membership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner.
- (b) The directors of a nonmembership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than any initial directors) shall be elected by the board.

Id. § 8.04;

- (a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons who are not members or who are designated in a manner other than by election or appointment, the term of a director may not exceed five years.

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- (b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.
 - (c) Except as provided in the articles of incorporation or bylaws[.](sic). the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.
 - (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office unless otherwise provided in the articles of incorporation or bylaws.

Id. § 8.05.

87. 805 ILL. COMP. STAT. ANN. 105/108.10 (West 1986). *Cf.* MODEL NONPROFIT CORP. ACT § 8.03 (AM. BAR. ASS'N 2008):

- (a) A board of directors must consist of three or more directors, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

Id.

- (a) The directors of a membership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner.
- (b) The directors of a nonmembership corporation (other than any initial directors named in the articles of incorporation or elected by the incorporators) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than any initial directors) shall be elected by the board.

Id. § 8.04;

- (a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons who are not members or who are designated in a manner other than by election or appointment, the term of a director may not exceed five years.
- (b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.
- (c) Except as provided in the articles of incorporation or bylaws. [sic] the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office unless otherwise provided in the articles of incorporation or bylaws.

Not only must a not-for-profit corporation have a minimum of three directors,⁸⁸ it must also have officers.⁸⁹ Officers may either be elected by members if there are members, or appointed by directors if there are no members.⁹⁰ A corporation must also have officers as provided in the bylaws.⁹¹ Officers may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws.⁹²

C. Dissolution of Illinois Not-For-Profit Corporations

A not-for-profit corporation may be voluntarily dissolved either by an act of the members or, if there are no members or the members are not entitled to vote, by an act of the directors. Not-for-profit corporations may also be involuntarily dissolved by an action of a member.

Voluntary dissolution of a not-for-profit corporation is accomplished either by the members or the board of directors. “Whe[n] a [not-for-profit] corporation has no members or no members [who are] entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors.”⁹³

Id. § 8.05.

88. 805 ILL. COMP. STAT. ANN. 105/108.10(a) (West 1986).

89. *Id.* § 108.50(a).

90. *Id.* §§ 102.20(a)(2), 107.40(c).

91. *Id.* § 108.50(a).

92. *Id.* § 108.50. Officers may also be provided for in the articles of incorporation. *Id.* §§ 102.10(b), 102.25, 108.50. *Cf.* MODEL NONPROFIT CORP. ACT § 8.40 (AM. BAR. ASS’N 2008):

- (a) The officers of a nonprofit corporation are the individuals who hold the offices described in its articles of incorporation or bylaws, or are appointed or elected in accordance with the articles and bylaws or as authorized by the board of directors.
- (b) The articles of incorporation or bylaws or the board of directors must assign to one of the officers responsibility for preparing or supervising the preparation of the minutes of the meetings of the board of directors and the members, if any, and for maintaining and authenticating the records of the corporation required to be kept under Sections 16.01(a) and 16.01(e).

Id.

93. 805 ILL. COMP. STAT. ANN. 105/112.05. (West 1986). *Cf.* MODEL NONPROFIT CORP. ACT § 14.01 (AM. BAR. ASS’N 2008):

A majority of the incorporators or directors of a nonprofit corporation that has not commenced activity, or of a membership corporation that has not admitted any members, may dissolve the corporation by delivering to the secretary of state of state [[]sic] for filing articles of dissolution that set forth:

However, when a not-for-profit corporation has members entitled to vote on dissolution, the dissolution of the corporation may be authorized by a vote of members entitled to vote. The board of directors adopts a resolution proposing that the corporation be dissolved voluntarily and directs the question to be submitted to a vote at a meeting of members entitled to vote on dissolution.⁹⁴ The resolution is adopted by receiving the affirmative vote of at least two-thirds of the votes entitled to vote.⁹⁵

-
- (1) the name of the corporation;
 - (2) the date of its incorporation;
 - (3) either:
 - (i) that the corporation has not commenced activity; or
 - (ii) that the corporation is a membership corporation and has not admitted any members;
 - (4) that no debt of the corporation remains unpaid;
 - (5) that, except as provided in the articles of incorporation or bylaws, the net assets of the corporation remaining after winding up have been distributed to the members, if members were admitted; and
 - (6) that a majority of the incorporators or directors authorized the dissolution.

94. 805 ILL. COMP. STAT. ANN. 105/112.15(a) (West 1986). *Cf.*

- (a) The board of directors of a membership corporation may propose dissolution for submission to the members.
- (b) For a proposal to dissolve to be adopted:
 - (1) the board of directors must recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and
 - (2) the members entitled to vote must approve the proposal to dissolve as provided in subsection (e).
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (d) The nonprofit corporation must give notice to each member, whether or not entitled to vote, of the proposed meeting of members. The notice must also state:
 - (1) that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and
 - (2) how the assets of the corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.
- (e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the proposal, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

Involuntary dissolution of a not-for-profit corporation may also be accomplished by judicial dissolution in an action by a member of the corporation.⁹⁶ A circuit court (trial level) may dissolve a corporation in an action by a member entitled to vote if it is established that either the directors are deadlocked and the members are unable to break the deadlock and irreparable injury to the corporation is thereby caused or threatened;⁹⁷ “[t]he directors or those in control of the corporation have acted, are acting,

(f) If the nonprofit corporation does not have any members entitled to vote on its dissolution, a proposal to dissolve shall be deemed adopted by the corporation when it has been adopted by the board of directors.

MODEL NONPROFIT CORP. ACT § 14.02 (AM. BAR. ASS’N 2008).

