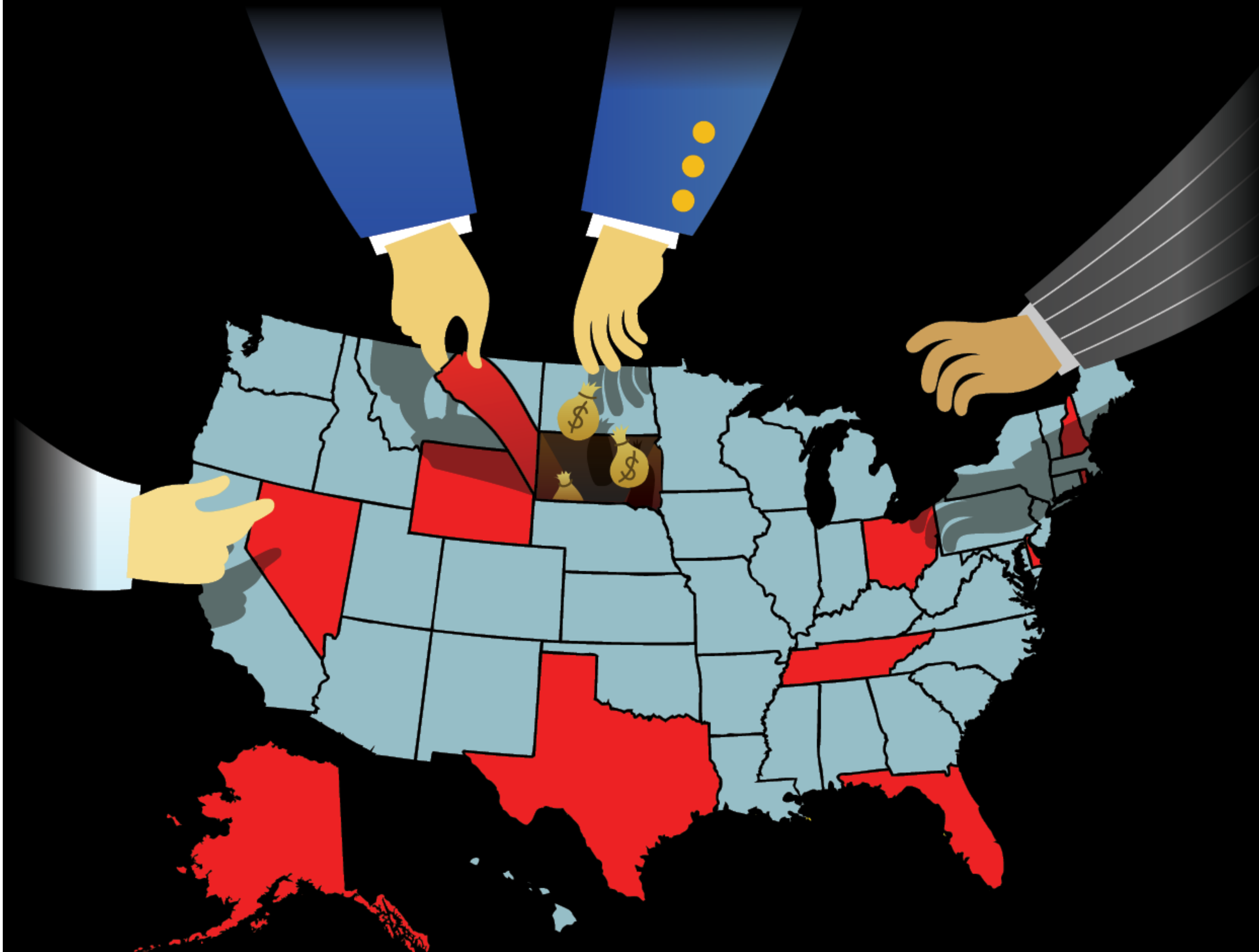


BILLIONAIRE ENABLER STATES

How U.S. States Captured by the Trust Industry Help the World's Wealthy Hide their Fortunes

Kalena Thomhave • Chuck Collins

Institute for Policy Studies

SEPTEMBER 2022

INEQUALITY.ORG
AN INSTITUTE FOR POLICY STUDIES PROJECT

CO-AUTHORS

Kalena Thomhave is a freelance journalist and researcher working with the Program on Inequality and the Common Good at the Institute for Policy Studies. Her work has appeared in *The American Prospect*, *The Nation*, *The Progressive*, and more.

Chuck Collins is director of the Program on Inequality and the Common Good at the Institute for Policy Studies where he coedits Inequality.org. He is author of the book, *The Wealth Hoarders: How Billionaires Pay Millions to Hide Trillions* (Polity 2021).

ACKNOWLEDGEMENTS

The authors wish to thank Sarah Gertler for her cover design and graphics. We would also like to thank Helen Flannery for her assistance with proofreading and graphics. We are grateful to Bob Lord and Don Griswold for their comments and feedback on an early version of this report. We also thank the staff at the state banking departments of Alaska, Illinois, Missouri, and Rhode Island for responding to queries about state trust asset data.

Other Relevant Research

Kalena Thomhave and Chuck Collins, "Dynasty Trusts: How the Wealthy Shield Trillions from Taxation Onshore," June 2021.

THE INSTITUTE FOR POLICY STUDIES

The **Institute for Policy Studies** (www.ips-dc.org) is a multi-issue research center that has been conducting pathbreaking research on inequality for more than 20 years.

The **IPS Program on Inequality and the Common Good** was founded in 2006 to draw attention to the growing dangers of concentrated wealth and power, and to advocate for policies and practices to reverse extreme inequalities in income, wealth, and opportunity.

The **Inequality.org** website (Inequality.org) provides an online portal into all things related to the income and wealth gaps that divide us, in the United States and throughout the world**.** Subscribe to our weekly newsletter at Inequality.org or follow us on Twitter and Facebook at @inequalityorg.

Institute for Policy Studies National Office
1301 Connecticut Ave NW, Suite 600, Washington, DC 20036 | Web: www.ips-dc.org
Twitter: @ips_dc | Facebook: http://www.facebook.com/InstituteforPolicyStudies

Email: chuck@ips-dc.org

Contents

Key Findings

- ***The U.S. is host to an estimated $5.6 trillion in trust and estate assets.*** *These assets belong to the uber-wealthy — both international and domestic — and are held in trust in states subservient to the trust industry. The concept of the "offshore" tax haven has very much washed ashore.*

- ***U.S. trust-subservient states enable illicit wealth hiding and tax avoidance.*** *As the International Consortium of Investigative Journalists' Pandora Papers investigation revealed, some U.S. states have allowed international kleptocrats to avoid accountability at home and hide their ill-gotten wealth abroad. These states also enable wealthy Americans to avoid federal taxation, cheating the U.S. out of revenue with which it could combat poverty or invest in infrastructure. Trusts, therefore, affect every U.S. citizen and resident.*

- ***Three key ingredients — low or no taxes, secrecy, and trust longevity — make certain U.S. states particularly attractive to wealth defenders.*** *These states pass laws to cut or abolish taxes or hide trust records from prying eyes. More than two thirds of states allow trusts to last for at least 150 years or forever. Additionally, more than a third of states allow trusts to be established by the person benefiting from the trust, shielding their assets from creditors and tax authorities.*

- ***There is a significant correlation between regressive state taxation systems, which hurt the poorest residents, and trust-subservient state laws.*** *Of the 13 states captured by the trust industry we have profiled here, eight are among the 15 most regressive tax states in the country. These states often cut taxes for the wealthiest and instead rely on the poor to pay a disproportionate amount of their income in taxes.*

- ***The trust industry says it simply helps its clients obey laws — but it often writes the laws.*** *As our report shows, the trust industry is the driving force for trust deregulation. Trust and estate lawyers regularly lobby state legislatures and sometimes work in official capacities with states to write legislation favorable to the industry. In small states with part-time or "citizen" legislatures, there is no countervailing power that matches the clout of the financial services industry. And this trust deregulation is often bipartisan.*

- ***The trust industry offers little benefit to states.*** *Contrary to what trust and estate lawyers may claim about increased economic development and boosted state revenue, states largely do not benefit from trusts. Though billions may be held in trust in a state, state coffers — and the public — will never see it. States charge only small fees to trust companies; the trust industry creates very few jobs; and trust owners have no reason to physically move to or even visit the states where they have established trusts.*

- ***States are engaged in a rapid race to the bottom, so federal action is needed.*** *States may see a few jobs created by the trust industry and determine that is worth the detrimental effect of trusts on the rest of the country. It is in the federal government's interest, therefore, to curb state laws that enable illicit wealth hiding and tax avoidance.*

Recommendations

- Boost federal and state oversight of complex trust transactions
- Require trust registration and disclosure
- Outlaw trusts designed to obfuscate ownership
- Establish a federal rule against perpetuities
- Reform estate, gift, and generation-skipping taxes

We explain these reforms in detail later in this report.

Introduction

After Russia's invasion of Ukraine this February, Ukraine's allies zeroed in on a possible weak spot for the attacking country: the hidden fortunes of Russian elites. Russian wealth has been parked in assets such as homes, apartments, art, yachts, and more — from oligarch Igor Makarov's private trust company in Wyoming to Igor Sechin's superyacht docked in France. [1] The world could join together to move against oligarchs and freeze Russian wealth hiding.

Oligarchy, however, is not confined to Russia. The clandestine world of financial secrecy stretches around the world, all the way back to the United States. And if Russian oligarchs can enjoy the tax haven of the United States, that means that elites from all over the world — including from the United States itself — can too.

Our research at the Institute for Policy Studies has shown that billionaire wealth has skyrocketed over the past several years, including during the pandemic. Since the start of the U.S. COVID-19 crisis in March 2020, known billionaire wealth has increased by more than 50 percent to nearly $5 trillion.[2] And trillions more are probably secretly sequestered in trusts.

This swelling tide of wealth is not lifting all boats. As wages continue to stagnate and everyday Americans still face health and economic harms from the pandemic, wealth inequality is a yawning chasm.

Trusts are key to this story. These financial vehicles facilitate tax avoidance and evasion and help to entrench the status and fortune of wealthy elites.

Trusts have been around for hundreds of years. Essentially, they are financial arrangements that allow a person to transfer their property to another party, the trustee, who manages the property for the sake of a beneficiary. Trusts are usually described as tools to hold funds until beneficiaries need them — parents may want to wait to give money to their children until they are older, for example, or a caregiver may set up a trust to ensure that after their death their loved one still receives care.

Yet trusts have been manipulated from these simple structures to bloated tools of wealth accumulation and tax avoidance. Trusts are one of the major mechanisms that ultra-high-net-worth families around the world use to cement their fortunes into hereditary wealth dynasties. One type of trust, the dynasty trust, is such a tool, as these trusts can last for centuries, or sometimes forever, meaning that wealth can grow virtually untaxed across generations.[3] In addition, trusts can enter into "ownership limbo," where trust assets are not considered to legally belong to anyone: the trust grantor (the creator of the trust) has transferred their assets out of their estate, the beneficiaries can claim they haven't received the assets yet, and the trustee merely manages the assets. Ownership limbo means that creditors and tax authorities often cannot access assets held in trust — or more often, do not even know about them.[4]

The International Consortium of Investigative Journalists (ICIJ) made a splash in October 2021 with the publication of the Pandora Papers, a trove of documents that highlight how the world's wealthy elites use trusts to evade taxation and hide often-illicit wealth from the public.[5] One of the greatest revelations from the Pandora Papers was that the U.S. has become a major global tax haven. The ICIJ shone a spotlight on several U.S. states at the center of this web of trust business, aided by an influential trust industry.

After the worldwide economic crisis of 2007 and 2008, the public discovered how a shadow banking system, operating with little to no transparency, contributed to the collapse of the housing market and the Great Recession at large.[6] In a similar way, a shadow system of trust companies in the United States is growing larger, increasingly eroding both tax revenue and public accountability to help the rich get ever richer.

States as Little Tax Havens: How the U.S. Took the Top Trust Spot

When establishing a trust, wealthy families typically do not call the trust company down the street. Instead, they seek out states that have enabled tax and regulatory avoidance — what we call "shadow states." These states have altered their laws, sometimes over decades, in order to make themselves more attractive to trust business. Some states are already more trust-subservient than others, such as those without income or capital gains taxes. But additional changes to state law can help the super-rich stash their wealth and avoid taxation, like by increasing the secrecy and complexity of trusts.

