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The United States of Anonymity

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Kleptocracy Initiative

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Preface

> *"Together, we have created a monster."*
> – Ramón Fonseca, founder of Panamanian law firm Mossack Fonseca[1]

For years, Viktor Bout, known as the "Merchant of Death," was considered the world's premier arms dealer, with clients ranging from those in Muammar Qaddafi's Libya to those in Mobutu Sese Seko's Democratic Republic of the Congo.[2] Former Ukrainian Prime Minister Pavlo Lazarenko, meanwhile, landed upon Transparency International's listing of the world's ten most egregious kleptocrats.[3] And Teodoro Nguema Obiang Mangue, son of Equatorial Guinea's dictator—a leader who has remained ensconced in power since 1979—is known not only for forfeiting tens of millions of dollars to the U.S. Department of Justice, but also for the fact that he continues to own, of all things, Michael Jackson's crystal-studded glove.[4]

Despite their disparate vehicles for accumulating wealth, and despite their current fortunes—Bout remains behind bars, while Obiang is now Equatorial Guinea's vice president—all three had something in common.[5] According to investigations and court records alike, all three men saw fit to utilize American shell companies to funnel and obscure their massive wealth. Rather than squirrel their funds in traditional offshore havens, the three turned to the United States to blur their swelling finances—and to further their own kleptocratic, or lethal, pursuits.

Bout, Lazarenko, and Obiang are by no means the only nefarious non-American actors utilizing U.S. shell companies to conceal their finances over the past few years. From Moldovan gangs involved in human trafficking to Mexican cartels funneling funds into the United States, even extending to criminals diverting millions of dollars that had been intended to upgrade safety precautions at Soviet-era nuclear facilities, the cast of characters abusing America's system of anonymous companies—and of the country's overall transformation into a leading provider of shell companies—is as deep as it is sinister.[6] Not only was one of the U.S. companies allegedly linked to Bout used for arms transfers to the Taliban, but, as one lawyer specializing in shell companies wrote in 2017, "It's not entirely beyond the realms of possibility that ISIS could be operating companies and trust funds domiciled in Delaware."[7]

All told, over the past few years the United States has transitioned into one of the most prominent jurisdictions hawking outright financial secrecy internationally. While traditional tax havens and other Western governments alike have tightened regulations pertaining to financial transparency, the United States has instead lurched in the opposite direction. And America's transformation into a haven for financial anonymity has arisen in no small part due to the efforts of a handful of local, state-level governments. Led by Delaware, Nevada, Wyoming, and South Dakota, a small scattering of states has flipped the broader American theory of federalization—that is, state-level legislative experimentation in the pursuit of policies that work best— on its head, and perfected policies that have placed the United States at the top of the list of global offshore havens. When it comes to financial secrecy, these states are engaged, as the Tax Justice Network wrote, in a "race to the bottom."[8]

While the Federal government has generally been regarded as one of the leading enforcers of international financial oversight, the United States has nevertheless morphed into one of the chief jurisdictions for those looking to hide their funds from governments and investigators alike. And while a few cases, like those of Bout and Obiang, have come to light, a report from Global Witness recently observed that such instances are "very likely just the tip of the iceberg."[9]

1. Financial Secrecy's Scope

> *"In some places [in the U.S.], it's easier to incorporate a company than it is to get a library card."*
> – Global Financial Integrity's Joseph Spanjers, 2016[10]

To tell the story of the United States' transformation into a global offshore haven for kleptocrats and criminal gangs, we must first define a few terms. For instance, tax havens are traditionally understood to be jurisdictions that pursue different tax regimes for domestic versus foreign clients. Such tax havens are, generally, smaller independent states, such as Belize or Panama, or smaller overseas dependencies, such as the British Virgin Islands or the Cayman Islands.[11] As *The Guardian* wrote, "[W]hen it comes to tax havens, the culprits are not hard to identify: there are more than 60 in the world, and the vast majority of them are controlled by a handful of Western countries."[12] The Organization for Economic Cooperation and Development (OECD) does not currently list any states on its register of "uncooperative tax havens," but jurisdictions such as Liberia, Andorra, and Nauru have previously been blacklisted.[13]

Tax havens, as the name makes clear, are generally utilized by those wishing to escape tax dues elsewhere. They are by no means a novel phenomenon—so long as levies have existed, individuals have sought means of escaping payments—but the fruits of globalization have significantly eased access to far-flung tax havens. Indeed, globalization has also increased the scope of international money laundering, with the Tax Justice Network noting that, as of 2010, upwards of $32 trillion was invested in some 80 offshore jurisdictions—and that did not even include assets like real estate or yachts.[14] And it's not simply actors from developed countries spiriting their funds abroad. A recent report from Global Financial Integrity found that developing countries have collectively lost a total of $13.4 trillion in unrecorded capital flight since 1980.[15]

The United States, meanwhile, has largely escaped association with traditional tax and offshore havens, due in no small part to Washington's outsized role as the preeminent enforcer of international financial regulation. Not only have American officials, in conjunction with Swiss and British counterparts, helped spearhead recent developments surrounding asset recovery and return—especially as it pertains to large-scale foreign bribery—but the United States has also overseen enforcement related to laws and regulations increasing banking transparency. For instance, a decade ago, a whistleblower within UBS Group AG alerted American authorities to undeclared offshore accounts holding U.S. clients' assets. More than 80 Swiss banks eventually agreed to pay some $5 billion in fines to the United States.[16] "If you're violating the tax laws of the Bahamas, or Belgium, or probably even Germany, they're not going to kick the door down and drag you out of somewhere and put you in jail for thirty years," the University of Cambridge's Jason Sharman, who specializes in researching international shell companies, said. "But occasionally that does happen to people who run afoul of the U.S. government."[17]