95. 805 ILL. COMP. STAT. ANN. 105/112.15(c) (West 1986). *Cf.*

(a) The board of directors of a membership corporation may propose dissolution for submission to the members.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

(2) the members entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The nonprofit corporation must give notice to each member, whether or not entitled to vote, of the proposed meeting of members. The notice must also state:

(1) that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and

(2) how the assets of the corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.

(e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the proposal, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(f) If the nonprofit corporation does not have any members entitled to vote on its dissolution, a proposal to dissolve shall be deemed adopted by the corporation when it has been adopted by the board of directors.

MODEL NONPROFIT CORP. ACT § 14.02 (AM. BAR. ASS’N 2008).

96. 805 ILL. COMP. STAT. ANN. 105/112.50(b) (West 1986).

97. *Id.* § 112.50(b)(1).

or will act in a manner that is illegal, oppressive or fraudulent;”⁹⁸ “the corporate assets are being misapplied or wasted;”⁹⁹ or “the corporation is unable to carry out its purposes.”¹⁰⁰

In lieu of ordering dissolution, the circuit court may retain jurisdiction and either appoint a provisional director or appoint a custodian to safeguard the assets¹⁰¹ if it appears that such action by the court will remedy the grounds alleged.¹⁰² The next section discusses not-for-profit corporations as shell corporations. In order to understand the nature of not-for-profit corporations as shell corporations, however, for-profit shell corporations are first discussed.

I. NOT-FOR-PROFIT MEMBERSHIP CORPORATIONS: CAN THEY BE SHELL CORPORATIONS?

A. *For-Profit Shell Corporations*

In 2009, more than two million shell corporations were formed in the U.S.¹⁰³ A shell corporation refers to a non-publicly traded corporation that typically generates little to no independent economic value.¹⁰⁴ Thus, a for-profit corporation is a shell corporation if it has no assets or earns no income, e.g., from selling products or providing a service.¹⁰⁵ A for-profit corporation is not a shell corporation simply because it may not have shareholders, since a corporation with no shareholders would only occur subsequent to incorporation but prior to the issuance of stock.¹⁰⁶ While a

98. *Id.* § 112.50(b)(2).

99. *Id.* § 112.50(b)(3).

100. *Id.* § 112.50(b)(4). *Cf.* “The [name or describe court or courts] may dissolve a nonprofit corporation: . . . (2) in a proceeding by 50 members or members holding at least 5% of the voting power, whichever is less” MODEL NONPROFIT CORP. ACT § 14.30 (AM. BAR. ASS’N 2008).

101. 805 ILL. COMP. STAT. ANN. 105/112.55(a) (West 1986).

102. *Id.* § 112.55(b).

103. Browning, *supra* note 10.

104. DEP’T OF THE TREASURY, FIN. CRIMES ENF’T NETWORK, POTENTIAL MONEY LAUNDERING RISKS RELATED TO SHELL COMPANIES (2006), <https://www.sec.gov/about/offices/ocie/aml2007/fin-2006-g014.pdf>.

105. DEP’T OF THE TREASURY, FIN. CRIMES ENF’T NETWORK, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES (2006), [http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL .pdf](http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf).

106. The Illinois Business Corporation Act of 1983 allows close corporations to elect to be managed directly by shareholders rather than a board of directors. 805 ILL. COMP. STAT. ANN. 5/2A.45 (West 1983).

for-profit corporation may have no assets or earn no income, a for-profit shell corporation must have at least one shareholder and must have at least one director elected by that shareholder (usually the shareholder elects him or herself as the director).¹⁰⁷

Furthermore, while most shell companies are formed for legitimate reasons, they have also become common tools for money laundering and other financial crimes,¹⁰⁸ as well as election fraud. For example, research conducted by the New York Public Interest Research Group reported both for-profit shell corporations and “sham” not-for-profit corporations were used to funnel money into the 2012 elections.¹⁰⁹

B. *Not-For-Profit As Shell Corporations*

Neither the Delaware corporation laws, nor the Illinois corporation laws, nor the Model Nonprofit Corporation Act, explicitly allow not-for-profit-membership corporations. Nor do they explicitly prohibit them. Whether they are implicitly allowed must therefore be considered.

A for-profit corporation is owned by its shareholders.¹¹⁰ A for-profit corporation is a shell corporation if it has no assets or receives no income from selling a product or providing a service.¹¹¹ However, a for-profit corporation would receive cash or other assets when it initially issues common stock,¹¹² even if it is only one share and one shareholder, and thus strictly speaking it would have a minimum amount of assets, usually cash

107. *Id.* § 8.10.

108. DEP'T OF THE TREASURY, FIN. CRIMES ENF'T NETWORK, POTENTIAL MONEY LAUNDERING RISKS RELATED TO SHELL COMPANIES (2006), <https://www.sec.gov/about/offices/ocie/aml2007/fin-2006-g014.pdf>.

109. Brendan Fischer & Blair Bowie, *Elections Confidential: How Shady Operators Used Sham Non-profits and Fake Corporations to Funnel Mystery Money into the 2012 Elections*, U.S. PIRG EDUCATION FUND (Jan. 17, 2013), <http://illinoispirg.org/sites/pirg/files/reports/USP%20Elections%20Report%20Jan13%201.3-3.pdf>.

110. The Illinois Business Corporation Act of 1983 defines shares as “the units into which the proprietary interests in a corporation are divided” and shareholder as “one who is a holder of record of shares in a corporation.” 805 ILL. COMP. STAT. ANN. 5/1.80(f)-(g) (West 1983).

111. DEP'T OF THE TREASURY, FIN. CRIMES ENF'T NETWORK, THE ROLE OF DOMESTIC SHELL IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES (2006), http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf.

112. 805 ILL. COMP. STAT. ANN. 5/1.80(t) (West 1983).

equal to the value of the common stock issued,¹¹³ regardless of what it does with the cash or other assets it receives when the stock is issued.