States aspire to make it onto lists of the best trust states, as determined by tax and estate lawyers. Each year since 2012, trust and estate lawyer Steve Oshins has compiled a popular list of the top dynasty trust states in the U.S. The most recently published ranking debuted in late 2020. South Dakota tops the list, followed by Nevada, Tennessee, Alaska, Rhode Island and Wyoming (tied for fifth), Delaware and Ohio (tied for seventh), Missouri, New Hampshire, Illinois, and Florida.[7]

Some of the states on this list are surprising. The "big four" trust jurisdictions—the major players in the industry — are usually considered to be South Dakota, Nevada, Alaska, and Delaware. When responding to the Pandora Papers, the European Parliament specifically named these four states plus Wyoming "hubs of financial and corporate secrecy."[8] But clearly more are trying to compete with the shadow state heavyweights and rewrite their laws to lure trust industry business.

States often do so by repealing or weakening the Rule Against Perpetuities (RAP), an important check that limits the lifespan of a trust. Without the RAP, trusts can be set up to last forever; these perpetual trusts are known as dynasty trusts. States may also adopt laws allowing the creation of "domestic asset protection trusts" (DAPTs, also called "self-settled spendthrift trusts"), in which the trust grantor may *also* be the trust beneficiary. The ownership limbo that arises helps the grantor dodge creditors (think ex-spouses requesting child support or alimony) as well as the IRS. Other laws make it easier for certain trusts to be established or govern whether a trust need be registered with and examined by the state.

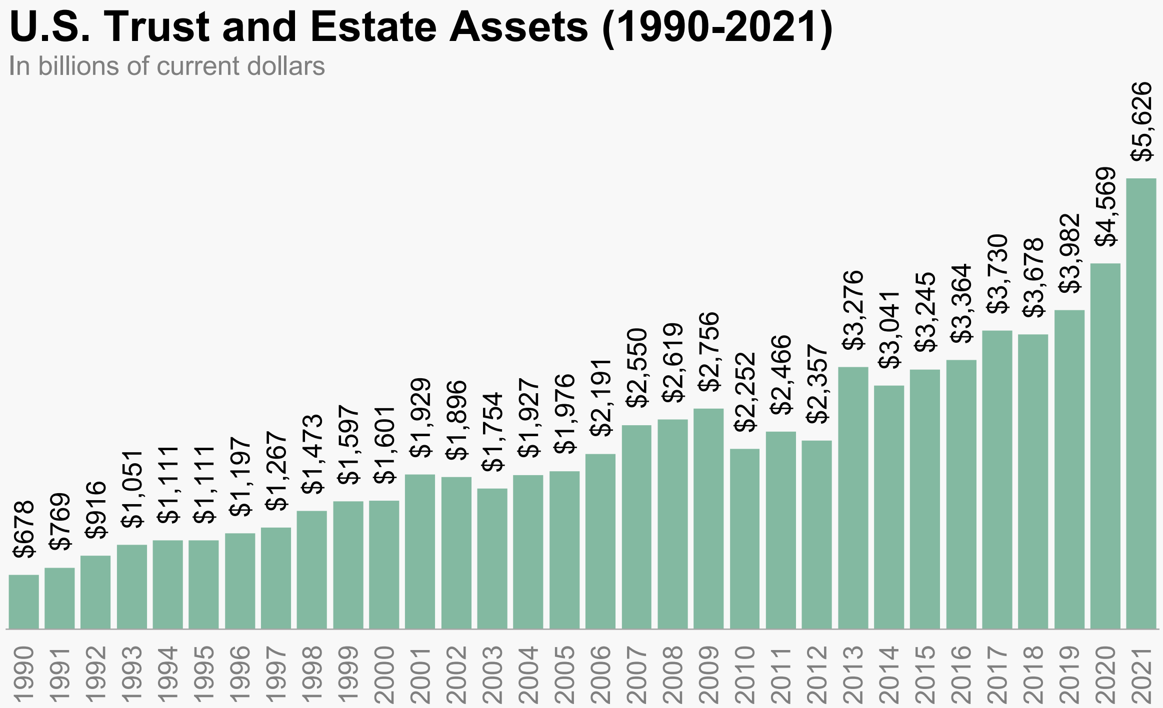
Currently, more than half of U.S. states have repealed or weakened the RAP, most within the past 40 years.[9] Most recently, in 2021, Texas weakened its RAP when legislators extended the time limit that a trust can exist to 300 years. This may as well be forever considering how many billions or trillions of dollars can grow, virtually untaxed, and passed from generation to generation over that time.[10] Without the Rule Against Perpetuities, dynastic wealth skyrockets and assets like real estate are kept out of commerce for centuries — allowing a trust grantor to control assets with a "dead hand" from the grave.[11] A 2005 paper by Robert H. Sitkoff and Max Schanzenbach found that states that abolished the Rule Against Perpetuities experienced an average 20 percent increase in trust assets from their date of abolition through 2003, as long as these states did not tax out-of-state trust income.[12]

Trust and estate lawyers in states like South Dakota had been rewriting their laws since the early 1980s. But much of the concerted focus on trust business didn't begin in states until the late 1990s, when the global wealth defense industry started to use combinations of trusts, offshore banks, and anonymous shell companies in jurisdictions such as the Cayman Islands and the Isle of Man to protect assets in trust from creditors. U.S. trust companies in states wanted a piece of the pie and to keep wealth "onshore."

Alaska passed a law allowing the creation of domestic asset protection trusts in 1997, meaning that the person establishing the trust could also be a beneficiary of the trust. The purpose of such a structure is to shield assets from creditors and tax authorities, because if you don't technically own the wealth, you can't be forced to use it to satisfy your business or tax obligations. Delaware followed with its own bill not three months later. Nevada passed its law in 1999. South Dakota began allowing domestic asset protection trusts in 2005, and Wyoming followed in 2007. Currently, at least 19 other states allow these trusts, including almost all of the states profiled in this report.[13]

Trust and Estate Wealth

Due to all of these changes, trust assets in the U.S. have exploded over the last two decades. According to estimates by Gabriel Zucman, Thomas Piketty, and Emmanuel Saez, the U.S. is host to an estimated $5.626 trillion in trust and estate wealth, as of 2021.[14] That's an increase of nearly $2.4 trillion since 2015, when Zucman, Piketty, and Saez estimated U.S. trust wealth at $3.6 trillion.[15] And trust and estate wealth has increased an estimated $1 trillion over just the single year from 2020 to 2021.



Source: Distributional National Accounts: Methods and Estimates for the United States, Updated Series from Piketty, Saez, and Zucman QJE 2018, Table S.B2: Trust and estate wealth and income by asset class, Column 1, "Trust and estate wealth (KG not capitalized)."

This is, however, a conservative estimate — perhaps the tip of a multi-trillion-dollar iceberg.[16] After all, grantor trusts — which represent a sizable portion of U.S. trusts — are not included in IRS data.

U.S. as Tax Haven

In 2010, the United States began to crack down on U.S. taxpayers' use of foreign bank accounts with the passage of the Foreign Account Tax Compliance Act (FATCA). FATCA requires that U.S. citizens and residents report their foreign assets to the Internal Revenue Service (IRS) and that non-U.S. financial institutions report the records of U.S. customers to the Treasury Department.

The U.S., however, does not reciprocate by disclosing the accounts and assets of foreign clients of American financial institutions. It has not signed onto the Common Reporting Standard (CRS) developed by the OECD in 2014, which requires that countries share financial information with each other about the financial accounts of a partner country's residents.

In other words, as other countries — including famous tax havens like Switzerland and Panama — have become more transparent, the U.S. has become more opaque. Indeed, U.S. states have dramatically expanded their trust industries, allowing the U.S. to rise to the top as a major tax haven, enabling the wealthy to establish new trusts or for those with foreign trusts, both U.S. residents and otherwise, to relocate their trusts to the U.S. According to a 2020 report that ranked jurisdictions based on trust law liberalization, of the top 20 trust jurisdictions around the world, 17 are U.S. states.[17] Additionally, the U.S. takes the top spot in the 2022 edition of the Tax Justice

Network's Financial Secrecy Index, "a ranking of jurisdictions most complicit in helping individuals to hide their finances from the rule of law."[18]

Most states at the forefront of the trust wave chose to bring trust business to their states because of a desire for economic diversification and the need for jobs for their residents. It's easy for trust lawyers and the rest of the "intellectual infrastructure for [tax] avoidance" to make their cases in these states.[19] Unsurprisingly, they regularly succeed in a bipartisan manner.

The influence of the trust industry is why states with small populations, which often have part-time legislatures and little funding to hire research staff, tend to rank high on trust jurisdiction lists: South Dakota, Alaska, Nevada, Wyoming. Now, however, as more and more states repeal or weaken the rule against perpetuities, larger states are getting in on the action, like Texas and Florida.

But the changes that states make to attract the trust industry drive changes in other state policies that can negatively affect residents, such as tax policy. In trust-subservient states, a combination of trust secrecy, trust permanency, and regressive tax infrastructure work to attract trust business to the state at the expense of those who live there. None of the states profiled in this report tax trust income, and nearly half do not levy any personal income tax at all. According to Sitkoff and Schanzenbach, "jurisdictional competition in trust law is best understood in light of interest group analysis. The immediate benefits of attracting new trust business flow to local lawyers and institutional trustees" — not states themselves.[20]

The Harms of the System

In addition to fueling inequality, trust-driven wealth hiding causes harm in the U.S. and around the world.

Plundering the Wealth of Nations. Trusts allow the theft of revenue from the world's poorest and most vulnerable populations. The trust system, working in conjunction with shell companies and off-shore banks, enables the siphoning of wealth from Russia and resource-rich countries in the global south to luxury districts. This thwarts the ability of sovereign countries to tax their own wealthy citizens in order to make public investments in health, infrastructure, and education. And some of the kleptocrats parking their assets in the United States have even committed crimes in their home countries or pillaged their public treasuries. The hidden wealth system in the U.S., with our anonymous companies and clandestine trusts, enables these heists to happen.

Shifting Tax Obligations. The hidden wealth apparatus enables the wealthy to shift their tax obligations onto everyone else. When transnational corporations and wealthy individuals dodge their taxes, they pass the bill for public services onto everyone else — and create the conditions for austerity and budget cuts. In the U.S., lawmakers debate how to pay for long overdue investments in infrastructure and climate change mitigation, while trusts enable the very wealthy to opt out of their responsibility to chip in.

Disrupting Housing Markets. Investments by anonymous trusts in real estate are flooding into US real estate markets, pushing up the cost of housing for local residents. Much of this housing stays vacant, a form of stable wealth storage for the super-wealthy. Affordable housing groups find themselves shadow boxing with nameless trusts and shell company owners in their effort to anchor low-cost housing.

Wealth Dynasties. The trust system facilitates the creation of inherited wealth dynasties while undermining economic security for everyone else. As the French economist Thomas Piketty warned, unless the U.S. can reverse this trajectory, we're on track to become a hereditary aristocracy of wealth — where the sons and daughters of today's billionaires will dominate our economy, politics, philanthropy, and culture.

Cementing Inequality. As wealth and power concentrates, the cycle of inequality continues. The wealthy deploy their power to further shape the rules, news, and culture of society, including trust law. They block popular reforms by capturing the political system and ensuring dysfunctional gridlock. This leads to further consolidation of wealth dynasties, impervious to taxation and accountability. It also leads to further social breakdown and polarization as our collective capacity to solve big problems — like responding to a pandemic or ecological disruption — is rendered inoperative.

Thirteen U.S. States that Have Sold Out Their Taxpayers and Sovereignty to the Trust Industry

In this section, we take a look at some of the top trust jurisdictions in the U.S., including the **Biggest Enablers**, the **Bad Actors**, and the **Emerging Enablers**. We examine how they got there, and what it means for the people who live there. Our report includes each state listed in the Oshins dynasty trust ranking: South Dakota, Nevada, Tennessee, Alaska, Rhode Island, Wyoming, Delaware, Ohio, Missouri, New Hampshire, Illinois, and Florida, with the addition of Texas.[21]

Each shadow state profile includes key information about the number of trust companies in the state, the current trust asset total (if known), and how long a trust established in the state can exist.[22] We include the tax inequality state ranking, as documented by a 2018 Institute on Taxation and Economic Policy (ITEP) report that ranks states based on how their tax systems disproportionately affect low-income groups. A higher state ranking means that the state has a more regressive, and thus less equitable, tax system than the states ranked below it.[23] And we also note whether the state levies an inheritance tax or income tax.

THE BIGGEST ENABLERS: South Dakota, Nevada, Alaska, Delaware

The shadow states in the darkest corners of the wealth management industry

South Dakota

Current Trust Asset Total: $512 Billion
Current Number of Trust Companies: 106
ITEP Tax Inequality Rank: 4
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: Abolished

The Mount Rushmore state has increasingly made headlines since the October 2021 publication of the Pandora Papers, the exposé by the International Consortium of Investigative Journalists that unmasked a web of trusts that allow the world's elite to avoid taxation and accountability. Of the trusts exposed in the investigation, more were located in South Dakota (96) than in any other state.