American Anonymity Arises

However, for those following developments surrounding mechanisms of financial secrecy, the United States has begun taking on all of the trappings of an offshore haven. Not only did a recent assessment from the European Parliament describe the U.S. as a "leading tax and secrecy haven for rich foreigners,"[18] but as far back as 1966 a State Department memo noted that the United States "is probably the second major flight money center in the world," after Switzerland.[19] According to a 2015 report from the Tax Justice Network, the United States "has long been a secrecy jurisdiction or tax haven at the federal U.S.-wide level."[20] Indeed, at last check, Switzerland and Hong Kong remain the only jurisdictions outpacing the United States in the Tax Justice Network's Financial Secrecy Index, with the U.S. besting traditional offshore stalwarts like Luxembourg, Panama, and the Cayman Islands. A recent report from the Boston Consulting Group pegged total offshore wealth in the United States at $800 billion, which, while still trailing Switzerland, is nonetheless expected to expand at some 6 percent per year moving forward.[21]

While the reasons for the U.S. transformation, as detailed below, stem in large part from state-level innovation, federal policies over the past few years have helped exacerbate prior trends toward offshoring. Not only has America's sheer size allowed it to outpace offshore rivals elsewhere—as the World Bank found in 2011, the United States sees ten times more legal entities formed each year than the next 41 listed tax haven jurisdictions combined—but recent federal regulations have undercut international efforts to combat financial secrecy abuse.[22] In 2014, the United States opted not to join the OECD's Common Reporting Standards (CRS), and instead implemented the Foreign Account Tax Compliance Act (FATCA), which made foreign banks operating outside U.S. borders disclose business with American clients. The language of the FATCA mirrored the CRS, but the two pieces of regulation remain remarkably disjointed, especially as it pertains to U.S. unwillingness to share information with its OECD counterparts.[23] (Bahrain and Vanuatu, among other states, joined the United States in opting not to implement the CRS.) As one analysis noted, "Washington's independent-minded approach risks tearing a giant hole in international efforts [at financial transparency]," describing the disjunction between the two programs as a "disaster."[24]

The U.S. decision to craft its own regulations has resulted in a massive shift in funds from European banks into the United States. As one Swiss lawyer wrote, "How ironic—no, how perverse—that the USA, which has been so sanctimonious in its condemnation of Swiss banks, has become the banking secrecy jurisdiction du jour."[25] Or as another analyst added, the United States is now "effectively the biggest tax haven in the world."[26] And those in the United States are by no means ignorant of the fallout from the FATCA's implementation. As one Washington lawyer recently said, "I think the U.S. is already the world's largest offshore center. It has done a real good job disabling competition from Swiss banks."[27] Added Bloomberg: "Some are calling [the U.S.] the new Switzerland."[28]

Shells on the Shelf

Still, it is not simply federal regulation, or lack thereof, that has catapulted the United States into "one of the world's largest 'offshore' financial destinations," as the *Washington Post* wrote.[29] Over the past two decades, a series of U.S. states, via shell companies and secretive trusts alike, have helped turn the country into a global offshore haven.

These state-level innovations have taken two basic forms. The first, as mentioned in the introduction, involves shell companies. Shell companies, also known as shell corporations, maintain a handful of key characteristics that separate them from other companies or corporations. At their most basic, shell companies are little more than their legal descriptor—that is, the information found on the page describing their name, address, or director. Per the U.S. Department of Justice's most recent National Money Laundering Risk Assessment (NMLRA), a shell company is "registered with the state as a legal entity, but has no physical operations or assets."[30] Or as the World Bank describes, "a shell company can be defined as a non-operational company—that is, a legal entity that has no independent operations, significant assets, ongoing business activities, or employees."[31]

Shell companies have grown increasingly popular for actors seeking to mask ties to wealth and property alike. Not only do shell companies ease the means of blurring overall ownership structures, but, as detailed below, certain jurisdictions eagerly turn a blind eye to those individuals benefiting from such companies. Shell companies have gained significant notoriety over the past few years, most especially as a result of the 2016 Panama Papers leak, which saw the inner workings of the Panamanian firm Mossack Fonseca—the fourth-largest purveyor of international offshore services—revealed to the world. Unsurprisingly, added the World Bank, the "vast majority" of the most recent instances of large-scale kleptocracy have employed companies or corporations—which are often shell companies.[32]

There are a handful of variations of shell companies, the most notable of which are known as "shelf companies." While largely similar to shell companies, shelf companies maintain several small but important differences: They have been in existence for some time, and they maintain a discernible track record of ownership or management. Per the NMLRA, "A shelf company is a legal entity that is state-registered, but has not been used for any purpose. It was created and put on the 'shelf,' awaiting a buyer who does not want to go through the process of creating a new legal entity."[33] A company with a track record aids in convincing hesitant partners or others that the company is not just a shell, helping assuage potential concerns about financial secrecy.