A not-for-profit corporation, on the other hand, is not owned by its members the way a for-profit corporation is owned by its shareholders.¹¹⁴ A not-for-profit corporation does not typically sell a product or provide a service for a fee as its *raison d'être* as does a for-profit corporation, although many, such as hospitals, do so as part of their not-for-profit mission and purpose.¹¹⁵ As observed by Matthew Caudill, “Not-for-profit entities run the gamut from churches, sports leagues, charities, social clubs, schools, and hospitals. Charitable organizations such as the American Red Cross, the Salvation Army, the United Way, as well as special interest groups, such as the Federalist Society and the Star Trek Fan Club, all count themselves among the many not-for-profit entities. Not-for-profit entities provide many services and functions in society, most notably serving as philanthropic vehicles.”¹¹⁶ Indeed, not-for-profits may actually earn a “profit” as long as the “profit” is not distributed to insiders.¹¹⁷

Not-for-profit corporations that do not provide a service for a fee will typically derive their income from donations or grants. If its members must pay dues or a membership fee, they derive income from the membership fees or dues.¹¹⁸ Thus, a not-for-profit corporation will have assets if it receives donations or grants. A not-for-profit membership corporation will also have assets if its members pay dues or a membership fee. If a not-for-profit corporation receives donations or grants, or the members of a not-for-profit membership corporation pay dues or membership fees, the corporation receives income regardless whether it uses the income for the mission or purpose of the corporation.

113. “Paid-in capital means the sum of the cash and other consideration received, less expenses, including commissions, paid or incurred by the corporation, in connection with the issuance of shares, plus any cash and other consideration contributed to the corporation by or on behalf of its shareholders, . . .” *Id.* § 1.80(j) (internal quotations omitted).

114. “Shares and dividends prohibited. A corporation shall not have or issue shares. No dividend shall be paid and no part of the money, property or other assets of a corporation shall be distributed to its members . . .” 805 ILL. COMP. STAT. ANN. 105/106.05 (West 1986).

115. Jane C. Schlicht, *Piercing the Nonprofit Corporate Veil*, 66 MARQ. L. REV. 134, 134 n.3 (1982).

116. Caudill, *supra* note 74, at 478.

117. Dana Brakham Reiser, *Dismembering Civil Society: The Social Cost of Internally Undemocratic NonProfits*, 82 OR. L. REV. 829, 833 (2003); Schlicht, *supra* note 115, at 136.

118. For-profit corporations can also earn income from membership dues, such as a gym. However, members of a gym are not members of the corporation the way members of a not-for-profit corporation are members of a not-for-profit corporation. Members of a for-profit gym cannot vote for directors unless they also own shares in the corporation.

If the not-for-profit corporation is a membership corporation and the members have a right to vote, then in Illinois the members must elect a minimum of three directors¹¹⁹ according to its articles of incorporation¹²⁰ regardless of whether it received income from membership fees or dues, and regardless what the corporation does with the income it receives, just as the shareholders of a for-profit corporation must elect directors regardless of what the corporation does with the income it receives.¹²¹

A diligent search turned up few cases involving not-for-profit corporations labeled as “shell” corporations.¹²² None were found where a not-for-profit defendant corporation itself claimed to be a shell corporation. Instead, the reported cases occurred where the not-for-profit corporation was either accused by the plaintiff, or found by a court, to be a shell corporation.

In *Ammcon, Inc. v. Kemp*,¹²³ a federal case arising in New York, a contractor sued the Secretary of Housing and Urban Development (HUD) for monies owed to it by HUD for work completed for HUD through an “asset-less, [New York] non-profit shell corporation that is HUD’s ‘alter ego’”¹²⁴ In *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, a prior case

119. 805 ILL. COMP. STAT. ANN. 105/108.10(a) (West 1986). MNCA also requires three, MODEL NONPROFIT CORP. ACT § 8.03 (AM. BAR. ASS’N 2008), while the DGCL requires only one, DEL. CODE ANN. tit. 8, § 141(b) (West 1953).

120. 805 ILL. COMP. STAT. ANN. 105/107.03(f) (West 1986); Muhammad v. Muhammad-Rahmah, 844 N.E.2d 49, 53 (Ill. App. Ct. 2006), *reh’g denied*, 857 N.E.2d 674 (Ill. 2006). If the not-for-profit corporation is not a membership corporation, then the board may be self-perpetuating. 805 ILL. COMP. STAT. ANN. 105/107.03(f).

121. For example, the American College of Forensic Examiners International, Inc., a Missouri not-for-profit corporation, received membership dues and then contracted with a for-profit management company, Management Executives, Inc., owned by a director of the not-for-profit corporation, to manage the company for a fee. See Wm. Dennis Huber, *A Comparison of Forensic Accounting Corporations in the U.S.*, 12 J. OF ACCT., ETHICS & PUB. POL’Y (3) 301, 316 (2011).

122. See *Reich v. Compton*, 57 F.3d 270, 272, 274 (3d Cir. 1995), *amended* (Sept. 8, 1995); *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Agway, Inc. v. United States*, 524 F.2d 1194, 1197-98 (Ct. Cl. 1975); *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639, 643-44 (E.D.N.Y. 1993); Muhammad v. Muhammad-Rahmah, 844 N.E.2d 49, 58-59 (Ill. App. Ct. 2006), *reh’g denied*, 857 N.E.2d 674 (Ill. 2006); *Diocese of Cent. N.Y. v. Rector, Church Wardens, Vestrymen of Church of Good Shepherd*, 880 N.Y.S.2d 223, *1, *6 (N.Y. Sup. Ct. 2009) (unpublished opinion); *King County Dep’t of Comty. & Human Servs. v. Nw. Def. Ass’n*, 75 P.3d 583, 588-89 (Wash. Ct. App. 2003).