It should be no surprise, then, that South Dakota is often heralded by the trust industry as the top trust jurisdiction in the U.S.

Why? Because South Dakota has passed a slew of laws to ensure the state keeps the top spot. The tax environment is lucrative for both wealthy individuals and the companies that serve them: there is no state income tax, no capital gains tax, and no inheritance tax. And this is unlikely to change since South Dakota requires a two-thirds majority to pass any tax increase, a rule established in 1996.

The wealthy can rest assured their assets in trust will not be taxed by the state. Trusts can also exist perpetually, as South Dakota was one of the first states to repeal the Rule Against Perpetuities that limited trust length. Privacy laws, too, are strong, as well as asset protection laws. South Dakota is the only state on this list that hides trust information forever and that protects assets from creditors or ex-spouses seeking alimony.

Many states have worked to adopt laws similar to South Dakota's, but what may make the state distinctive is how much support the trust industry receives from the South Dakota government. The Governor's Task Force on Trust Administration Review and Reform was "assembled with the goal of establishing and maintaining South Dakota's stature as the premier trust jurisdiction in the United States," according to the state banking division.[24] In other states, trust boards, typically based at state bar associations, draft bills and guide them through the legislative process. Unlike South Dakota, they don't necessarily have governor-convened groups of trust industry representatives officially on hand to propose legislation to strengthen trust business in the state. Yet South Dakota's trust task force is not classified as a state committee, so their meetings are not open to the public and minutes are not published.

As our study shows, states like South Dakota that are captured by the trust industry are also among the most regressive in terms of state tax policy. The state runs its government mostly on the sales tax, which the poor pay disproportionately, and South Dakota is one of just three states that taxes groceries the same rate as other goods. Lower-income South Dakotans pay a greater share of their income in property taxes than the wealthy do. In all, the poorest 20 percent of South Dakota households pay about 11.2 percent of their incomes in taxes, while the top 1 percent pays 2.5 percent.[25]

Nevada

Current Trust Asset Total: Unknown
Current Number of Trust Companies: Unknown
ITEP Tax Inequality Rank: 5
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: 365 years

Nevada is routinely considered one of the most trust-subservient jurisdictions in the country and often runs neck-and-neck with South Dakota when trust and estate lawyers discuss the best states for trusts.

We have very little information on trusts in Nevada, per the state's design. Though Nevada policy is that each state agency must have a public records official, there is no such official listed on the Division of Financial Institutions' website. And there is no need for one. In 2009, the legislature passed a law affirming that any records — personal, financial, or otherwise — submitted to the division for the purposes of an examination or audit are "confidential." Indeed, in 2015 the statute had to be amended so that the Department of Taxation could see these records to do their jobs.

"I do not think there is enough time for me to learn all I can about trusts," said a Nevada assemblyman during a hearing on trust reform legislation in 2009.[26] Then he voted for it. (Interestingly, the bill was passed not long after the U.S. Senate's Permanent Subcommittee on Investigations had begun investigations into tax evasion of U.S. residents in offshore jurisdictions.)[27]

So there's not too much we can glean from the state, though trust assets under management are likely in the many billions. Clearly, one area where Nevada stands out is trust secrecy.

Trust-subservient states aren't always led by economic conservatives; in fact, trust legislation is often bipartisan, and Nevada is a case in point. Democrats currently hold a trifecta of control over the state's house of representatives, senate, and governor's office.

In 1999, Nevada enacted legislation, sponsored by a Democratic assemblyman, to allow domestic asset protection trusts (DAPTs). DAPTs help grantors dodge creditors by allowing a grantor to also serve as a beneficiary. The reasoning for the legislation given by the assemblyman, as summarized in the assembly judiciary committee minutes, deserves to be excerpted:

> *"[A domestic asset protection trust] offered protection to wealthy people just as the committee was often fighting for the rights of the poor, and the undeserving. Wealthy people deserved rights as well. When a person walked down the street they took risks in everything they did. When a person drove they took risks and to protect against those risks, most people, bought insurance. They bought liability on auto insurance, homes, and sometimes lawyers bought broad-based liability for their law practice, or sometimes teachers, the school carried liability insurance and that was to protect their own assets. If something happened where an individual became liable, they would have something to protect our personal assets. The problem of becoming extremely wealthy was it becomes impossible to insure against that liability. When the trust was domicile [*sic*] in Nevada and the person was a resident of Nevada, Nevada got the benefit of all their inheritance tax."*[28]

When testifying about trust legislation, most legislators talk about economic diversification and the jobs that the trust sector will bring. "Wealthy people [deserve special] rights" is a new argument. It's also a feeble argument to suggest that wealth needs liability insurance just as real estate and cars do — considering that real estate and cars are wealth assets.

Trust reform legislation passed without objection in both houses. Six years later, in 2005, the Nevada legislature repealed their state inheritance tax, eliminating the major benefit to the legislation the assemblyman cited.

Today, a two-thirds majority is required in the Nevada legislature for any tax increase.[29] Nevada has the sixth most regressive tax system in the country as it has no income or inheritance tax and is heavily dependent on sales tax. The bottom 20 percent of Nevada income earners pay 10.2 percent of their income in state and local taxes; the richest 1 percent pay 1.9 percent of their income in state and local taxes.

Because Nevada allows unregulated trust companies, while South Dakota does not, the South Dakota Trust Company has a branch in Nevada. So does Alaska's Peak Trust Company. These are the largest trust companies in their respective states.

Alaska

Current Trust Asset Total: $12.5 Billion
Current Number of Trust Companies: 5
ITEP Tax Inequality Rank: 26
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: Abolished

Alaska is regularly considered a leading trust jurisdiction — one of what the trust industry calls the "big four," along with South Dakota, Nevada, and Delaware.

Alaska began soliciting trust business in the late 1990s by passing trust-subservient legislation. The Alaska Trust Act, passed in 1997, was drafted with assistance from trust lawyers, particularly those that would go on to form Peak Trust Company (then called Alaska Trust Company), one of the major trust companies in the state.

Alaska was specifically chosen by trust and estate lawyers as the state to target for this legislation. Wealth manager Jonathan Blattmachr originally wanted to pass the legislation in New York but was hitting roadblocks. In Alaska, a low-population state with a small legislature, roadblocks were smaller.

"I presented [the idea of U.S. domestic asset protection trusts] to the New York State Bar Association Trusts and Estates Law Section. I was unanimously shot down," Blattmachr said in an interview for *Tax Notes* in 2016. But Blattmachr's brother had connections in Alaska. According to Blattmachr, one of those connections, Alaska trust lawyer Dick Thwaites, told the duo, "If you draft these laws, we'll pass them." So that's what they did.[30]

After the Alaska Trust Act was passed, trust lawyer Thwaites testified to the Alaska House Judiciary Committee when it was considering legislation to shore up the act, affirming, "We are looking at Alaska, because of this new trust act, as a destination jurisdiction for this."[31]

Delaware

Current Trust Asset Total: At least $50 billion (likely much more)[32]
Current Number of Trust Companies: 36
ITEP Tax Inequality Rank: 48

Personal Income Tax: No (residents only)
Inheritance Tax: Yes
Rule Against Perpetuities: Abolished[33]

How could Delaware, the state known as the corporate capital of the U.S., not be on this list? Delaware has spent decades establishing itself as a financial center. Because of its corporate-friendly laws and its convenient location on the East Coast, more than two-thirds of Fortune 500 companies are domiciled in the state.[34] Limited liability companies based in Delaware are infamous for their lack of transparency and are commonly used as anonymous shell companies. The state has also worked to attract trust business and is regularly considered one of the best trust jurisdictions in the country.

The story of Delaware is tied up with the story of the du Pont family wealth dynasty. Today, there are approximately 3,000 du Pont descendants, but 200 years ago, there was Éleuthère Irénée du Pont.[35] Éleuthère was the founder of the gunpowder manufacturing company, based in Wilmington, which would eventually become the chemical behemoth DuPont.

In 1903, Wilmington Trust was founded by the du Pont family in order to manage the family's growing wealth. Wilmington Trust was sold to M&T Bank after the 2008 financial crisis, but it remains one of the largest holders of trust assets in the U.S., and du Pont family members still have numerous trusts managed by the company.[36]

Another du Pont, Republican Governor Pete du Pont, served the state between 1977 and 1985. He helped usher in policies that would enable Delaware to become the "financial Luxembourg of America," according to the governor's distant cousin, who was also director of the state's economic development office.[37] Du Pont cut income taxes and oversaw the addition of a state constitutional amendment that requires three-fifths of the legislature to agree in order to pass any tax increase (the state is the only one in the country that does not require popular approval of state constitutional amendments).[38]

The chair of the Federal Reserve was not pleased with Delaware's actions. He reportedly said, "I am seriously concerned about the possibility of widely divergent and inconsistent laws governing both banks and thrift powers, with deposit-taking organizations shopping for the most permissive rules, and states competing to pass such laws in order to enhance local employment."[39] The chair was talking about banks back in the 1980s, but he could very well be talking about trust companies today.

Delaware's eagerness to lead the race to the bottom was clear when it repealed its usury law just months after South Dakota did to attract Citibank (now Citigroup) to Sioux Falls. Chase Bank made its way to Wilmington soon after the repeal and raised its credit card interest rates.[40]

Part of what makes Delaware a major attraction for financial institutions is that it has a special court for financial matters: Chancery Court. Chancery Court, modeled on the English common law court of equity, hears cases much more quickly than in other courts and the judges all specialize in corporate and fiduciary law.

Delaware is tied for seventh on the Oshins list — a relatively low ranking compared to the other "big four" trust states.[41] This is likely in part because domestic asset protection trusts, while legal in

Delaware, are not wholly protected from divorce proceedings or those seeking child support payments.

It may also be because Delaware has not *completely* sold out their residents in favor of the finance industry. The state tax structure in Delaware is one of the least regressive in the U.S. — the top 1 percent actually pays a higher share of their income than the lowest 20 percent of households, though the rates are close (6.5 percent of income versus 5.5 percent). There is also no state sales tax, and the state levies an estate tax.

Delaware is able to have relatively progressive taxes because over half the state's revenue comes from imported money — fees paid by corporations and clients from outside the state. All the financial services paper-shuffling generates a ton of money for the state — some $1.45 billion in taxes and fees in 2020, almost a third of its 2020 state budget that year.[42] Another 10 percent of Delaware's income, roughly $500 million a year, comes from recovery of abandoned corporate property, a process called escheatment.

"Think about that," writes Bill Freeborn, former director of Delaware's Division of Corporations. "Delaware residents pay only 50 cents for each dollar of services we receive."[43]

BAD ACTORS: Tennessee, Wyoming, New Hampshire

The shadow states operating at dusk

Tennessee

Current Trust Asset Total: $160 billion
Current Number of Trust Companies: 15
ITEP Tax Inequality Rank: 6
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: 360 years

Tennessee is rising quickly in popularity as a trust jurisdiction due to changes that the state has made to its trust policies over the past several years. Between just 2015 and 2021, assets in trust in the state rose from $25 billion to $160 billion.[44] Commissioner of the Tennessee Department of Financial Institutions, Greg Gonzales, even attended a private family office conference in 2015, seemingly to try to promote the state's lax trust environment.[45]

Each year, the trust legislative committee of the Tennessee Bankers Association's drafts legislation to update the state's trust laws. In 2021, new legislation to update trust laws passed unanimously in the state Senate and with just one abstention in the House.[46] Among other changes, the law makes it more difficult for creditors to access assets and makes it easier to move an out-of-state trust, foreign or otherwise, into Tennessee.

"I'm all about making the state a better place for its citizens and to attract people to move to it, and I think this will help accomplish that," said one representative about the legislation, who perhaps didn't recognize that moving an out-of-state trust to Tennessee doesn't require any people to actually move to Tennessee — just a ton of money that the state can't even touch.[47]

Tennessee has the sixth most regressive tax system in the U.S. In 2015, it repealed its state-level inheritance tax. And in January 2021, it fully repealed its state income tax. As a result, the bottom 20 percent of income earners in Tennessee pay 10.5 percent of their income in state and local taxes while the richest 1 percent only pay 2.8 percent of their incomes.