In numerous jurisdictions, companies—including, most especially, shell and shelf companies—are registered via corporate service providers (CSPs), agents paid to manage paperwork and annual fees associated with corporate registration. As detailed below, the CSP industries in both Nevada and Wyoming are tied to a large number of entities and generate significant revenue for their states. CSPs, writes the World Bank, are "crucial actors in both the legitimate and the illicit use of corporate vehicles."[34] Likewise, such providers can be divvied into "wholesale" and "retail" providers, with the former providing block companies for the latter, while “retail” providers then sell individual companies to clients.

Benefits and Blowback

While shell and shelf companies remain broadly legal despite their utility in various instances of corruption, multiple jurisdictions are increasing oversight on their use. Many countries and territories have begun to require information about beneficial ownership to be registered, as requested by international bodies of which the United States is a member—most notably the Financial Action Task Force (FATF), a body formed in 1997 and widely considered the foremost organization monitoring financial secrecy concerns. Per the FATF, such registries should not only contain the identities of beneficial owners but also other relevant information.[35] As Ben Judah noted in Hudson Institute's *The Kleptocracy Curse*, the "purpose of this requirement is to prevent the ability of criminals to launder funds through the system, though in reality this flimsy stipulation has broken down in the contemporary offshore environment."[36]

Although it has multiple traditional offshore jurisdictions in the form of British Crown Dependencies and Overseas Territories, the United Kingdom recently implemented a nationwide beneficial owner registry. This registry is far from perfect, but it demonstrated that numerous companies continue to list their beneficial owners as companies located in tax havens. Nevertheless, the move was widely hailed as a significant development in the world of financial transparency. The registry, according to Global Witness, is "a big step forward for transparency in this country, and a potential treasure trove of information."[37] Many European Union nations have also begun setting up similar registries, which will be accessible by both law enforcement and the public alike.

But in the United States, no such public registry of beneficial ownership exists, nor does one appear likely to exist for the foreseeable future. As the *Washington Post* has noted, movement toward a potential nationwide registry has faced stiff resistance from a handful of actors, including "Delaware, Nevada, Wyoming and other states through an organization called the National Association of Secretaries of State, who worry about the loss of tax revenues and the burden of regulation."[38] For U.S. states with significant shell company industries, notes *USA Today*, the motive for their resistance "appears to be simple: mountains of cash."[39]

At present, many U.S. states require minimal information about beneficial ownership. In several cases, no proof of identification is required to set up a company. Further, those creating such companies can appoint "nominees" to stand in for the beneficial owners on documentation. (A recent report from the Financial Action Task Force found that "[n]o State expressly permits companies to use nominee directors; neither is there an express bar against them.")[40] As a report from Global Witness found, "America is one of the easiest places in the world to set up an anonymously-owned company. In many states, you need less identification to set up a company than you do to get a library card."[41]

Trust Us

Other states, meanwhile, have opted to forego shell and shelf corporations and take a different tack on financial secrecy: trusts. At their simplest, trusts—legal entities that date back to the Middle Ages—involve a trio of actors: A *settlor* transfers assets to a *trustee*, who is then charged with managing these assets for the benefit of the *beneficiaries*. Parents or grandparents frequently employ this mechanism as settlors, hiring a lawyer to act as trustee to steward assets for the benefit of children or grandchildren, the eventual beneficiaries. Largely because of their provenance as a private means of passing along wealth, trusts retain broad secrecy provisions.

Especially in the wake of the Panama Papers revelations, news reports in recent years have focused on the role that shell companies have played in the explosion of secret financial maneuvering. Trusts, on the other hand, have received comparatively little coverage, which in part is why they may well be the next growth industry for financial secrecy, if they are not already. In the Panama Papers themselves, we received a glimpse of lawyers from Mossack Fonseca pushing trusts, saying their clients "should go more for trusts and complicated structures."[42]

A recent report from the Tax Justice Network identified a handful of jurisdictions that have implemented abusive trust regimes internationally, including Belize, New Zealand, Nevis, and the Cook Islands.[43] These domestic trust industries, the report makes clear, have become as brazen as the shell company industry when it comes to pushing trusts for the purposes of large-scale financial secrecy. For instance, new boutique trusts now allow the settlor to act as a beneficiary as well; some even allow the trustee to transfer assets without notifying anyone. As the International Consortium of Investigative Journalists' Will Fitzgibbon, a journalist who helped cover the Panama Papers, said, "Lots of the low-hanging fruit of the offshore industry has already been [covered], or is a thing of the past.... [Now] journalists should be looking at trusts in particular."[44]

Despite recent movement toward greater oversight, no countries or jurisdictions except the European Union have implemented any kind of public registry for trusts. Meanwhile, there has been little discussion of registries in the United States, which, led by South Dakota, has become one of the leading international jurisdictions for secretive trusts. As with shell companies, American officials and state-level legislatures have vaulted the United States into global leadership in yet another financial secrecy industry—to the detriment of constituents, foreign governments, and America's own anti-kleptocracy efforts.