123. *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639 (E.D.N.Y. 1993).

124. *Id.* at 643. HUD had formed or sponsored other shell not-for-profit corporations for purposes of constructing elderly housing which were also defendants in lawsuits against HUD for non-payment of construction projects. See, e.g., *C.H. Sanders Co. v. BHAP*

with almost identical factual issues, the United States Court of Appeals for the Second Circuit pierced the corporate veil of a New York not-for-profit, asset-less corporation and found the corporation to be the “alter ego” of HUD and allowed the plaintiff to foreclose its lien against HUD.¹²⁵

In *Reich v. Compton*,¹²⁶ the U.S. Secretary of Labor sued the Electrical Mechanics Association (“EMA”) of Philadelphia, “a not-for-profit corporation closely related to Local 98 of the International Brotherhood of Electrical Workers (‘Local 98’ or ‘the union’)”¹²⁷ for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”).¹²⁸ The pension plan of Local 98 which was controlled by the EMA which made a loan to EMA at non-market interest rates.¹²⁹ The Secretary alleged that the plan trustees breached their fiduciary duties and that EMA was a shell corporation controlled by Local 98 and therefore “all transactions with EMA, were, in fact, transactions with Local 98,” in violation of ERISA requirements.¹³⁰

In *Diocese of Central New York v. Rector, Church Wardens, Vestrymen of Church of Good Shepherd*,¹³¹ a case arising in New York, The Church of the Good Shepherd, affiliated with The Episcopal Church and the Episcopal Diocese, subsequently chose to disaffiliate from the Diocese and to become a member of the Anglican Church of Kenya. The Diocese subsequently demanded that The Church of the Good Shepherd convey all its property to the Diocese, which the church refused to do.¹³² The New York Supreme Court for Broome County granted summary judgment to the Diocese.¹³³ Shortly thereafter, the Diocese moved for summary judgment for a declaration that The Church of the Good Shepherd, by virtue of its disaffiliation with the Diocese, was no longer the beneficiary of a testamentary trust, the terms of which included the provision that “[i]n the

Housing Dev. Fund Co., 903 F.2d 114, 118, 120–21 (2d Cir. 1990); *S.S. Silberblatt, Inc. v. East Harlem Pilot Block*, 608 F.2d 28, 41–42 (2d Cir. 1979); *Trans-Bay Eng’rs & Builders, Inc. v. Hills*, 551 F.2d 370, 381–82 (D.C. Cir. 1976); *F.W. Eversley & Co. v. East New York Non-Profit HFDC, Inc.*, 409 F. Supp. 791, 796–98 (S.D.N.Y. 1976).

125. *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114 (2d Cir. 1990).

126. *Reich v. Compton*, 57 F.3d 270 (3d Cir. 1995), *amended* (Sept. 8, 1995).

127. *Id.* at 272.

128. *Id.*

129. *Id.*

130. *Id.* at 273.

131. *Diocese of Cent. N.Y. v. Rector, Church Wardens, Vestrymen of Church of Good Shepherd*, 880 N.Y.S.2d 223 (N.Y. Sup. Ct. 2009) (unpublished opinion).

132. *Id.*

133. *Id.* at *3.

event *The Church of the Good Shepherd shall cease to exist . . . such bequests shall be to the RECTOR, WARDENS AND VESTRYMEN OF CHRIST EPISCOPAL CHURCH OF BINGHAMTON, by whatever name known.*¹³⁴ The Church of the Good Shepherd argued that it continued to exist and therefore was still entitled to the testamentary trust since “no formal dissolution proceedings have been initiated, let alone completed, for either a judicial or non-judicial dissolution under the Not-For-Profit Corporation Law or a dissolution under the Religious Corporation Law.”¹³⁵

The court granted summary judgment to the Diocese noting that “while The Church of the Good Shepherd may well exist in the legal world as a shell corporation that formerly held its property, but not (yet) dissolved under the auspices of the Not-For-Profit Corporation Law and/or Religious Corporation law, applying such a technical argument to [testator’s] intent would violate the spirit of his bequest.”¹³⁶ Equally, if not more, important the court also noted that the “revenue being collected during the pendency of this matter was not been [sic] funneled to the Church of the Good Shepherd, but rather a separate entity named St. Matthias Society, Ltd.”¹³⁷ The point the court was making was that the defendant not-for-profit corporation, The Church of the Good Shepherd, was a shell corporation being used to violate the terms of the testamentary trust and although it was a shell corporation, it not only received income but funneled the income it collected into another entity.¹³⁸

In a case where the plaintiff was a Delaware not-for-profit corporation, the United States Court of Claims rejected a claim for a refund of income taxes paid.¹³⁹ In *Agway, Inc. v. U. S.*, the court held that while *Agway* was a not-for-profit corporation, it was not a shell corporation and was therefore not entitled to a refund of taxes paid.¹⁴⁰

While *Muhammad v. Muhammad-Rahmah*¹⁴¹ is not a case directly involving a not-for-profit corporation as a shell corporation, it is related to the preservation of assets of an Illinois not-for-profit corporation whose

134. *Diocese of Cent. N.Y. v. Rector, Church Wardens & Vestrymen of Church of Good Shepherd*, 886 N.Y.S.2d 70 (N.Y. Sup. Ct. 2009).

135. *Id.* at *4.

136. *Id.* at *6.

137. *Id.* at *5.

138. The other entity was not identified by the court.

139. *Agway, Inc. v. United States*, 524 F.2d 1194, 1198-99 (Ct. Cl. 1975).

140. *Id.* at 1196.