Wyoming

Current Trust Asset Total: At least $31.5 billion, plus an unknown amount in unregulated trust companies
Current Number of Trust Companies: 21[48]
ITEP Tax Inequality Rank: 10
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: 1,000 years

Wyoming isn't always named as a top trust jurisdiction when compared with the likes of South Dakota and Nevada, but it can hang with the best. Predominantly rural, with the smallest population in the U.S., Wyoming has auctioned off its sovereignty and turned the state into a model trust jurisdiction. At least a dozen global money-hiders that were unmasked in the Pandora Papers had established trusts in Wyoming.[49]

Like South Dakota, Wyoming has long attempted to establish itself as a financial services center. In 1977, the Wyoming legislature created the now ubiquitous limited liability company (LLC), a business structure that allows an owner to be shielded from liability like a corporation, but also enjoy pass-through taxation.

Wyoming produces the most coal of any state, responsible for more than 40 percent of total U.S. coal production.[50] And reliance on coal, oil, and gas in Wyoming goes beyond jobs. The revenue from mineral extraction forms more than half of the state budget; property taxes levied on mineral companies help fund the public school system.[51]

But these sources of funding are volatile and reliant on commodity price and production. And mining and other mineral extraction industries have fallen significantly in recent years. All of this can explain the state's commitment to economic diversification and, in particular, its embrace of the trust industry. By 2020, the financial services industry had become the largest private industry in the state.[52]

Trust professionals also point to the jobs created by the trust industry — well-paid, white-collar employment, including the jobs that service the trust industry, like law firms and investment agencies.

The Wyoming Trust Association formed in 2019, just after an advisory group of trust industry professionals — similar to South Dakota's trust task force — worked with the Wyoming Division of

Banking to "moderniz[e]" the state's trust company rules and regulations by drafting a bill to be introduced to the state legislature.[53]

In Wyoming, as in Nevada and New Hampshire, private family trust companies can be regulated or unregulated; an unregulated private family trust company is not subject to oversight or inspection by the state.[54] In fact, the South Dakota Trust Company has established branches in both Wyoming and Nevada in order to offer unregulated family trust company services alongside regulated private family trust services in South Dakota. Because of the lack of state oversight in these entities, we do not know how many trust assets are in unregulated trust companies.

Wyoming has the tenth most regressive tax system in the U.S. In Wyoming, households in the lowest quintile pay 9.6 percent of their income in taxes, while those in the top 1 percent pay just 2.6 percent.

New Hampshire

Current Trust Asset Total: $669.2 billion including corporate trust assets[55], with an unknown amount in unregulated trust companies
Current Number of Trust Companies: 40
ITEP Tax Inequality Rank: 16
Personal Income Tax: No (dividends and interest on residents only)
Inheritance Tax: No
Rule Against Perpetuities: Abolished

New Hampshire's foray into the trust world began in 2003 when it repealed the Rule Against Perpetuities. Soon after, in 2006, it passed major trust reform legislation in 2006. The intention of the 2006 act was to "establish New Hampshire as the best and most attractive legal environment in the nation for trusts and trust services, and this environment will attract to our state good-paying jobs for trust and investment management, the legal and accounting professions, and support and infrastructure required to service this growing sector of the nation's economy."[56]

Since then, the General Court, New Hampshire's state legislature, has regularly passed laws to strengthen the trust industry, including a law passed in 2012 that exempts trusts from state interest and dividends tax. This did not entirely sail through the legislature and required an override to a veto by the governor.[57] Both regulated and unregulated trust companies operate in New Hampshire; five of the 40 trust companies are unregulated. An unregulated trust company is not supervised by the state, meaning that we cannot know how much wealth is in such trusts. Unlike most regulated trust companies, unregulated companies are required to register with the Securities and Exchange Commission—unless they qualify for an exemption because they're structured as a family office, which is a company that manages the wealth and affairs of extremely wealthy families.

In 2017, New Hampshire even passed legislation to allow European-style civil law foundations, the first U.S. state to do so. These are not to be confused with charitable foundations, as civil law foundations are entities that manage assets for beneficiaries but are legally separate from grantors, trustees, or beneficiaries themselves. Such foundations are likely to be attractive to wealthy people abroad. (According to a member of the New Hampshire Trust Council, these vehicles were also being considered in South Dakota and Minnesota as of 2019.)

But in 2019, New Hampshire decided to investigate whether trusts have actually been beneficial for the state economy. One former trust professional, fired from his job at a New Hampshire trust company, decided to speak openly about the New Hampshire trust industry.

"We had the best of intentions. I'm saying we made all these changes, and they haven't worked out as we had hoped. It hasn't brought the state any benefits," said Scott Baker, as reported in the *New Hampshire Business Review.*[58]

Baker, a veteran of the industry who also helped found the New Hampshire Trust Council in 2010, testified that there is a "significant disconnect" between the benefits that New Hampshire reaps from the trust industry and the costs and risks that the state is now subject to as a result of hosting the trust industry. New Hampshire, Baker's written testimony explained, receives no revenue on trust assets because they are exempt from state taxes. Job gains in the state have been "minimal" and likely represent fewer than 100 new positions. Baker's testimony even included that New Hampshire is "turning into an international tax haven" due to New Hampshire's "lax" laws surrounding transparency.

Legislators also learned that most trust companies chartered in New Hampshire — including their more than $500 billion in trust assets — are not actually located in New Hampshire. A good number are in neighboring Massachusetts.

"It seems that these trust lawyers are forever looking for some magic formula that will make them a boatload of money," said a New Hampshire state representative in 2017.[59]

Baker recommended a committee be formed to study the trust industry's impact on the state, and the General Court ultimately passed legislation to do so. The report came out that same year.

The Committee to Study the Effects of Past New Hampshire Trust Code Legislation concluded in its brief, two-and-a-half-page report that New Hampshire does benefit from the trust industry, though the number of jobs created is small and the economic benefit is smaller than initially anticipated. (Testimony in support of the 2006 legislation claimed the legislation would create between 900 and 4,000 jobs within 10 years.)[60] The report stated that "there is, where needed, the ability to provide adequate oversight and that the more sophisticated regulations provided by the various modernization efforts have encouraged successful growth of the Trust Industry in our state."

Baker has returned to the trust industry. According to his LinkedIn, he's now at the New Hampshire-based Fidelity Personal Trust Company.

New Hampshire is the sixteenth most regressive tax state in the U.S. The top 1 percent pays 3 percent in taxes as a share of family income, while the bottom quintile pays 9.1 percent.

EMERGING ENABLERS: Rhode Island, Ohio, Missouri, Illinois, Florida, Texas

The shadow states currently pulling down the shades

Rhode Island

Current Trust Asset Total: More than $1 billion
Current Number of Trust Companies: 2
ITEP Tax Inequality Rank: 32
Personal Income Tax: No (residents only)
Inheritance Tax: Yes
Rule Against Perpetuities: Abolished

Rhode Island is rarely considered a desired trust jurisdiction, but it has still been quietly revising its laws to attract trust business. As early as 1999, Rhode Island adopted legislation allowing the formation of domestic asset protection trusts (DAPTs) just two years after Alaska and Delaware. That same year, it abolished the Rule Against Perpetuities.

A bill was proposed in early 2022 to pass the Uniform Directed Trust Act, which deals with directed trusts. Directed trusts allow an entity besides the trustee, usually an investment firm, to manage assets in the trust.[61]

The state has just two trust companies, though Washington Trust, a bank, also has a trust department.

Ohio

Current Trust Asset Total: At least $17 billion[62]
Current Number of Trust Companies: 6
ITEP Tax Inequality Rank: 13
Personal Income Tax: No (residents only)
Inheritance Tax: No
Rule Against Perpetuities: Opt-out[63]

Ohio is another state that is slowly morphing its trust legislation to join the race to the bottom. In 1999, it took the first step by weakening the Rule Against Perpetuities by allowing trusts to opt out of time-limited trusts. .[64] More than a decade later, in 2012, the state passed its own domestic asset protection trust act, allowing trust grantors to shelter their assets from creditors. The state calls these trusts Ohio Legacy Trusts.

In 2016, Ohio enacted a law to allow wealthy families to form private family trust companies.[65] The bill was co-written by national law firm Baker Hostetler's private wealth team.[66] When testifying in support of the law before the financial institutions, housing, and urban development committee, Baker Hostetler partner Rob Galloway invoked the states of Wyoming, South Dakota, New Hampshire, Nevada, and Tennessee as models for family trust company legislation.[67] He also used the argument that too many families were setting up private trust companies outside of the state of Ohio. The only opposition testimony came from the Ohio Bankers League, as private family trust companies would be competitors to Ohio banks.[68]

As of the 2020 annual report of the state's commerce department, there are six public trust companies. The state does not report trust assets.[69] In 2021, the state did not list the trust companies in their annual report.

Missouri

Current Trust Asset Total: $18.4 billion[70]
Current Number of Trust Companies: 3
ITEP Inequality Rank: 28
Personal Income Tax: No (residents only)
Inheritance Tax: No
Rule Against Perpetuities: Abolished

Missouri passed legislation in 2017 to allow private family trust companies to form in the state. In 1989, it passed domestic asset protection trust legislation — even before Alaska — but needed to amend it in 2004 to ensure that trust assets were truly protected from creditors.[71]

Clearly, Missouri joined the trust game early — yet its fame has never risen as high as the likes of South Dakota, Nevada, Delaware, and Alaska.

Illinois

Current Trust Asset Total: Likely $1.1 trillion
Current Number of Trust Companies: 15
ITEP Tax Inequality Rank: 8
Personal Income Tax: No (residents only)
Inheritance Tax: Yes (estate tax only)
Rule Against Perpetuities: Opt-out[72]

Illinois updated its trust code in 2019 with legislation drafted by a subcommittee of the Chicago Bar Association. "It's a modern, comprehensive trust code that will benefit individual and corporate trustees, practitioners like myself, writers and administrators, and beneficiaries," said trust and estate lawyer Adam Damerow after the new law's passage.[73] The state's trust code is now similar to the Uniform Trust Code — a standard, trust-friendly codification of trust law adopted by a majority of states.

Northern Trust in Illinois is a huge player in the trust game. The company claims to manage wealth for 25 percent of the Forbes 400.[74]

Illinois ranks as the eighth most regressive tax system in the U.S. The bottom 20 percent of Illinois income earners pay 14.4 percent of their income in state and local taxes while the richest 1 percent only pay 7.4 percent of their income.

Governor of Illinois, Democrat J. B. Pritzker, himself benefits from family trusts. The Pritzker family, owners of the Hyatt hotel chain, is one of the wealthiest in the United States; Forbes ranked them the ninth-richest family in the U.S. in 2020, when the Pritzker wealth was estimated at $32.5 billion.[75] The large Pritzker family has trusts not only in Illinois, but also South Dakota.[76]

Florida

Current Trust Asset Total: $54.6 billion[77]
Current Number of Trust Companies: 13 public
ITEP Tax Inequality Rank: 3
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: 360 years

Though Florida weakened its Rule Against Perpetuities in 2000, significant forays into the trust business didn't come until later. In 2014, the state passed comprehensive family trust company legislation drafted by the Real Property, Probate, and Trust Law Section of the Florida Bar Association. The new family trust companies could be licensed or unlicensed.

Then, in 2021, Florida passed its own version of the Uniform Directed Trust Act and introduced community property trusts. Trust and estate lawyers announced that Florida would become a desirable and competitive destination for trusts for wealthy families because of both its trust and tax laws.

Florida has one of the least equitable tax systems in the country, ranking as the third most regressive state. The top 1 percent pay just 2.3 percent of their income in taxes, while those in the bottom quintile pay 12.7 percent. In addition, the state in recent years has passed hundreds of millions of dollars in tax breaks for corporations.

Because Florida is quite large and has many industries to sustain its population, the argument of needing to diversify the economy does not exactly ring true in Florida. Yet 37 Florida trusts have so far been revealed in the Pandora Papers investigation.

Texas

Current Trust Asset Total: $167.65 billion[78]
Current Number of Trust Companies: 17
ITEP Tax Inequality Rank: 2
Personal Income Tax: No
Inheritance Tax: No
Rule Against Perpetuities: 300 years

In 2021, Texas passed legislation to extend its Rule Against Perpetuities to 300 years, a policy that took effect on September 1 of last year. The state joins the majority of states that have also extended the lifespan of trusts or abolished the Rule Against Perpetuities altogether.

During hearings for the bill, Jerry Young, the director of the Sage Trust Company and general counsel for construction equipment dealer Mustang Cat, introduced himself to the Texas legislature's jurisprudence committee as an agent of the Texas family that established Sage Trust.[79] This unnamed family, he said, is associated with Mustang Cat — so it's not exactly difficult to figure out who the family most likely is. The trust company director was almost certainly talking about the Tucker family, who has owned Mustang Cat for generations and also, interestingly, helped found the Houston Trust Company in 1994.[80] The Houston Trust Company is the largest private trust company in the state. Brad Tucker is also listed as a director of Sage Trust Company.