2. The Rise of the United States of Anonymity

> *"That 'giant sucking sound' you hear? It is the sound of money rushing to the USA."*
> —Swiss lawyer Peter A. Cotorceanu, 2016, on the U.S. transformation into a global offshore haven[45]

As described above, the United States' reputation as a primary enforcer of international rules and regulations that combat large-scale financial secrecy does not reflect its growing role as a global offshore haven. This apparent contradiction has failed thus far to attract much notice, due in part to the difficulty in monitoring financial trends, shell companies, and trusts themselves. "I don't know enough about [financial transparency in the U.S.]—no one does, really," said Brigham Young University's Daniel Nielson, a co-author of *Global Shell Games*, the widest shell company transparency survey to date.[46] The World Bank also reports that "[b]ecause so little information is collected on U.S. companies, it is impossible to tell how many [companies formed in the U.S.] are shell companies and not operational companies"—even though "U.S. law enforcement consistently . . . indicated that the number is high enough to cause grave concerns."[47]

Over the past few years, however, a handful of reports and investigations have begun to shed light on American tools for hiding foreign and domestic wealth. The World Bank, Global Witness, and Tax Justice Network have all issued reports dealing with the tools American jurisdictions offer to wealthy actors interested in financial secrecy. Global Witness's 2014 report, for instance, details how American shell companies have "tricked elderly people into investing in worthless business schemes, launder[ed] millions of dollars from Mexican drug cartels, accept[ed] political bribes, and circumvent[ed] U.S. sanctions against Iran."[48]

There has also been a notable uptick in academic interest in related phenomena over the past few years. Few academics have traced the spread of, and lack of transparency surrounding, shell companies more than Jason Sharman, one of Nielson's co-authors for *Global Shell Games*.[49] A few years ago, Sharman and his colleagues posed as potential customers for thousands of CSPs internationally in order to determine each jurisdiction's transparency requirements. Their findings were startling: U.S. incorporation services posted a lower response rate in terms of transparency compliance in setting up shell companies *than any other country*. All told, only 1.5 percent of U.S. providers who responded to the researchers provided information complying with international transparency standards, as compared to 31.7 percent of international providers.

But the responses from American providers were far from uniform. Said Nielson, "There's a lot of variety across the states in their compliance with these know-your-customer rules—vast, vast differences."[50] For instance, in certain states not a single provider offered an anonymous company. However, states including Delaware, Nevada, and Wyoming—all of whom are already nationwide leaders in shell company services—were among the worst in the country, dragging the U.S. compliance rate lower than all other shell company stalwarts.

Perhaps the most interesting results from the team behind *Global Shell Games* is the conclusion that traditional offshore havens were far *likelier* to comply with international compliance regimes than countries like the United States. Per the *Global Shell Games* study, the jurisdictions with the highest rates of transparency compliance were the Cayman Islands and Jersey, with the British Virgin Islands, St. Kitts and Nevis, and Gibraltar all cracking the top ten list for compliance rates. As Sharman wrote in *Despot's Guide to Wealth Management* (2017), "there is strong reason to think that the United States, given its central place in the global financial system and the number of companies involved, is the worst in the world when it comes to regulating shell companies."[51]

Lack of Transparency, Lack of Compliance

But it is not only academics and non-governmental organizations who have begun sounding the alarm about America's transformation into a global offshore haven. In December 2016 the FATF released its most recent Mutual Evaluation Report of the United States—one of the organization's 37 member-jurisdictions.[52] While the FATF determined that the U.S. anti-money laundering mechanism was "robust," it nonetheless slammed U.S. efforts at transparency regarding beneficial ownership, especially within companies, as "not compliant." Per the FATF, one of America's primary money laundering vulnerabilities was a "[l]ack of timely access to adequate, accurate and current beneficial ownership [information]." Further, and with a clear nod to states like Nevada and Wyoming, "it is not clear that all States give [anti-money laundering efforts] due priority." The FATF report also criticized the United States for its lack of transparency requirements for trusts, noting that "there was minimal information concerning the beneficial owners of trusts that could be obtained or accessed by the competent authorities in a timely fashion."

Unfortunately for American authorities—and for those pushing transparency within U.S.-based companies and trusts—none of these findings is new. The FATF's 2006 Mutual Evaluation Report on the United States noted that there were "no measures in place" to obtain proper beneficial ownership information "in a timely fashion by competent authorities."[53] Like the 2016 evaluation, the FATF added in 2006 that the United States was "not compliant" in the realm of tying beneficial owners to legal persons.

Foreign bodies are not the only ones pointing to deficiencies in U.S. financial oversight mechanisms. The Department of Justice's most recent National Money Laundering Risk Assessment (NMLRA) notes that some $300 billion "is generated annually in illicit proceeds" in the United States and cites numerous examples of foreign actors abusing U.S. shell companies for criminal ends: "Eurasian organized crime groups are a particular concern because of their systemic use of sophisticated schemes to move and conceal their criminal proceeds using U.S. banking institutions and U.S. incorporated shell companies."[54] All told, U.S.-based suspected shell companies "have moved billions of dollars globally" from foreign accounts, most especially those from countries like Russia and Latvia. The NMLRA also aligns with the FATF's finding that America's ability to identify beneficial ownership behind shell companies remains remarkably poor—and largely unchanged from a decade ago.

As such, it's perhaps little surprise that the U.S. played a role in the 2016 Panama Papers release. Indeed, two states in particular saw outsized public attention following the revelations, with Mossack Fonseca outright promoting Nevada and Wyoming as destinations for their clientele.[55] Higher-ups at Mossack Fonseca were comfortable pushing clients toward these two states, knowing that, as Nielson said, "Among all of the venues in the world, the easiest place to get an anonymous shell company is the United States."