141. *Muhammad v. Muhammad-Rahmah*, 844 N.E.2d 49 (Ill. App. Ct. 2006), *reh’g denied*, 857 N.E.2d 674 (Ill. 2006).

directors were not elected according to its articles of incorporation.¹⁴² In *Muhammad*, the court found that the not-for-profit corporation at issue, a mosque, never had an election for any directors subsequent to its incorporation and had no legitimate officers or directors who were elected in accordance with the General Not for Profit Corporation Act and articles of incorporation.¹⁴³ There was no oversight or control of its assets.¹⁴⁴ Specifically, the court held that “at some point, a corporate body must elect its directors, not just name them at the time of formation”¹⁴⁵ The court appointed a receiver to preserve the corporation’s assets and to establish a new, legitimate board of directors as required by its articles of incorporation.¹⁴⁶

In its ruling, the court in *Muhammad* noted similarities with a Washington State case, *King County Department of Community and Human Services v. Northwest Defenders Association*.¹⁴⁷ In *King County*, the court did not find the defendant to be a shell corporation but appointed a receiver to take possession of and preserve the corporation’s assets and appoint a new board of directors where there had been no legitimate board of directors elected by the members of the corporation according to its articles of incorporation.¹⁴⁸

C. *The Illinois Not-For-Profit “Shell” Corporation*

A comprehensive search revealed that in the few reported cases involving not-for-profit corporations as shell corporations, none involved cases where the corporation itself claimed as a defendant or a respondent that it was a shell corporation, that it never owned any assets, or, if it was a membership corporation, that there were never any members except for the one case discussed below. Furthermore, in cases where a not-for-profit corporation was either alleged to be or found to be a shell corporation, the issues involving membership, members’ rights, or corporate governance were considered only in conjunction with issues of preserving corporate assets or

142. *Id.* at 50.

143. *Id.* at 58.

144. *Id.*

145. *Id.* at 56-57.

146. *Id.* at 59; *see also* 805 ILL. COMP. STAT. ANN. 105/112.55 (West 1986).

147. *Muhammad*, 844 N.E.2d at 57-58; *King County Dep’t of Cmty. & Human Servs. v. Nw. Def. Ass’n*, 75 P.3d 583 (Wash. Ct. App. 2003).

148. *King County Dep’t of Cmty. & Human Servs.*, 75 P.3d at 585.

revenue.¹⁴⁹ More particularly, the cases involving the not-for-profit corporation as a defendant involved not just the presence or absence of assets or income, as is the issue in for-profit shell corporations, but also the actual or potential misuse of assets or income by not-for-profit shell corporations.¹⁵⁰

In *Huber v. American Accounting Association*,¹⁵¹ the author of this article petitioned the court to judicially dissolve a not-for-profit corporation, alleging that “those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent.”¹⁵² The corporation had been incorporated in 2002.¹⁵³ The articles of incorporation had explicitly created members.¹⁵⁴ The articles of incorporation had also created both a board of directors and officers.¹⁵⁵ The members were given unrestricted rights to vote for both officers and directors.¹⁵⁶ However, shortly after the incorporation, the initial officers declared that the officers would also act as directors rather than allowing the members to elect the directors.¹⁵⁷ The members of the corporation had not been informed that the articles of incorporation had created both officers and directors and

149. See, e.g., *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Reich v. Compton*, 57 F.3d 270, 273-74 (3d Cir. 1995), *amended* (Sept. 8, 1995); *Agway, Inc. v. United States*, 524 F.2d 1194, 1197-98 (Ct. Cl. 1975); *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639, 643 (E.D.N.Y. 1993); *Muhammad v. Muhammad-Rahmah*, 844 N.E.2d 49, 57-59 (Ill. App. Ct. 2006), *reh'g denied*, 857 N.E.2d 674 (Ill. 2006); *Diocese of Cent. N.Y. v. Rector, Church Wardens & Vestrymen of Church of Good Shepherd*, 886 N.Y.S.2d 70 (N.Y. Sup. Ct. 2009); *King County Dep't of Comty. & Human Servs. v. Nw. Def. Ass'n*, 75 P.3d 583, 585 (Wash. Ct. App. 2003).

150. See *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Reich v. Compton*, 57 F.3d 270, 273-74 (3d Cir. 1995), *amended* (Sept. 8, 1995); *Agway, Inc. v. United States*, 524 F.2d 1194, 1197-98 (Ct. Cl. 1975); *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639, 643-44 (E.D.N.Y. 1993); *Muhammad v. Muhammad-Rahmah*, 844 N.E.2d 49, 57 (Ill. App. Ct. 2006), *reh'g denied*, 857 N.E.2d 674 (Ill. 2006); *Diocese of Cent. New York v. Rector, Church Wardens & Vestrymen of Good Shepherd*, 886 N.Y.S.2d 70 (N.Y. Sup. Ct. 2009); *King County Dep't of Comty. & Human Servs. v. Nw. Def. Ass'n*, 75 P.3d 583, 585 (Wash. Ct. App. 2003).

151. *Huber v. Am. Accounting Ass'n*, 2014 WL 103780, *2 (Ill. Ct. App.).

152. 805 ILL. COMP. STAT. ANN. 105/112.50(b)(2) (West 1986). See also *Huber v. Am. Accounting Ass'n*, No. 4-13-0278, 2014 WL 103780 *1, *2 (Ill. App. Ct.).

153. *Huber*, 2014 WL 103780, at *1.

154. See Wm. Dennis Huber, *Does the American Association Exist? An Example of Public Document Research*, 3 J. FORENSIC & INVESTIGATIVE ACCT. 28-29 (2011).

155. *Id.* at 8. Officers also included non-elected officers whose terms had expired. *Id.*

156. “If the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.” 805 ILL. COMP. STAT. ANN. 105/107.03(c) (West 1986).