A representative from the Texas Bankers Association, Michael Milich, also testified in favor of the bill, reporting that he has "personally met with families faced with the current rule in Texas [who] opened accounts at our competitors in states like Delaware. When that happens over time, Texas is at a disadvantage, estate planning attorneys at a disadvantage." He explained that "Assets and jobs leave Texas," using one of the most common arguments for repealing the Rule Against Perpetuities: everybody else is doing it.[81]

It's notable that Milich works at Frost Bank, which only operates in Texas. Unlike national banks that may benefit from the trust industry in other states in which they do business, Frost Bank is entirely beholden to Texas laws.

While many states with part-time citizen legislatures — like South Dakota — are small, Texas is not.[82] Texas lawmakers work part time for 140 days every other year. They earn $7,200 per year — $600 a month — plus a per diem for each day they are in session.[83]

Texas has the distinction of being the second most regressive tax jurisdiction in the country. The lowest income 20 percent of households pay 13 percent of their income in state and local taxes; the richest 1 percent only pay 3.1 percent.

All the Rest

After examining the states that have passed laws to boost themselves as trust destinations, we can also look at whether there are states that are pushing back—or at least are not allowing their tax and trust laws to be manipulated by trust business interests.

Some states have protected the Rule Against Perpetuities and have not allowed the use of domestic asset protection trusts. A minority of states — just 13, by our calculation — require that trusts vest within the time limit generally required by the Rule Against Perpetuities, which is approximately 90 to 100 years. Domestic asset protection trusts are not permitted in most states.[84]

Several states also have robust estate or inheritance tax laws that can dilute the power of wealth dynasties. Twelve states and the District of Columbia have estate taxes. Five states still have inheritance taxes on the books. And one state — Maryland — has both.[85] Such state policy is a balm to the regressive tax infrastructure typical of most U.S. states, especially as several states pursue sweeping tax cuts that will mostly benefit the wealthy.[86]

There are also states that have passed legislation specifically to rein in the industry's manipulation of trusts for the wealthiest people. One example is New York. Recall that when Jonathan Blattmachr, now of Peak Trust Company, originally wanted to create domestic asset protection trusts, he first approached the New York Bar Association and was, as he said, "unanimously shot down," forcing him to turn to Alaska.[87] And New York has made other moves to crack down on trust abuse.

In 2013, New York passed a law to bar residents from establishing incomplete non-grantor trusts, a type of domestic asset protection trust. These trusts involve the trust grantor transferring "incomplete" gifts to the trust, meaning that no federal gift taxes will be due. Their purpose is to allow trust owners to avoid paying state income tax, as these trusts are established (and made residents) in states without income taxes. As Northern Trust explains, "This strategy requires making sure the grantor has sufficient control to keep contributions to the trust from being treated as completed gifts, but insufficient control to require that she be treated as the owner of the trust's income."[88] New York is the only state that rejected this ownership-limbo structure and treats incomplete non-grantor trusts as regular grantor trusts.

Tapping into its rural populist tradition, the state of Iowa has also stayed firm — refusing to repeal the Rule Against Perpetuities and rejecting legislation that would allow exceptions to the rule. Still, bills to repeal the Rule Against Perpetuities have cropped up in the legislature every few years, supported by lobbying organizations such as the Iowa Trust Association, the Iowa Bankers Association, and the Iowa Academy of Trust and Estate Counsel.

Trust companies are everywhere. Even if a state does not have trust-subservient laws, nearby trust-friendly states may allow its trust companies to operate in accordance with theirs. For example, Massachusetts does not allow dynasty trusts, but more New Hampshire trust companies are located in Massachusetts than New Hampshire. And as the race to the bottom accelerates, it is likely that more states will adopt even more subservient laws to attract the trust industry for their questionable promises of jobs and economic development — unless federal action is taken.

See Appendix C to learn about each state's policies regarding the Rule Against Perpetuities, DAPTs, and inheritance taxes.

New Reckoning

Following the October 2021 release of the Pandora Papers, federal lawmakers introduced the ENABLERS Act to rein in illicit monetary transactions facilitated by U.S. representatives such as trust companies.[89] State lawmakers, even some in shadow states, weren't far behind.

Russia's invasion of Ukraine has also forced some state legislators to consider how their states might be aiding the wealth-hiding activities of Russian oligarchs. "We need transparency to make sure the bad actors are not abusing the system," an Alaska Democratic representative told *The Washington Post*. And now legislation currently before the Alaska state legislature would require trusts to register with the state.[90]

The Wyoming state legislature's joint revenue committee discussed trusts and the Pandora Papers in late April, including inviting five representatives of trust interests and one representative from the FACT Coalition for an "education" session.[91] All trust industry representatives gave glowing testimonies about the Wyoming trust industry. But when the FACT Coalition representative, last to testify, discussed how Wyoming's status as a trust jurisdiction sets it up to facilitate illicit wealth hiding, Wyoming lawmakers were noticeably confused. It remains to be seen how the state will respond, though it is surely positive that the topic was considered at all.

With an ever-growing number of states competing for the most trust-subservient shadow-state status, it may seem difficult for individual states to hold their ground. But state legislatures must push back against the wealth defense industry and refuse to be manipulated by promises of economic development that have not panned out for any other state. Other states can follow the example of New York, which passed a law to protect itself from tax losses due to incomplete non-grantor (ING) trusts. States can also refuse to weaken the Rule Against Perpetuities or to reinstate it, and they can ensure that trusts are adequately registered and regulated.

And while it will be difficult, we also urgently need federal action to help curb the race to the bottom among U.S. state tax havens.

Solutions: A Call for Transparency and Limits

It is unlikely that states that host trust industries will voluntarily limit their expansion. The wealth defense industry has a strong vested interest in maintaining the status quo while ignoring the harms to state residents. We propose a series of reforms to trust law and enforcement, which will benefit residents of shadow states as well as people nationwide.

Oversight and Enforcement Capacity

As the trust industry has expanded, IRS audits on the rich have fallen. Audits of the extremely wealthy require more agents and more agency resources. But IRS funding has plunged by 21 percent, in inflation-adjusted terms, since 2010.[92] And the number of audit employees has decreased as well. Without a strong IRS enforcement apparatus, the wealthy can avoid paying taxes they owe through the manipulation of trusts with little fear of serious reprisal.

As part of the Inflation Reduction Act of 2022, Congress appropriated $45.6 billion for IRS tax enforcement over the next ten years.[93] This will provide badly needed resources to provide enforcement and oversight of high-net-worth households. This investment, while substantial, will generate an estimated $480 billion in tax revenue, according to the Treasury Department. Shoring up IRS enforcement power in this way would also narrow the tax gap: the amount of taxes owed in the U.S. versus the amount of taxes actually paid.[94]

We call on the IRS to develop a special trust oversight division with the expertise to follow the money and close down the shell games played by the ultra-wealthy.

Reforms to Improve Trust Governance

Many reforms to the hidden wealth system attempt to address illegal money laundering and corporate tax evasion. But there are also many legal ways to hide money and dodge taxes that need to be shut down. Most of these involve trusts and estate tax avoidance.

There are several meaningful reforms that should be advanced. These include registration of trusts, the outlawing of dynasty trusts, the treatment of assets in trusts as belonging to the grantor until distributed, and reforming transfer tax loopholes.

Implementing the following reforms would be incremental moves in the right direction, as trust accumulations would be reduced substantially with the passing of each generation.

Trust Registration and Disclosure

As we have seen from our research, trust company registration with a state agency is not enough to curb an explosion in tax evasion by trust grantors both foreign and domestic. An elegant solution to the issue of U.S. states serving as tax havens is to simply require that all U.S. trusts be federally registered.

As a condition for their existence, trusts should be listed in a public registry, like property deeds, and the identities of grantor, trustee, beneficiary, and protector should be disclosed. Certain transactions should be publicly recorded, including those involving international bank accounts or the release of a will and testament. And public accounting should be required to prevent sham distributions from trusts that are masked as loans, sales, and other simulations.

As Andres Knobel has written for the Tax Justice Network, the Financial Action Task Force (FATF) Recommendations on Anti-Money Laundering — the international standard — already require that companies, partnerships, and civil law foundations abroad be registered.[95] Trusts, which often function as similar entities, should be no different, and the U.S. Corporate Transparency Act allowed for a significant loophole by not specifically including trusts in its anti-money-laundering and data disclosure terms.

Outlaw Trusts Designed to Obfuscate Ownership for Tax Avoidance

If trusts are allowed to continue as an ownership and contractual system, they should have clear definitions that eliminate the “ownership limbo” status they engender. A trust should have a clear grantor and beneficiary — both human beings. A grantor and beneficiary of a trust should not be allowed to be the same person. This would effectively outlaw the domestic asset protection trust that allows a wealthy person to be both trust grantor and trust beneficiary (It would also impact charitable remainder trusts, which benefit both trust grantors and their chosen charities.). From a tax and creditor point of view, trusts that do not make the distinction between beneficiary and grantor should be treated as owned by either the grantor or a vested beneficiary. Making this determination should be clear and transparent.

Passage of Federal Rule Against Perpetuities

Currently, each state develops its own rules relating to trust perpetuity; this has led to the rise of U.S. tax havens. Lawmakers should reassert the original intention of modern trust law to limit the lifespan of trusts and outlaw perpetual trusts in any state. As law professor Eric Kades has written, a federal rule against perpetuities will curb the length of dynasty trusts and thus the generation-defying power of dynastic wealth.[96]

Narrow the Use of IDGT, Zeroed-Out GRATs, and Valuation Discount Loopholes

A number of loopholes in our tax code are manipulated by the trust and estate industry in order to create specialized trusts that are used for tax avoidance by the extremely wealthy.

- An **intentionally defective grantor trust (IDGT)** is a standard trust vehicle for hereditary wealth transfers. In this type of trust, trust assets are considered separate from the trust grantor for estate tax purposes but are still considered to be owned by the grantor for income tax purposes. This allows the trust grantor — not the trust assets—to pay income tax on appreciated assets in the trust, indirectly gifting tax payments to the trust, essentially protecting these assets from income tax.
- **Zeroed-out grantor-retained annuity trusts (GRATs)** allow a trust grantor to transfer the appreciation of assets to beneficiaries virtually free of tax. The grantor sets up the trust for their beneficiaries (usually their children) and the grantor chooses to receive annuities equal to the value of the trust assets and IRS-anticipated interest. Any appreciation left over, which may be millions of dollars, is transferred to beneficiaries untaxed. And if the assets don't appreciate at a rate greater than the IRS-anticipated interest rate, the trust assets simply revert back to the grantor.
- **Valuation discounts** are sleights of hand used by the extremely wealthy to artificially reduce the value of their assets transferred to trusts. This reduces transfer taxes such as the estate tax. For example, minority shares of businesses can be discounted because of the shareholder's theoretical lack of control, and privately-owned stocks can be discounted for a theoretical lack of marketability since they're not publicly traded.

Lawmakers should require all assets held in a grantor trust to be included in a grantor's estate, as well as disallow valuation discounts on nonbusiness assets. The Build Back Better Act of 2021 initially included these reforms; if implemented, they would have raised an estimated $7.9 billion and $19.9 billion, respectively, over the next decade, according to data published by the Joint Committee on Taxation.[97] Unfortunately, these measures were removed from the bill even before it failed to pass.

Strengthen the Estate Tax

Because of the success of trust manipulation and sophisticated planning techniques by the wealth defense industry, estate and gift tax revenue has plummeted over the last several decades. As Saez and Zucman point out, in the early 1970s, estate and gift tax revenue amounted to about 0.2 percent of total US household net worth. Since 2010, it has barely reached 0.03 to 0.04 percent annually, a reduction by a factor of more than five. The researchers believe this is the result of design changes to the estate tax — such as the increase in the exemption threshold and copious deductions — alongside lack of enforcement.[98]

The estate tax, established in 1916, was once a robust tool in the effort to thwart dynastic wealth. Facing public policy assaults starting in 2001 by anti-tax advocates, it was further decimated as part of the 2017 Trump tax cuts. Currently, the amount of wealth exempted from the estate tax has more than doubled to $12.06 million for an individual and $24.12 million for a couple.[99]

Reform Generation-Skipping Trust Laws

Wealthy families have been deploying a device called a generation-skipping trust for decades. Families create an irrevocable trust and allocate a generation-skipping transfer tax exemption — an amount currently equal to the estate tax exemption, approximately $12 million — to the trust. As trust lawyer Martin Shenkman writes:

> *Properly done, the value of assets in that trust, no matter how much they appreciate, should never be subject to transfer taxation. The compounding of wealth outside the estate-tax system can provide incredible wealth shifting opportunities. When this is coupled with a long-term trust (dynasty trust) wealth can compound outside your estate forever.*[100]

The operative words here are "dynasty" and "forever." One solution, proposed by Senator Bernie Sanders, is to limit the application of the generation skipping transfer tax exemption to trusts that will last no longer than 50 years.[101]

Eliminate Stepped-Up Basis

Stepped-up basis at death is a loophole that allows a wealthy heir to dodge taxes on an ancestor's lifetime of investment gains. Usually, when a person sells an asset that has appreciated in value, they pay taxes on these capital gains. If a billionaire buys a yacht for $10 million and then sells it ten years later for $30 million, they'll pay taxes on $20 million in capital gains. At a maximum 20 percent capital gains tax rate, that's $4 million in federal taxes owed on that capital income.