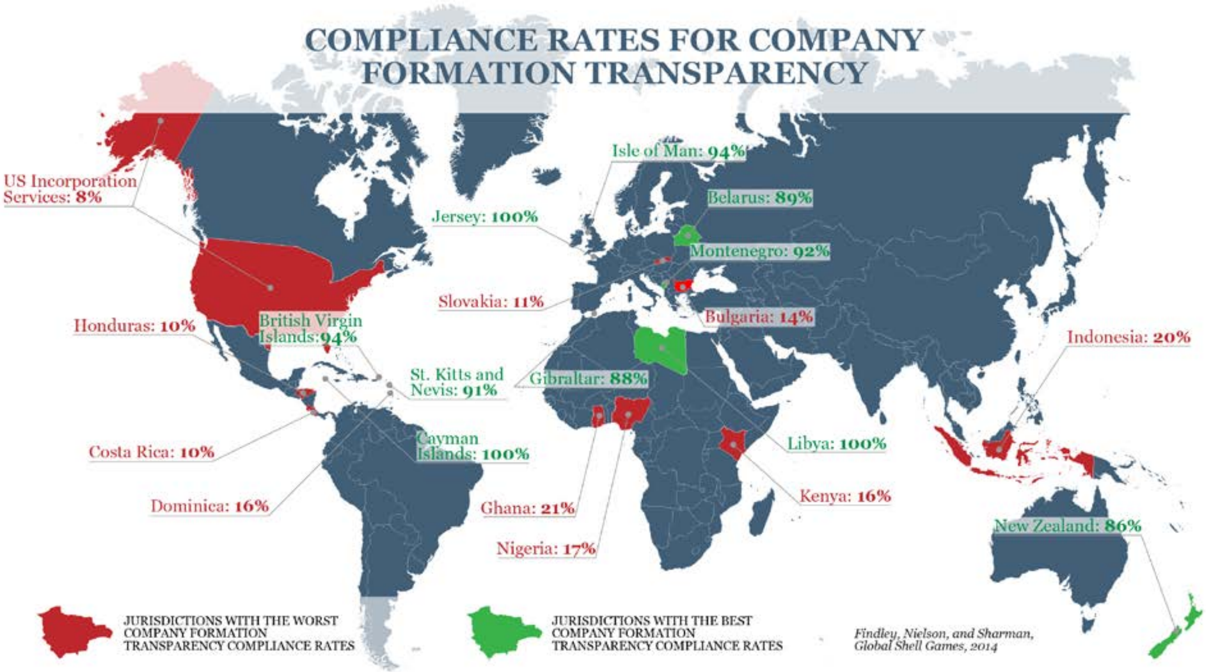

Figure 1: Countries rated on their level of compliance with international standards on company formation transparency. Data from Findley, Nielson, and Sharman, Global Shell Games, *2014.*

Real Estate, and Real Customers?

To be sure, it is not simply actors like Viktor Bout or Eurasian organized crime groups whose use of U.S. financial secrecy tools poses a continued threat. Like European metropoles before them (especially London), property markets in America's cities have drawn in significant numbers of foreign and anonymous buyers over the past decade. In New York, for instance, the $8 billion recently spent on properties with a price over $5 million is triple the amount spent a decade ago.[56] Not only did more than half of the aforementioned sales in New York involve shell companies, but, as the *Financial Times* reported in 2017, "$32 billion a year flows into U.S. real estate from abroad in cash transactions that, until a year ago, could be conducted anonymously."[57] And New York isn't the only boom market; foreign and anonymous buyers have driven up cost of living throughout the country, from Boston to Seattle to San Francisco.

The Geographic Targeting Order pilot scheme recently launched by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), which identifies buyers behind these large-scale real estate deals in certain American jurisdictions, has helped bring more oversight to high-value property purchases in cities like New York, Miami, and San Antonio.[58] But as FinCEN's Jennifer Shasky Calvery and Kevin Bell have noted, "when criminals move their dirty money into the real estate market, American consumers and businesses suffer."[59] And using shell companies for such purposes is, of course, understandable. Hudson Institute's Peter Podkopaev notes that such shell company purchases "allow individuals unknown to the buyer to make stupendously expensive purchases, safeguarding vast sums of money in relatively stable and secure real estate markets."[60]

Captured States

As mentioned above, a handful of states have jump-started the U.S.'s transformation into a stalwart of financial secrecy and obscurantism. But while Delaware gains the lion's share of attention in the United States for its offshoring services, there is a case to be made that Nevada and Wyoming deserve just as much scrutiny—if not more. These three states, according to the Tax Justice Network, "took an early lead in offshore secret incorporations, and remain leaders today."[61] Moreover, these three, under the auspices of the National Association of Secretaries of State, have resisted the imposition of increased transparency and oversight mechanisms. (Improved oversight, for good measure, is also opposed by those who prefer to see anonymous donations—often supplied from LLCs to super PACs—continue to play a role in American elections.)

The fact that these three states have vaulted to the lead in offshoring services in the United States should not necessarily come as a surprise. Like other offshore jurisdictions before them, from Jersey to the British Virgin Islands, these three states all have relatively small populations and are, compared to other American states, industry-poor. "There are some interesting parallels between the kind of countries that become tax havens, and then the kind of U.S. states that have done tax haven-like reforms to their laws," Sharman said.[62] "They have this sovereign power to legislate and create comparative advantage through these legal fictions—and not a lot of other options."