157. *Huber*, *supra* note 154, at 15.

were not given the opportunity to elect directors.¹⁵⁸ However, the corporation had received dues from its members since the year in which it had been incorporated.¹⁵⁹

The petitioner, a member of the corporation, discovered the irregularities in 2011 during a forensic accounting investigation and advised the officers that they were not legally elected as directors.¹⁶⁰ In response, the officers, as the self-appointed board of directors, filed a voluntary dissolution of the corporation without a vote of the members¹⁶¹ and reinstated a not-for-profit corporation with the same name that had been incorporated in 1935 but which had been administratively dissolved by the Illinois Secretary of State in 1996.¹⁶² The petitioner then petitioned the court to vacate both the dissolution of the 2002 corporation and the reinstatement of the 1935 corporation, and either to judicially dissolve the 2002 corporation¹⁶³ or, alternatively, to retain jurisdiction and appoint a custodian and a new board of directors,¹⁶⁴ alleging those in control of the corporation “have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent.”¹⁶⁵

The corporation moved to dismiss the petition pursuant to section 2–619(a)(9) of the Illinois Code of Civil Procedure¹⁶⁶ arguing that the corporation was only a “shell.” An affidavit by the corporation’s executive director claimed not only that the corporation never had any assets, but the monies received from members for membership dues had been deposited in

158. *Id.* at 7.

159. *Id.* at 7; *see also* Am. Accounting Ass’n Financial Statements and Supplemental Information Year Ended May 31, 2011 and Nine Months Ended, May 31, 2010, http://aaahq.org/Portals/0/documents/about/Financials/FYE_May2011_AuditedFinancialStatements.pdf.

160. Huber, *supra* note 154.

161. 805 ILL. COMP. STAT. ANN. 105/112.15 (West 1986).

162. *Id.* § 112.45.

163. *Id.* § 112.50(b)(2); Muhammad v. Muhammad-Rahmah, 844 N.E.2d 49 (Ill. App. Ct. 2006), *reh’g denied*, 857 N.E.2d 674 (Ill. 2006).

164. 805 ILL. COMP. STAT. ANN. 105/112.15 (West 1986); *Muhammad*, 844 N.E.2d at 49.

165. 805 ILL. COMP. STAT. ANN. 105/112.50(b)(2) (West 1986).

166. Huber v. Am. Accounting Ass’n, 2014 WL 103780, at *2 (Ill. Ct. App. 2014).

Involuntary dismissal based upon certain defects or defenses.

(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit . . . (9) That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.

735 ILL. COMP. STAT. ANN. 5/2-619 (West 1986).

accounts of the corporation that had previously been administratively dissolved in 1996 rather than into the accounts of the corporation itself.¹⁶⁷

More importantly, the corporation argued that, as a shell corporation, there were never any members of the corporation.¹⁶⁸ Thus, according to the respondent, the petition failed to state a cause of action as a matter of law since the corporation had been dissolved by the directors, and the court therefore lacked jurisdiction.¹⁶⁹ Furthermore, the corporation claimed that the petitioner had no standing because he was not a member of the corporation and that the corporation had been dissolved by the directors and the reinstatement of the previous corporation was retroactive to the date of administrative dissolution—1996.¹⁷⁰

D. Principles of Statutory Construction and Not-For-Profit Corporations as “Shell” Corporations

The Illinois General Not For Profit Corporation Act of 1986 does not explicitly prohibit not-for-profit corporations to exist as shell corporations any more than the Illinois Business Corporation Act of 1983 prohibits for-profit corporations to exist as shell corporations.¹⁷¹ But neither does the Act specifically authorize not-for-profit corporations to exist as shell corporations. Therefore, the Act must be analyzed using generally accepted principles of statutory construction as applied by Illinois appellate courts and the Illinois Supreme Court. Moreover, the logic of the process must be considered in order to avoid absurd results.

The rules of statutory construction are described by the appellate court in *Mason v. John Boos & Co.*:¹⁷²

In determining what the intent is, the court may properly consider not only the language used in a statute but also the reason and necessity for the law, the evils sought to be remedied, and the purpose sought to be achieved. In construing a statute, the court must assume that the legislature did not intend an absurd result.¹⁷³

167. *Huber v. Am. Accounting Ass’n*, 2014 WL 103780, at *2 (Ill. Ct. App. 2014).

168. *Id.*

169. *Id.*

170. *Id.*

171. Neither the DGCL nor the MNCA explicitly allow or prohibit not-for-profit membership corporations shell corporations.

172. *Mason v. John Boos & Co.*, 959 N.E.2d 209 (Ill. App. Ct. 2011).

173. *Id.* at 184 (citation omitted).

The Illinois Supreme Court had previously explained the rules of statutory construction in *Mulligan v. Joliet Regional Port District*:¹⁷⁴

Where the language of a statute admits of two constructions, one of which would make the enactment absurd and illogical, while the other renders it reasonable and sensible, the construction which leads to absurd result must be avoided. A proper interpretation of provision cannot simply be based on its language; it must be grounded on the “nature, objects and consequences that would result from construing it one way or the other.”¹⁷⁵

While the Act does not explicitly prohibit the formation of not-for-profit membership shell corporations, according to the rules of statutory construction, it must be concluded that the Act implicitly prohibits the formation of not-for-profit membership shell corporations. Not-for-profit membership shell corporations with no members, no assets, and no income lead to the absurd and illogical consequences that the Illinois Supreme Court sought to avoid in *Mulligan v. Joliet Regional Port District*, i.e., if there is no election of directors by the members of a not-for-profit membership corporation, there can be no directors or officers and therefore no legitimate governance or oversight.¹⁷⁶

Nevertheless, the trial court in *Huber v. American Accounting Association* granted the corporation’s motion to dismiss without issuing an opinion.¹⁷⁷ If no reason is given by a trial court for dismissing an action it must be assumed that the dismissal is for the reasons argued by the movant.¹⁷⁸ Therefore, the trial court in *Huber v. American Accounting Association* accepted the corporation’s arguments that the not-for-profit membership corporation was only a “shell” and never had assets and, more importantly, never had any members, ignoring the articles of incorporation that created members.¹⁷⁹

Since the respondent’s arguments were recognized as valid by the trial court,¹⁸⁰ the potential for similar claims to be made in the future by other

174. *Mulligan v. Joliet Reg’l Port Dist.*, 527 N.E.2d 1264 (Ill. 1988).