But assets transferred to heirs after a wealthy benefactor dies do not incur taxes on the actual capital gain. Instead, the cost basis, or the original value of the asset, is raised — stepped up — to the value of the asset on the date of the benefactor's death. In other words, the capital gains essentially disappear in the eyes of the IRS, and heirs can avoid capital gains taxation entirely. So, if the billionaire above bought a yacht for $10 million and then died ten years later, bequeathing his yacht to his nephew, the nephew's cost basis on the yacht would step up to $30 million. If the nephew immediately sold the yacht, he would pay $0 in capital gains — the $20 million in appreciated value gained during his uncle's lifetime is irrelevant.

President Biden has proposed eliminating stepped-up basis for gains of $1 million or more and thus taxing unrealized capital gains at death.[102] While trust abuses could still continue without stepped-up basis, eliminating the loophole would still be a robust solution to curb the strength of the wealth defense industry.

Tax Income from Trusts

Lawmakers should add an additional income tax bracket for trusts — five percentage points higher than the maximum income tax bracket for individuals — on undistributed trust income in excess of $250,000. This will encourage the distribution of trust income to beneficiaries rather than the retention of income that causes the trust to grow even faster. Because the additional bracket would start at $250,000 of retained income, it would not penalize reasonable accumulations of trust income to provide for the future needs of trust beneficiaries, such as those who are young and disabled.

Increasing the distribution of income from dynasty trusts slows the accumulation of dynastic wealth. This is critical to do since the nominal estate and generation-skipping tax rates are 40 percent, with effective rates still lower. Even if assets in a dynasty trust are subject to a 40 percent transfer tax once each generation, assuming a modest 5 percent rate of return on investments, wealth will still increase by more than 738 percent over three generations.[103]

Enact a Wealth Tax or Excise Tax on Dynasty Trusts

An annual wealth tax, such as the one suggested by Senator Elizabeth Warren and Representatives Pramila Jayapal and Brendan Boyle in their proposed Ultra-Millionaire Tax, could be applied to trusts. This would levy a 2 percent annual tax on trust assets greater than $50 billion and an additional 1 percent annual tax on those trust assets greater than $1 billion. Such a tax could also be designed as an excise tax instead of a wealth tax. Either way, trusts could receive tax credits for assets contributed to charity, since the intention of a tax on trust-held wealth would not be to raise revenue, but to reduce the size of dynastic wealth and weaken the concentrated power of those who hold it.

Appendices

APPENDIX A: METHODOLOGY AND DATA SOURCES

Data on profiled states have been compiled from a variety of sources including state banking agency correspondence, agency reports, news articles, and trust company data available to the public. Due to the variety of sources used, the fact that there are no uniform reporting standards regarding trust assets, and the issue of inadequate transparency in a number of states, **trust asset numbers should not be regarded as definitive and comparisons between states are not necessarily reliable.** For example, some states may report total trust assets as those assets under management, while others may report total trust assets as those assets under administration. Note also trust asset numbers do not include unregulated trust companies, as such activity is not reported to the state. The data presented represent our *best effort* at profiling state jurisdictions.

Trust asset data for South Dakota are from the annual report of the South Dakota Department of Labor and Regulation. New Hampshire trust asset data are from the New Hampshire Banking Department's Annual Report of the Banking Commissioner. Ohio data are from annual reports of the Ohio Department of Commerce. Florida data are from the Long-Rage Program Plan published by the Department of Financial Services.

Data from Alaska are from correspondence with the Alaska Division of Banking & Securities. Data from Rhode Island are from correspondence with the Rhode Island Department of Business Regulation. Data from Illinois are from correspondence with the Illinois Department of Financial and Professional Regulation, Division of Banking. Data from Missouri are from correspondence with the Missouri Department of Commerce & Insurance, Division of Finance.

Data from Texas were gathered from a public records request. Data from Tennessee, Delaware, and Wyoming were estimated via news articles or press releases on trust industry activity.

Public records requests could not be used to identify total trust assets in all states because of some state statutes specifically exempting financial institution documents or barring non-residents from requesting records.

Tax inequality rankings are from the sixth edition of the Tax Inequality Index published by the Institute on Taxation and Economic Policy; see Meg Wiehe et al., "Who Pays? A distributional analysis of the tax systems in all 50 U.S. States, Sixth Edition," Institute on Taxation and Economic Policy, October 2018. This index determines the effect of state taxes on post-tax incomes for different income quintiles in each state and ranks each state based on its level of tax inequality, that is, whether the poor are taxed at higher rates than the rich and thus whether the tax system increases income inequality.

Data on maximum trust length were collected based on a review of individual state laws as well as a review of: Daniel G. Worthington et al., "Which Trust Situs is Best in 2020?" *Trusts & Estates* (January 2020): 70.

Appendix B: Table of Profiled Trust State Characteristics

State	Total Trust Assets	Trust Companies	Rule Against Perpetuities	Income Tax	Inheritance Tax	DAP Trusts Allowed	Tax Inequality Rank
South Dakota	$512.0 billion	106	Abolished	No	No	Yes	4
Nevada	Unknown	45	365 Years	No	No	Yes	5
Alaska	$12.6 billion	5	Abolished	No	No	Yes	26
Delaware	More than $50 billion	36	Abolished, except that real estate can only be held for 110 years	Residents only	No	Yes	48
Tennessee	$160 billion	15	360 Years	No	No	Yes	6
Wyoming	More than $31.5 billion	21	1,000 Years	No	No	Yes	10
New Hampshire	$669.2 billion	40	Abolished	No	No	Yes	16
Rhode Island	$1 billion	2	Abolished	Residents only	Estate tax only	Yes	32
Ohio	More than $17 billion	6	Opt-out (the rule doesn't necessarily apply to trusts)	Residents only	No	Yes	13
Missouri	$18.4 billion	3	Abolished	Residents only	No	Yes	28
Illinois	$1.1 trillion	15	Opt-out (the rule doesn't necessarily apply to trusts)	Residents only	Estate tax only	Yes	8
Florida	$54.6 billion	13	360 Years	No	No	Yes	3
Texas	$167.7 billion	17	300 Years	No	No	Uncertain (see notes)	2

Sources for Table of Profiled Trust State Characteristics

- Trust asset data for South Dakota, New Hampshire, Ohio, and Florida are from reports published by the respective state agency. Data from Alaska are from correspondence with the Alaska Division of Banking & Securities. Data from Rhode Island are from correspondence with the Rhode Island Department of Business Regulation. Data from Illinois are from correspondence with the Illinois Department of Financial and Professional Regulation, Division of Banking. Data from Missouri are from correspondence with the Missouri Department of Commerce & Insurance, Division of Finance. Data from Texas were gathered from a public records request. Data from Tennessee, Delaware, and Wyoming were estimated via news articles or press releases on trust industry activity.
- Tax inequality rankings are from the sixth edition of the Tax Inequality Index published by the Institute on Taxation and Economic Policy; see Meg Wiehe et al., "Who Pays? A distributional analysis of the tax systems in all 50 U.S. States, Sixth Edition," Institute on Taxation and Economic Policy, October 2018.
- Data on maximum trust length were collected based on individual searches of state law and a review of: Daniel G. Worthington et al., "Which Trust Situs is Best in 2020?" *Trusts & Estates* (January 2020): 70.
- Data on pandora trusts are from The Pandora Papers, International Consortium of Investigative Journalists, 2021.
- It may still be possible to create a DAP trust in Texas; see Rania Combs, "Did the Texas Legislature Create a Back Door for the Creation of a Self-Settled Asset Protection Trust?" Rania Combs Law, March 1, 2021.

Appendix C: Table of Trust Characteristics, All States

State	Rule Against Perpetuities	DAP Trusts Allowed	Inheritance Tax
Alabama	360 Years	No	No
Alaska	Abolished	Yes	No
Arizona	500 Years, *and* opt-out (the rule doesn't necessarily apply to trusts)	No	No
Arkansas	Abolished	No	No
California	RAP Intact	No	No
Colorado	1,000 Years	No	No
Connecticut	800 Years	Yes	Yes, estate tax
Delaware	Abolished, except that real estate can only be held for 110 years	Yes	No
District of Columbia	Opt-out (the rule doesn't necessarily apply to trusts)	No	Yes, estate tax
Florida	360 Years	No	No
Georgia	360 Years	No	No
Hawaii	Opt-out (the rule doesn't necessarily apply to trusts)	Yes	Yes, estate tax

State	Rule Against Perpetuities	DAP Trusts Allowed	Inheritance Tax
Idaho	Abolished	No	No
Illinois	Opt-out (the rule doesn't necessarily apply to trusts)	No	Yes, estate tax
Indiana	RAP Intact	Yes	No
Iowa	RAP Intact	No	Yes, inheritance tax, though will be phased out by 2025
Kansas	RAP Intact	No	No
Kentucky	Abolished	No	Yes, inheritance tax
Louisiana	RAP Intact	No	No
Maine	Opt-out (the rule doesn't necessarily apply to trusts)	No	Yes, estate tax
Maryland	Opt-out (the rule doesn't necessarily apply to trusts)	No	Yes, estate tax and inheritance tax
Massachusetts	RAP Intact	No	Yes, estate tax
Michigan	Opt-out (the rule doesn't necessarily apply to trusts)	Yes	No
Minnesota	RAP Intact	No	Yes, estate tax
Mississippi	360 Years, except that real estate can only be held 110 years	Yes	No
Missouri	Abolished	Yes	No
Montana	RAP Intact	No	No
Nebraska	Opt-out (the rule doesn't necessarily apply to trusts)	No	Yes, inheritance tax
Nevada	365 Years	Yes	No
New Hampshire	Abolished	Yes	No
New Jersey	Abolished	No	Yes, inheritance tax
New Mexico	Abolished, except that real estate can only be held for 365 years	No	No
New York	RAP Intact	No	Yes, estate tax
North Carolina	Abolished	No	No
North Dakota	Opt-out (the rule doesn't necessarily apply to trusts)	No	No
Ohio	Opt-out (the rule doesn't necessarily apply to trusts)	Yes	No
Oklahoma	Case law determined RAP need not apply	Yes	No
Oregon	RAP Intact	No	Yes, estate tax
Pennsylvania	Abolished	No	Yes, inheritance tax
Rhode Island	Abolished	Yes	Yes. estate tax
South Carolina	RAP Intact	No	No
South Dakota	Abolished	Yes	No
Tennessee	360 Years	Yes	No

State	Rule Against Perpetuities	DAP Trusts Allowed	Inheritance Tax
Texas	300 Years	Uncertain	No
Utah	1,000 Years	Yes	No
Vermont	RAP Intact	No	Yes, estate tax
Virginia	Opt-out (the rule doesn't necessarily apply to trusts)	Yes	No
Washington	150 Years	No	Yes, estate tax
West Virginia	RAP Intact	Yes	No
Wisconsin	Abolished	No	No
Wyoming	1,000 Years	Yes	No

Sources for Table of Trust Characteristics, All States

Trust length designations and Rule Against Perpetuities status were collected based on individual searches of state law and a review of: Daniel G. Worthington et al., "Which Trust Situs is Best in 2020?" *Trusts & Estates* (January 2020): 70.