Political capture is much easier in small states than in large ones. To wit, the *New York Times* reported as far back as 1988 on the rise of such secrecy facilities in some states, but not in larger states: "'Surprisingly,' notes one legal study, 'much of the difficulty of these large states appears to be . . . because of their legislatures.' The large states persist in viewing corporation laws as complex moral and political problems rather than—as in happy Delaware—a way of making everybody rich."[63]

Much of the groundwork for the U.S.'s transformation into a global offshore haven was laid, in fact, by "happy Delaware." Not only has Delaware propounded lenient corporation laws for nearly a century, but, having made its first forays into shell companies and LLCs a few decades ago, Delaware unsurprisingly remains an industry leader, both in terms of revenue generation and relevant case law backing related disputes.[64] The latest estimate, from 2016, pegged total revenue generated in Delaware by company registration at over $1 billion.[65] Per one analysis, Delaware is the "biggest single source of anonymous corporations in the world." Blue-chip companies like JPMorgan Chase, Walmart, American Airlines, and Apple have all incorporated in Delaware, as well as two-thirds of all Fortune 500 companies.

But in response to the growing media focus on Delaware's incorporation regulations, state legislators have made a push to build new transparency mechanisms within their incorporation industry. For instance, Delaware recently passed laws requiring companies registered in the state "to provide the name of someone who knows who the legal owners are," writes the Sunlight Foundation (although such owners can still be anonymous shell companies elsewhere). While certain financial secrecy experts have described Delaware's pledged changes as little more than "window-dressing," public pressure appears at least to have led to certain improvements in the state, with Delaware officials recently coming out in support of federal attempts to identify beneficial owners behind companies.[66] "I think people from Delaware say legitimately: 'Look, there are plenty of states that are as bad as us, and a few others are even worse,'" Sharman said.

There are at least two states that rival Delaware for secrecy provisions and have thus far escaped public pressure: Nevada and Wyoming. Initial filing fees in Nevada can cost as little as $75, with Delaware starting at $89, and Wyoming at $100.[67] All three states require less than 15 minutes to incorporate.

Given the lax oversight in both Nevada and Wyoming, as well as their apparent status as "captured states," they "clearly have styled themselves as tax havens, as places to incorporate," Nielson says. Not only did both, until recently, offer bearer shares—which are vested solely in a physical stock certificate and otherwise completely unregistered, making them one of the most notorious mechanisms of corporate financial secrecy available—but they were also singled out for opprobrium by the World Bank for offering Social Security numbers to potential shell company customers. There is a reason, after all, why Mossack Fonseca steered clients to these two states.

But Nevada and Wyoming are not the only states that have made the United States a leader among global offshore havens. The U.S. trust machine, as mentioned above, is a growth industry, and no state has done as much to construct secrecy mechanisms and stall oversight as successfully as South Dakota. Another "captured state," South Dakota has become, as Bloomberg writes, a "Bermuda of the prairie."[68] As such, we should not be surprised that Nevada, Wyoming, and South Dakota, along with Delaware, are all within the bottom five of the Center for Public Integrity's State Integrity Index.[69]

Over the past decade these states have cobbled together the underpinnings and infrastructure of the U.S.'s financial secrecy regime. For years, their efforts to strengthen America's status as a global center of offshoring—and their efforts to undercut federal anti-kleptocracy mechanisms—have been underappreciated. But they have helped turned the United States into one of the most prominent offshore havens globally. And their race to the bottom has only just begun.