175. *Id.* at 1269 (citation omitted).

176. *Muhammad v. Muhammad-Rahmah*, 844 N.E.2d 49, 58-59 (Ill. App. Ct. 2006), *reh’g denied*, 857 N.E.2d 674 (Ill. 2006).

177. *Huber v. Am. Accounting Ass’n*, 2014 WL 103780, at *2 (Ill. Ct. App. 2014).

178. *Zielinski v. Miller*, 660 N.E.2d 1289, 1293 (Ill. App. Ct. 1995).

179. *See Huber*, *supra* note 154, at 64.

180. *See supra* notes 164, 165, and accompanying text.

not-for-profit membership corporations must be taken seriously and the potential consequences carefully considered since the potential for abuse is enormous.

V. NOT-FOR-PROFIT MEMBERSHIP SHELL CORPORATIONS—THE BAD, THE WORSE, AND THE UGLY

To allow not-for-profit membership corporations to be created as asset-less shell corporations is an encouragement to commit fraud against third parties such as creditors, against the government, and against members. Each type of fraud is discussed in the following sections.

A. *The Bad—Fraud Against the Public and Third Parties*

To allow not-for-profit corporations to be created as asset-less shell corporations is an encouragement to commit fraud against third parties such as creditors. A creditor, or supplier who extends credit, would have no recourse against an asset-less, not-for-profit shell corporation. For example, in *Ammcon, Inc. v. Kemp* and *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*,¹⁸¹ the plaintiffs were able to recover from the defendant not-for-profit, asset-less shell corporation because the courts pierced the corporate veil to reach an agency of the United States government to recover the funds.¹⁸²

In *Diocese of Central New York v. Rector, Church Wardens, and Vestrymen of Church of Good Shepherd*,¹⁸³ the defendant not-for-profit shell corporation was funneling the income it collected into another entity.¹⁸⁴ In *Huber v. American Accounting Association*, the corporation issued audited financial statements. The corporation stated in the audit report for the Fiscal Year Ended May 31, 2011 that “[t]he Association’s members are primarily accounting faculty members at colleges and universities throughout the world.”¹⁸⁵ The audit reported the corporation had received “Support and Revenue [from] Membership Dues” of \$1,523,584, and \$1,220,399 from the sale of its publications.¹⁸⁶ However, the unqualified audit opinion did not disclose that

181. *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114 (2d Cir. 1990); *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639 (E.D.N.Y. 1993).

182. See *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114 (2d Cir. 1990); see also *Ammcon, Inc. v. Kemp*, 826 F. Supp. 639 (E.D.N.Y. 1993).

183. *Diocese of Cent. N.Y. v. Rector, Church Wardens, & Vestrymen of Church of Good Shepherd*, 23 Misc. 3d 1117(A), 886 N.Y.S.2d 70 (Sup. Ct. 2009).

184. *Id.* at *5.

185. Am. Accounting Ass’n Financial Statements, *supra* note 159, at 9121.

186. *Id.* at 3.

the corporation claimed it was an asset-less shell corporation and did not disclose that the income it received from support and revenue from membership dues was being deposited in the accounts of a corporation that had previously been dissolved.¹⁸⁷ Had there been an action against the corporation by a creditor, the creditor would not have been able to recover damages since according to the corporation, it had no assets.

Furthermore, the audit report stated the corporation was a § 501(c)(3) corporation,¹⁸⁸ but the corporation had not received authorization to operate as a § 501(c)(3) corporation.¹⁸⁹ Not-for-profit corporations' "financial accountability problems have been well-documented and much lamented."¹⁹⁰ For example, the FBI recently announced the indictment and arrest of the former president of National Relief Charities, charging him with conspiring to defraud National Relief Charities and conspiring to commit money laundering violations with the proceeds of the fraud scheme.¹⁹¹ The former president had formed a not-for-profit corporation and allegedly "induced National Relief Charities to fund Charity One Inc. with \$4 million from 2006 through 2009, which Brown represented would be used to fund educational scholarships for Native Americans.¹⁹² Instead, Brown and unnamed coconspirators allegedly used the entire \$4 million for their personal benefit."¹⁹³

B. *The Worse—Fraud Against the Government*

Fraud against the government includes fraud against federal, state, and municipal governments. The mere fact that a corporation may be not-for-profit does not mean it is automatically exempt from income, sales, or property taxes. In order for a not-for-profit corporation to be exempt from taxation, it must receive § 501(c) authorization.¹⁹⁴ A not-for-profit

187. *Id.*

188. *Id.* at 10.

189. Huber, *supra* note 154, at 7.

190. Reiser, *supra* note 117, at 855.

191. Press Release, Fed. Bureau of Investigation, Portland Division, Former President of National Charity Arrested and Charged in \$4 Million Fraud and Money Laundering Scheme (Oct. 21, 2013), <http://www.fbi.gov/portland/press-releases/2013/former-president-of-national-charity-arrested-and-charged-in-4-million-fraud-and-money-laundering-scheme>.