See also:

- AR Code § 18-3-104 (2020)
- Bobby Harrison, "Bill allowing trusts for 360 years heading to governor," *Daily Journal*, March 13, 2015. https://www.djournal.com/news/bill-allowing-trusts-for-360-years-heading-to-governor/article_a8e3dd87-f8c2-51b2-91ed-eeefd7513ce0.html; Mississippi Legislature, House, *MS Uniform Statutory Rule Against Perpetuities*, Regular Session, 2015. https://legiscan.com/MS/bill/HB153/2015
- Gerry W. Beyer, "New Mexico Updates Trust & Estate Legislation," Wills, Trusts & Estates Prof Blog, November 26, 2016. https://lawprofessors.typepad.com/trusts_estates_prof/2016/11/new-mexico-updates-trust-estate-legislation.html
- N.D. Cent. Code § 47-02-27.4 The rule against perpetuities does not apply to a "fiduciary's power relating to the administration or management of assets" or to a "discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal."
- *Pipkin v. Pipkin*, 370 P.2d 826, 829 (Okla. 1962) Case law: "The trust in this case provided that the trustee had the full power to sell, transfer, convey and dispose of the trust estate for such price as he deemed meet and proper. With such a provision we see no suspension of the power of alienation."
- Rania Combs, "Did the Texas Legislature Create a Back Door for the Creation of a Self-Settled Asset Protection Trust?" Rania Combs Law, March 1, 2021. https://raniacombslaw.com/resources/did-the-texas-legislature-create-a-backdoor-for-the-creation-of-a-self-settled-asset-protection-trust Texas is not usually considered a domestic asset protection trust state, but there may be reason to suspect that these trusts can and are being created in Texas.
- Katie Akin, "Reynolds signs major tax cuts into law, promises more to come," Iowa Capital Dispatch, June 16, 2021. https://iowacapitaldispatch.com/2021/06/16/reynolds-signs-major-tax-cuts-into-law-promises-more-to-come/ Repealed in 2021 and will be phased out by 2025.

End Notes

[1] Will Fitzgibbon and Debbie Cenzipar, "The 'cowboy cocktail': How Wyoming became one of the world's top tax havens," *The Washington Post*, December 20, 2021. https://www.washingtonpost.com/business/interactive/2021/wyoming-trusts-finance-pandora-papers/; Xiaofei Xu and Anaëlle Jonah, "France seizes superyacht owned by sanctioned Russian oligarch," CNN, March 3, 2022. https://www.cnn.com/2022/03/03/business/oligarch-superyacht-seized/index.html
[2] Chuck Collins and Omar Ocampo, "Billionaire Wealth up $1.7 Trillion as U.S. Passes 1 Million COVID Deaths Milestone," Institute for Policy Studies, May 5, 2022. https://ips-dc.org/1-million-covid-deaths-billionaire-wealth-up-1-7-trillion/
[3] Bob Lord, "Dynasty Trusts: Giant Tax Loopholes That Supercharge Wealth Accumulation," Americans for Tax Fairness, February 2022.
[4] Andres Knobel, "Trusts: Weapons of Mass Injustice?" Tax Justice Network, February 13, 2017. https://taxjustice.net/wp-content/uploads/2020/11/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf
[5] Tayma Ben Ahmed, "Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak," International Consortium of Investigative Journalists, October 3, 2021. https://www.icij.org/investigations/pandora-papers/
[6] Laura E. Kodres, "What is Shadow Banking?" *Finance & Development* 50, no.2: 2013. https://www.imf.org/external/pubs/ft/fandd/2013/06/basics.htm
[7] Steve Oshins, "9th Annual Dynasty Trust State Rankings Chart," 2020. https://www.oshins.com/_files/ugd/b211fb_79b9ea83b72543e995ad71695279d4e3.pdf
[8] "European Parliament resolution on the Pandora Papers: implications for the efforts to combat money laundering, tax evasion and avoidance," October 20, 2021. https://www.europarl.europa.eu/doceo/document/RC-9-2021-0530_EN.pdf
[9] See Appendix C for a complete list.
[10] Johnson, David Fowler, "Texas Legislature Extends the Rule Against Perpetuities To 300 Years For Trusts," *The National Law Review*, May 27, 2021. https://www.natlawreview.com/article/texas-legislature-extends-rule-against-perpetuities-to-300-years-trusts
[11] The legal concept of "dead hand control," also known as *mortmain*, refers to perpetual ownership and control of an asset.
[12] Robert H. Sitkoff and Max Schanzenbach, "Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes," *Yale Law Journal* 115, no. 356: 2005. https://www.yalelawjournal.org/pdf/396_e4p5nu1m.pdf
[13] Besides Alaska, Delaware, Nevada, and South Dakota, domestic asset protection trusts are legal in Connecticut, Hawaii, Indiana, Michigan, Mississippi, Missouri, New Hampshire, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, Virginia, West Virginia, and Wyoming. This list is replicated in Appendix C. There is also reason to suspect that DAPTs are being created in Texas. See Rania Combs, "Did the Texas Legislature Create a Back Door for the Creation of a Self-Settled Asset Protection Trust?" Rania Combs Law, March 1, 2021. https://raniacombslaw.com/resources/did-the-texas-legislature-create-a-backdoor-for-the-creation-of-a-self-settled-asset-protection-trust
[14] Gabriel Zucman, Thomas Piketty, and Emmanuel Saez, Data from: "Distributional National Accounts: Methods and Estimates for the United States," Current annual series, February 2022. https://gabriel-zucman.eu/usdina/ Accessed May 19, 2022.
[15] Ibid.

[16] We contend that this is a conservative estimate because grantor trusts are not included in IRS data, nor are trusts that do not pay U.S. taxes because the grantor is a foreign national (that is, they are not expected to pay U.S. taxes).
[17] Adam Hofri-Winogradow, "The Statutory Liberalization of Trust Law across 152 Jurisdictions: Leaders, Laggards and the Market in Fiduciary Services," *UC Davis Law Review* 53: 2313-2355 (2020). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3487054
[18] Tax Justice Network, "Financial Secrecy Index 2022." https://fsi.taxjustice.net/
[19] Don Griswold, "State Tax Havens in the Pandora Papers," *Tax Notes State* 103, no. 4 (2022): 404. https://www.taxnotes.com/tax-notes-today-state/tax-havens/state-tax-havens-pandora-papers/2022/02/07/7crjw
[20] Sitkoff and Schanzenbach, "Jurisdictional Competition for Trust Funds."
[21] Steve Oshins, "9th Annual Dynasty Trust State Rankings Chart."
[22] Trust assets by state are estimates based on information provided by states themselves, financial records of trust companies, or other digital resources. Most estimates are from 2021. Due to differences in how states calculate and determine total trust assets, these numbers should not be regarded as definitive and comparisons between states are not necessarily reliable. Note also these numbers do not include unregulated trust companies, as such activity is not reported to the state. See further discussion in methodology.
[23] Meg Wiehe et al., "Who Pays? A distributional analysis of the tax systems in all 50 U.S. States, Sixth Edition," Institute on Taxation and Economic Policy, October 2018. https://itep.org/whopays/
[24] South Dakota Division of Banking, "Governor's Task Force on Trust Administration Review and Reform." https://dlr.sd.gov/banking/trusts/trust_task_force.aspx
[25] Institute on Taxation and Economic Policy, "South Dakota: Who Pays? 6th Edition." https://itep.org/whopays/south-dakota/
[26] Nevada Legislature, Assembly, Committee on Commerce and Labor, "Minutes of the meeting of the assembly committee on commerce and labor," 75th Legislative Session, May 15, 2009. https://www.leg.state.nv.us/Session/75th2009/Minutes/Assembly/CMC/Final/1294.pdf
[27] U.S. Senate, Permanent Subcommittee on Investigations, "Staff Report on Tax Haven Banks and U.S. Tax Compliance, Released in Conjunction with the Permanent Subcommittee on Investigations July 17, 2008 Hearing." The Permanent Subcommittee on Investigations began an investigation into tax haven banks in February 2008. The subcommittee's investigation led to the development and eventual passage of FATCA in 2010. Related work continued for several years. https://www.hsgac.senate.gov/imo/media/doc/REPORTTaxHavenBanksJuly1708FINALwPatEliseChgs92608.pdf; U.S. Congress, Senate, Permanent Subcommittee on Investigations, "Tax Haven Banks and U.S. Tax Compliance," 110th Congress, July 17 and 25, 2008. https://www.govinfo.gov/content/pkg/CHRG-110shrg44127/pdf/CHRG-110shrg44127.pdf; Homeland Security and Government Affairs, The Permanent Subcommittee on Investigations: Issues, "Tax Havens and Abusive Tax Schemes." Accessed May 11, 2022. https://www.govinfo.gov/content/pkg/CHRG-110shrg44127/pdf/CHRG-110shrg44127.pdf; Homeland Security & Governmental Affairs Committee
[28] Nevada Legislature, Assembly, Committee on Judiciary, "Minutes of the Nevada Assembly Committee on Judiciary," 70th Legislative Session, March 26, 1999. https://www.leg.state.nv.us/Session/70th1999/Minutes/AM-JUD-990326-AB'S392,443,467,469.html
[29] National Conference of State Legislatures, "Supermajority Vote Requirements to Pass the Budget," November 9, 2018. https://www.ncsl.org/research/fiscal-policy/supermajority-vote-requirements-to-pass-the-budget635542510.aspx
[30] Bridget J. Crawford, "On Perpetuities, Paradigms, and a Creative Life in the Law," *Tax Notes*, July 11, 2016. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808261

[31] Alaska Legislature, House, Judiciary Committee, *An Act relating to wills, intestacy, nonprobate transfers, and trusts* (Detailed minutes), 20th Legislative Session, March 6, 1998. http://www.legis.state.ak.us/basis/Meeting/Detail/?Meeting=HJUD%201998-03-06%2013:07&Bill=HB%20196
[32] The Wealth Advisor, "The Winners List: America's Most Advisor-Friendly Trust Companies in Delaware," 2017. PDF.
[33] However, real estate can only be held in trust in Delaware for 110 years.
[34] Delaware Division of Corporations, "Annual Report Statistics." https://corp.delaware.gov/stats/
[35] Chuck Collins, Joe Fitzgerald, Helen Flannery, Omar Ocampo, Sophia Paslaski, and Kalena Thomhave, "Silver Spoon Oligarchs: How America's 50 Largest Inherited-Wealth Dynasties Accelerate Inequality," Institute for Policy Studies, June 2021. https://ips-dc.org/wp-content/uploads/2021/06/Silver-Spoon-Oligarchs-Americas-Wealth-Dynasties-2021-Full-Report.pdf
[36] American Bankers Association, "25 Largest Institutions by Fiduciary Assets." https://www.aba.com/-/media/documents/data/top25institutionsbytrustassets.pdf?rev=b076309794564423ab7a0cf29c353249 Wilmington Trust was acquired by M&T Bank in 2011.
[37] Neil Gilbride, "Banking Haven," *The Washington Post*, June 26, 1983. https://www.washingtonpost.com/archive/business/1983/06/26/banking-haven/cfb55a74-159d-4d54-a91c-4d87c8965a6a/
[38] Tax Policy Center, "States with Legislative Supermajority Requirements to Increase Taxes, 2010." https://www.taxpolicycenter.org/file/59876/download?token=6vaioZC9
[39] Gilbride, "Banking Haven."
[40] John F. Berry, "Delaware Wears New Business Heart on Its Sleeve," *The Washington Post*, March 9, 1981. https://www.washingtonpost.com/archive/business/1981/03/09/delaware-wears-new-business-heart-on-its-sleeve/684c8a30-6a59-435b-9add-d9e874f5c8b2/
[41] Many in the trust industry use "the big four" as a nickname for trust-subservient states of South Dakota, Nevada, Alaska, and Delaware, usually considered to be the four "best" trust jurisdictions in the U.S.
[42] Delaware Division of Corporations, "2020 Annual Report Statistics." https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2020-Annual-Report.pdf; Delaware.gov News, "Governor Carney Signs $4.4 Billion Fiscal Year 2020 Budget," June 25, 2019. https://news.delaware.gov/2019/06/25/governor-carney-signs-4-4-billion-fiscal-year-2020-budget/
[43] Bill Freeborn, "Opinion: Delaware is in Real Trouble if it Loses Corporation-Revenue Dominance," *Delaware Online*, December 10, 2018, quoted in Chuck Collins, *The Wealth Hoarders: How Billionaires Pay Millions to Hide Trillions* (Medford, MA: Polity Press, 2021), 83.
[44] Amy Heaslet, "TBA priorities for the 112th General Assembly," Tennessee Bankers Association, January 13, 2021. https://tnbankers.org/wp-content/uploads/2021/06/21-TNBanker_JanHeaslet.pdf; Tennessee Department of Financial Institutions, "2020 Annual Report." https://www.tn.gov/content/dam/tn/financialinstitutions/new-docs/2021-department-documents/2020%20Tennessee%20Department%20of%20Financial%20Institutions%20Annual%20Report.pdf The numbers stated in this TN Bankers memo reflect an increase that is consistent with current trends and reported 2020 trust assets of $122 billion.
[45] Family Office Exchange, "States Update Legal Landscape to Attract Private Family Trust Companies," April 7, 2015. https://www.globenewswire.com/fr/news-release/2015/04/07/722239/21803/en/States-Update-Legal-Landscape-to-Attract-Private-Family-Trust-Companies.html
[46] Tennessee General Assembly, House, *An act to amend Tennessee Code Annotated, Title 35, relative to trusts*, H.B. 1186, 112th General Assembly, introduced in House February 10, 2021. https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1186