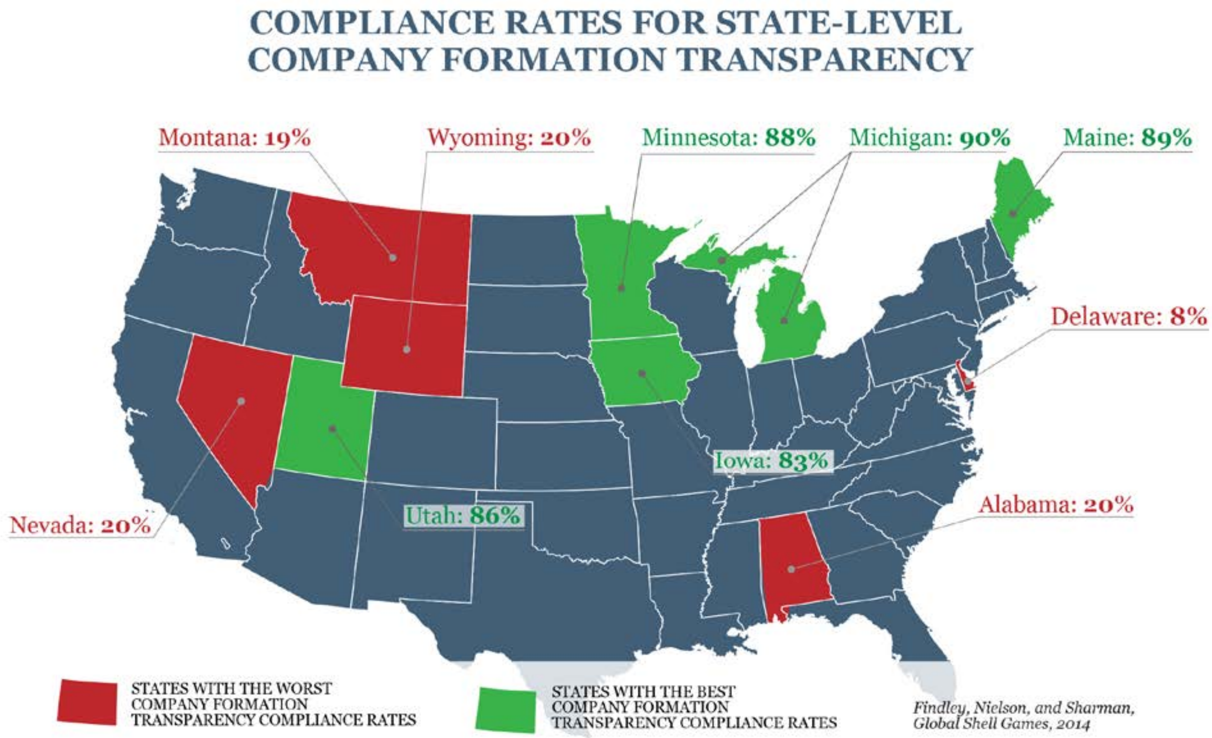

Figure 2: U.S. states rated on their level of compliance with international standards on company formation transparency. Data from Findley, Nielson, and Sharman, Global Shell Games, *2014.*

3. Nevada: The Delaware of the West

> *"Control everything, own nothing."*
> – Quote attributed to John D. Rockefeller, featured on the home page of Nevada123, one of Nevada's leading corporate service providers[70]

Nevada's first moves to create an infrastructure for financial secrecy came in 1991, when the state loosened its corporate laws and, according to the *Las Vegas Sun*, began marketing itself as the "Delaware of the West." Nevada, which has no income tax, had a simple motive for turning itself into a haven. "The impetus was income," says Eric Franklin, a professor at the law school of the University of Nevada, Las Vegas. "There's a lot of literature on the race to bottom in terms of corporate laws, and by saying 'Delaware of the West,' the code is 'business-friendly,' as business-friendly as possible, and that means little regulation, that means expanded liability shields for entities and for the owners of those entities." A few years later, lawmakers amended Nevada's state constitution to require a two-thirds super-majority to raise taxes, effectively neutering further revenue generation outside of avenues like corporation registration.

In 2001, the state faced a "huge gap in education funding," according to an official familiar with state incorporation law, increasing business filing fees while broadening legal protections for companies. With Nevada facing a steep budget shortfall, the official said, "there was really no other option." The 2001 legislation earmarked the revenue gained from business incorporation ($500 for an annual business license fee for corporations, $200 for other businesses) for teacher salaries. In short order, *McClatchy* notes, the state allowed those behind shell companies "to remain secret," which "made incorporating a company easier than getting a library card."[71]

The 2001 law generated notable pushback from state legislators, who were concerned both with the inevitable blow to the state's reputation and with the types of clientele the law would attract to the state. As Congresswoman Dina Titus (D-NV), then a state senator, said, "What a terrible message we are now sending to the business world. We might as well hang out a shingle, 'Sleazeballs and rip-off artists welcome here.'"[72] But in the nearly two decades since the law was passed, companies that once registered in havens ranging from Switzerland to the Cayman Islands have picked up their stakes and moved to Nevada. In all, more than 20,000 total companies with foreign addresses have registered in Nevada, according to state records, with over half of those companies coming over the previous decade.[73] And Nevada continues to rake in massive revenues from corporate registry fees, which now account for a significant chunk of the state's intake. Nevada's Secretary of State office, for example, brought in some $138 million in commercial recordings in 2014, more than triple the total from a decade prior.[74]

While much of Nevada's corporate registry industry remains relatively above-board, the state has also attracted legally dubious characters. Nevada, which now has hundreds of thousands of corporate entities in the state, has seen a notably higher rate of public companies subject to fraud allegations and regulatory investigations than elsewhere.[75] And as Reuters reported, one financial consulting firm that monitors publicly-traded U.S. shell companies noted that nearly half of such companies are found in Nevada.[76] Lax incorporation requirements have allowed individuals convicted of money laundering to open dozens of shell companies in the state; other companies have been involved in congressional bribery cases and Ponzi schemes, among other crimes. Nevada is a "victim of [its] own marketing," noted an adviser to the American Bar Association.[77] Or as the University of Virginia's Michael Barzuza says, "Nevada has all but hung up a 'no law' for-sale sign."

As such, Nevada now stands as one of the primary corporate industry leaders in the country, and increasingly globally. Not only does the state continue to provide one of the most stream-lined registration processes internationally, but it also allows anyone with a Nevada address to act as a CSP. As then-Secretary of State Ross Miller said in 2013, "My Labrador Jack, if he were a natural person, could be a [CSP] if he had $75, because he has a Nevada address and is capable of fetching the paper."[78]

Panama Papers and the Silver State

Nevada's corporate environment naturally attracted the attention of Mossack Fonseca. As the firm noted in its promotional material, "Nevada has no IRS information-sharing agreement (there is no exchange of information between the State of Nevada and any other State or Federal agency)." Indeed, more than 1,000 Nevada businesses have thus far been linked to Mossack Fonseca. Some of these were featured in a recent court case connected, as ICIJ has reported, to a "crony of Argentina's former president [in order] to steal millions of dollars from government contracts."[79] Another shell company, Murray Holdings LLC, also played a central role in Brazil's 2016 corruption crisis.