192. *Id.*

193. *Id.*

194. 26 U.S.C. § 501 (2015).

corporation that is not a § 501(c) corporation is not exempt from Federal, state, or municipal taxes on corporations.¹⁹⁵

Charitable § 501(c)(3) corporations must file IRS Form 990, Return of Organization Exempt From Income Tax.¹⁹⁶ If a not-for-profit corporation claims to be organized and operated exclusively for exempt purposes set forth in section § 501(c)(3), but is not in fact organized and operated exclusively for exempt purposes set forth in section § 501(c)(3), then the corporation would not be entitled to an exemption from tax and would constitute a violation of the Internal Revenue Code § 501(c)(3).¹⁹⁷

Furthermore, states and municipalities with corporate income taxes require a not-for-profit corporation to receive § 501(c)(3) authorization in order to be exempt from state corporate income tax and also exempt from sales and property taxes.¹⁹⁸ In *Huber v. American Accounting Association*, the audited financial statements stated the corporation was a § 501(c)(3) corporation.¹⁹⁹ However, the corporation had never obtained authorization from the IRS to operate as a § 501(c)(3) corporation.²⁰⁰

C. *The Ugly—Fraud Against Members*

Not-for-profit membership shell corporations are intertwined with and inseparable from issues of governance and control and the use (or misuse) of assets and income. A not-for-profit membership shell corporation whose directors are not elected by the members as required by its articles of incorporation provides pseudo-accountability and illusory oversight of assets and income. A major substantive accountability problem affecting nonprofit organizations is “failure of financial integrity,” and “[n]onprofits’ financial accountability problems have been well-documented and much lamented.”²⁰¹ Therefore, the risk for fraud is high, not just against the public, third parties, and the government, but also against members of the corporation.

For example, in *Diocese of Central New York v. Rector*, the income received by the defendant shell corporation, The Church of the Good

195. Caudill, *supra* note 74, at 479.

196. RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, <https://www.irs.gov/uac/about-form-990> (last visited Sept. 24, 2016); FORM 990, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, <https://www.irs.gov/pub/irs-pdf/f990.pdf> (last visited Sept. 24, 2016).

197. 26 U.S.C. § 501(c)(3) (2015).

198. Caudill, *supra* note 74, at 479.

199. Am. Accounting Ass’n Financial Statements, *supra* note 159, at 10121.

200. Huber, *supra* note 154, at 6-7.

201. Reiser, *supra* note 117, at 855.

Shepherd, was funneled to another entity rather than the corporation intended by the members.²⁰² In *Reich v. Compton*,²⁰³ loans were made to a not-for-profit corporation union controlled by the pension plan trustees at below market interest rates, thereby depriving the members of the income from market interest rates.²⁰⁴ In *Muhammad v. Muhammad-Rahmah*,²⁰⁵ the mosque had no directors legitimately elected by the members of the mosque requiring a court-appointed custodian to protect the assets.²⁰⁶

In *Daley v. Alpha Kappa Alpha Sorority, Inc.*,²⁰⁷ the District of Columbia Court of Appeals held that members of a not-for-profit sorority had standing to bring an action against the sorority and its board of directors for expending membership dues for purposes not in accordance with the sorority's articles of incorporation and bylaws.²⁰⁸ The court further held that the members' allegations that the sorority expended funds without approval of the directors was sufficient to sustain both an *ultra vires* claim and a breach of contract claim since the articles of incorporation and the bylaws constituted a contract between the members and the corporation.²⁰⁹ If a not-for-profit corporation is a membership corporation that solicits and receives dues or fees from members, but does not allow members to vote for directors, then its members would have little, if any, recourse if the directors subsequently claim the corporation is an asset-less shell corporation with no members and voluntarily dissolve the corporation.

VI. CONCLUSION AND RECOMMENDATIONS

Whether there are unreported cases involving not-for-profit membership shell corporations, or whether there are not-for-profit membership shell corporations that have not been challenged in legal proceedings, cannot be determined. At this time, however, it appears that Illinois is the only state to allow not-for-profit membership corporations to be shell corporations. The Illinois not-for-profit membership corporation is unique not only in its

202. *Diocese of Cent. N.Y. v. Rector, Church Wardens, & Vestrymen of Church of Good Shepherd*, 886 N.Y.S. 2d 70 (N.Y. Sup. Ct. 2009).

203. *Reich v. Compton*, 57 F.3d 270 (3d Cir. 1995).

204. *Id.* at 281.

205. *Muhammad v. Muhammad-Rahmah*, 844 N.E.2d 49 (Ill. App. Ct. 2006), *reh'g denied*, 857 N.E.2d 674 (Ill. 2006).

206. *Id.* at 58-59.

207. *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723 (D.C. Cir. 2011).

208. *Id.* at 729.

209. *Id.* at 730-32.

claim that it is a shell corporation, but that it also has no assets and no members in spite of its charter and receiving membership dues. Such an outcome can easily open the door for other “copycat” not-for-profit membership shell corporations to be formed.

An alarming precedent has been set. Although for-profit shell corporations can be legitimate, they can also be used for fraud, money laundering, and financial crimes. Not-for-profit corporations likewise can be legitimate, but they can also be used for fraud, money laundering, and financial crimes. The risk, however, is much higher in not-for-profit corporations due to less oversight over not-for-profit corporations. To allow a not-for-profit membership shell corporation is to open a Pandora’s box of not-for-profit membership shell corporations to engage in multiple types of fraud, money laundering, and other financial crimes. It would therefore behoove state legislatures to revise their not-for-profit corporation laws to prevent such an outcome.

As a matter of public interest, legislatures must enact statutes with unambiguous language that clearly and explicitly prohibits not-for-profit membership corporations to be shell corporations. Courts must also be cognizant of the public policy implications of interpreting not-for-profit corporation laws to allow not-for-profit membership corporations to be shell corporations.