[47] Tennessee General Assembly, House, Children and Family Affairs Subcommittee, *Item: H.B. 1186*, 112th General Assembly, March 17, 2021.
https://tnga.granicus.com/MediaPlayer.php?view_id=610&clip_id=24260
[48] Wyoming Division of Banking, "Wyoming Trust Companies."
https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/regulated-financial-institutions/trust-companies
[49] Fitzgibbon and Cenzipar, "The 'cowboy cocktail.'
[50] U.S. Energy Information Administration, "Coal explained: Where our coal comes from."
https://www.eia.gov/energyexplained/coal/where-our-coal-comes-from.php
[51] Margaret Austin, "Panelists ponder future of state finances," Wyoming Tribune Eagle, February 26, 2021. https://www.thesheridanpress.com/news/regional-news/panelists-ponder-future-of-state-finances/article_19969878-7861-11eb-9f4e-e38b0ee6551b.html; Kathryn Palmer, "One of the fairest school funding models in the nation might be about to fail," The Hechinger Report, March 14, 2021.
https://hechingerreport.org/one-of-the-fairest-school-funding-models-in-the-nation-might-be-about-to-fail/
[52] Wyoming Department of Administration and Information, Economic Analysis Division, "Gross domestic product (GDP) for Wyoming by industry (millions of current dollars)."
http://eadiv.state.wy.us/i&e/WyoGDP97_20.htm
[53] Wyoming Business Report, "Professionals announce formation of the Wyoming Trust Association," February 26, 2019.
https://www.wyomingnews.com/wyomingbusinessreport/industry_news/professionals-announce-formation-of-the-wyoming-trust-association/article_9504ee33-2548-5d5b-b220-2a8a81a37426.html; Wyoming Legislature, Joint Minerals, Business & Economic Development Committee Meeting, August 27, 2018.
[54] However, unregulated trust companies are subject to SEC registration, unless they qualify for the family office exemption.
[55] State of New Hampshire, "Annual Report of the Bank Commissioner," 2020.
https://www.nh.gov/banking/forms-pubs/documents/bc-annual-report-2020.pdf As of June 30, 2020.
[56] New Hampshire General Court, Senate, *Trust Modernization and Competitiveness Act*, S.B. 394, Regular Session, introduced in the Senate January 4, 2006.
http://gencourt.state.nh.us/BillHistory/SofS_Archives/2006/senate/SB394S.pdf
[57] Steven M. Burke and Beth L. Fowler, "Trusts will be exempt from N.H.'s interest and dividends tax in 2013," Seacoastonline, August 20, 2012. https://www.seacoastonline.com/story/news/local/portsmouth-herald/2012/08/20/trusts-will-be-exempt-from/49459403007/
[58] Bob Sanders, "Is NH losing trust in trusts?" New Hampshire Business Review, July 18, 2019.
https://www.nhbr.com/is-nh-losing-trust-in-trusts/
[59] Michael Kitch, "NH trust laws undergo yet another alteration," New Hampshire Business Review, August 3, 2017. https://www.nhbr.com/nh-trust-laws-undergo-yet-another-alteration/
[60] New Hampshire General Court, Senate, Committee on Judiciary, *Hearing on Establishing the Trust Modernization and Competitiveness Act*, Regular Session, January 26, 2006.
http://gencourt.state.nh.us/BillHistory/SofS_Archives/2006/senate/SB394S.pdf
[61] Rhode Island General Assembly, Senate, *An Act Relating to Fiduciaries—Uniform Directed Trust Act*, S. 2559, 2022 Regular Session, introduced in Senate March 4, 2022. https://legiscan.com/RI/bill/S2559/2022
[62] The Ohio Division of Financial Institutions did not respond to a public records request, but as of 2018 three trust companies held $17 billion in trust assets, as reported in the Ohio Department of Commerce's 2018 Annual Report. As of 2020, there are at least six trust companies in the state, as reported in the 2020 annual report; however, the department did not disclose trust company assets. The department did not include any trust company information in its 2021 report, the most recent report available. Ohio

Department of Commerce, 2018 Annual Report.
https://com.ohio.gov/static/documents/comm_AnnualReport2018.pdf; Ohio Department of Commerce, 2020 Annual Report. https://com.ohio.gov/static/documents/Commerce_FY2020_AnnualReportFinal.pdf; Ohio Department of Commerce, 2021 Annual Report.
https://com.ohio.gov/static/documents/Commerce_2021AnnualReportFinal.pdf

[63] The rule in Ohio does not necessarily apply to trusts. In practice, this means that Ohio trusts can generally last forever as long as the trust "opt outs" of the rule.

[64] M. Patricia Culler, "Opting-out from the rule against perpetuities in Ohio: Nine years later," *Probate Law Journal of Ohio* 18, no. 3: 145-149, (2008). https://www.hahnlaw.com/wp-content/uploads/2021/09/pdyyfth9fyf0al7otby2.pdf

[65] Vorys, "Ohio Private Trust Companies – A New Option for High Net Worth Families," Legacy Newsletter, July 6, 2017. https://www.vorys.com/newsletter-763.html

[66] BakerHostetler, "Governor Kasich Signs House Bill 229 to Create Ohio Family Trust Company Act," June 22, 2016. https://www.bakerlaw.com/alerts/governor-kasich-signs-house-bill-229-to-create-ohio-family-trust-company-act

[67] Ohio Legislature, House, *Enacts Family Trust Company Act*, H.B. 229, 131st General Assembly, Regular Session, introduced in House May 26, 2015. https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA131-HB-229

[68] Ibid.

[69] Ohio Department of Commerce, "Annual Report Fiscal Year 2020."
https://com.ohio.gov/static/documents/Commerce_FY2020_AnnualReportFinal.pdf

[70] Data as of 12/31/2021. Correspondence from Missouri Division of Finance, Banks and Trust Section, February 25, 2022.

[71] Keith A. Harman, "Missouri Asset Protection Trust," in *Bogert's The Law of Trusts and Trustees*, 2017. https://www.greensfelder.com/media/publication/303_Herman-BOGERT_MO-asset-protection-trust.pdf; David G. Shaftel and David H. Bundy, "Domestic Asset Protection Trusts."
https://shaftellaw.com/docs/article_23.pdf

[72] The rule in Illinois does not necessarily apply to trusts. In practice, this means that Illinois trusts can generally last forever as long as the trust "opt outs" of the rule.

[73] Katten, "Adam Damerow and Tye Klooster help draft Illinois' new trust code," August 26, 2019.
https://katten.com/adam-damerow-and-tye-klooster-help-draft-illinois-new-trust-code

[74] Northern Trust, "Global Family & Private Investment Offices." https://www.northerntrust.com/united-states/what-we-do/wealth-management/global-family-office-services

[75] *Forbes*, "Billion-Dollar Dynasties: These Are the Richest Families in America," December 17, 2020. https://www.forbes.com/sites/kerryadolan/2020/12/17/billion-dollar-dynasties-these-are-the-richest-families-in-america/?sh=bef701b772c7is

[76] Zachary R. Mider, "South Dakota Address Helps Richest Shelter Wealth Forever: Taxes," December 27, 2013. https://www.bloomberg.com/news/articles/2013-12-27/moguls-rent-south-dakota-addresses-to-dodge-taxes-forever#xj4y7vzkg

[77] Florida Department of Financial Services, "Long-Range Program Plan," September 30, 2021.
http://floridafiscalportal.state.fl.us/Document.aspx?ID=23184&DocType=PDF

[78] According to records provided by the Texas Department of Banking.

[79] Texas Legislature, Senate, Committee on Jurisprudence, *HB 654*, Regular Session, April 22, 2021 (testimony of Jerry Young). https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15817

[80] A 2017 Houston Trust Company ad notes that Brad Tucker was a founding shareholder of the company. The "history" page of the Houston Trust Company website states that the company was founded by a handful of "Texas families." See: https://houstontrust.com/our-company/#our-history

[81] Texas Legislature, Senate, Committee on Jurisprudence, *HB 654*, Regular Session, April 22, 2021 (testimony of Michael Milich). https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15817
[82] National Council of State Legislatures, "Full- and Part-Time Legislatures." https://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx
[83] Jen Rice, "Why Aren't State Legislators Paid a Living Wage?" Houston Public Media, July 21, 2017. https://www.houstonpublicmedia.org/articles/news/2017/07/21/222867/why-arent-state-legislators-paid-a-living-wage/
[84] See Appendix C for a complete list of trust length requirements by state.
[85] Tax Foundation, "Does Your State Have an Estate or Inheritance Tax?" https://files.taxfoundation.org/20210224125111/2021-state-estate-and-inheritance-taxes.-Which-states-have-an-estate-tax-Which-states-have-an-inheritance-tax-States-with-an-estate-tax.-States-with-an-inheritance-tax.png; See also Appendix C.
[86] Whitney Tucker, "State Tax Cuts, Voting Restrictions Combine to Worsen Inequities," Center on Budget and Policy Priorities, March 8, 2022. https://www.cbpp.org/blog/state-tax-cuts-voting-restrictions-combine-to-worsen-inequities
[87] Crawford, "On Perpetuities, Paradigms."
[88] Northern Trust, "Incomplete Non-Grantor Trusts – The Basics," June 2014. https://www.northerntrust.com/documents/line-of-sight/wealth-advisor/incomplete-non-grantor-trusts.pdf
[89] U.S. Congress, "H.R. 5525 Establishing New Authorities for Businesses Laundering and Enabling Risks to Security Act or the ENABLERS Act." https://www.congress.gov/bill/117th-congress/house-bill/5525
[90] Alaska 32nd Legislature, "HB 405." www.akleg.gov/basis/Bill/Detail/32?Root=HB 405
[91] Wyoming 66th Legislature, Joint Revenue Committee, April 28, 2022. https://www.wyoleg.gov/Calendar/20190601/Streams/2022
[92] Kalena Thomhave, "Whither the Wealth Squad?" Inequality.org, June 1, 2022. https://inequality.org/great-divide/fund-irs-wealth-squad/
[93] U.S. Congressional Research Service, "IRS-Related Funding in the Inflation Reduction Act," CRS Insight No. IN11977, August 9, 2022. https://crsreports.congress.gov/product/pdf/IN/IN11977
[94] Ibid.
[95] Knobel, "Trusts: Weapons of Mass Injustice?"
[96] Eric Kades, "Of Piketty and Perpetuities: Dynastic Wealth in the Twenty-First Century (and Beyond)," *Boston College Law* Review 60, no. 1 (2019). https://lawdigitalcommons.bc.edu/bclr/vol60/iss1/4
[97] Joint Committee on Taxation, "Estimated Budgetary Effects of an Amendment in the Nature of a Substitute to the Revenue Provisions…," September 13, 2021, quoted in Bob Lord, "Dynasty Trusts."
[98] Emmanuel Saez and Gabriel Zucman, "Progressive Wealth Taxation," *Brookings Papers on Economic Activity*, (Fall 2019): 437-533. https://www.brookings.edu/bpea-articles/progressive-wealth-taxation/
[99] These are 2022 exemption levels.
[100] Martin Shenkman, "Sanders Estate Tax Proposal: Estate Planning Steps to Take Now," *Forbes*, March 21, 2019. https://www.forbes.com/sites/martinshenkman/2019/03/21/sanders-estate-tax-proposal-estate-planning-steps-to-take-now/?sh=1ef1a8db99f5
[101] Bernie Sanders, U.S. Senator for Vermont, "FOR THE 99.5% ACT: Summary of Sen. Bernie Sanders' legislation to tax the fortunes of the top 0.5%." https://www.sanders.senate.gov/wp-content/uploads/For-the-99.5-Summary.pdf
[102] The White House, "FACT SHEET: The American Families Plan," April 28, 2021. https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/

[103] The Northern Trust Institute, "Nevada Trusts: Safeguarding Personal Wealth." https://www.northerntrust.com/united-states/institute/articles/nevada-trusts-safeguarding-personal-wealth If one invests the current estate tax exemption ($12.06 million) to a trust, based on a 5 percent rate of return and subject to tax at 40 percent every 25 years, after 75 years it will grow to an estimated $101 million.