The Panama Papers showed that Mossack Fonseca went to great lengths to mask its ties to Nevada, notwithstanding their legality. As ICIJ reported:

> One email from 2014, for instance, instructs that any link between Mossack Fonseca's central computing system in Panama and the Nevada office "has to be obscure to the investigators." Other emails report that IT operatives working via remote control from Panama "tried to clean the logs of the PC's in the Nevada office" and planned to run a "remote session to eliminate the traces of direct access to our CIS"—the firm's computer information system.[80]

As the documents showed, fewer than 10 percent of the Nevada-linked corporations revealed in the Panama Papers had officers based in the United States. Overall, as a *USA Today* analysis of the Nevada-related information from the leak found, both Nevada and Wyoming "have become secretive havens much like Bermuda and Switzerland have long been."[81]

Financing in Fernley

Among corporate service providers in Nevada, meanwhile, there appears a general apathy regarding the revelations within the Panama Papers—and a clear desire to avoid any increased oversight or transparency in the future. This much is clear in the dusty, tumbleweed town of Fernley, nearly an hour outside Reno. Fernley, as it is, houses thousands of shell companies in a single home, where Robert Harris runs NBI, one of the state's best-known commercial registration agencies.

Harris said that he doesn't make any kind of effort to identify the beneficial owners of the companies he helps set up. ("Not everybody in Nevada is a crook," he said.) Harris added that the Panama Papers changed nothing about his work, although he mentioned that business has slowed since the revelations—but he was unsure if this was tied to the leak, or from states like Wyoming swiping business from Nevada.

Harris also pointed out that, unlike other corporate service providers, he's actually based in Nevada. Indeed, one of the state's other primary service providers, Nevada123, appears to have scant presence in Nevada proper. David Batrick, who runs Nevada123, told a reporter in 2016 that he was neither an American citizen nor resided in America. Still, his company—which also specializes in shelf corporations—advertises on its website that it offers "Nominee or Privacy Services to eliminate your name completely from public record." Batrick's company makes no effort to hide its business model, pointing directly to its offshore inspiration: "We quickly realized that our clients would benefit from services and procedures that were traditionally offered only by 'offshore' service providers[.]" And where other providers have moved toward transparency, Batrick's company has advertised its continued focus on, above all, secrecy. As Nevada123's website read, "Our conscience would not allow U.S. to 'roll over', so we 'internationalized' our services in order to give you the privacy that you still deserve."

Revenue Reigns

Unfortunately for those pushing increased oversight in the United States, little has changed in Nevada following the Panama Papers revelations—nor do any changes appear likely in the foreseeable future. Harris, who runs NBI, says he's experienced no increased pressure from legislators in Carson City or elsewhere. "I don't think Nevada is gonna quit," he added. A statement obtained from the Nevada Secretary of State's office attested to as much, noting that "no changes to the corporate filing requirements laws have occurred in Nevada since the 2015 Legislative Session."[82]

While Nevada's governor pledged an investigation pertaining to the Panama Papers revelations, there is little indication any such investigation will result in substantive changes. The *Las Vegas Review-Journal*'s John L. Smith wrote, "In the past, Nevada politicians have managed to ride out the heat by talking tough, 'studying' the complexities and joining in under-staffed task forces. Whether it's recession-era economics or the state's supposed libertarian traditions, the excuses to do nothing have always been in plentiful supply."[83] Likewise, pressure from Washington appears negligible. Senator Ron Wyden (D-OR), the ranking minority member of the Senate Finance Committee, did write a letter to the secretaries of state in both Nevada and Wyoming following the Panama Papers revelations requesting information on steps to increase corporate monitoring, but there appears to have been little pressure beyond that.

There are any number of reasons for the lack of movement in Nevada: the dearth of interest from constituents; the fact that corporate registry revenue is now tied directly to teachers' salaries; the reality that Nevada retains only limited avenues for other methods of revenue-generation. Further, legislators in states like Nevada appear unwilling to unilaterally change, pointing to the business the state would then lose to jurisdictions like Wyoming. As one state senator said, "We don't want to make changes and shoot ourselves in the foot unless other states make the same changes." Other state legislators apparently prefer to ignore the issue as long as they can. As Las Vegas City Councilman Bob Coffin, one of the most vocal opponents of loosening the state's corporate laws, said, "The only way you can address this issue is at the federal level, not at the state level." Given that the Panama Papers changed little in Nevada, Councilman Coffin's observation rings truer than it has at any other point since Nevada's first foray into shell companies a quarter century ago.

4. Wyoming: Where Buffalo and Shell Companies Roam

> *"Somalia has slightly higher standards than Wyoming and Nevada."*
> *– University of Cambridge's Jason Sharman, 2011*[84]
>
> *"If you're just trying to find individuals, you can't search by an individual's name. You have to know the name of their company. And if they have a weird company name, you're never going to find them."*
> *– Wyoming State Rep. Dan Zwonitzer, 2017*[85]

While Nevada's and Delaware's corporate registration industries have grown larger than Wyoming's over the past two decades, the Equality State can still claim to be the original home of the limited liability company (LLC). In 1977, Wyoming's legislature, nodding to parallel structures in Panama, enacted the first domestic LLC.[86] Wrote the University of Alabama's Susan Hamill, "The LLC promised the best of both worlds—the limited liability of corporations and the favorable tax treatment of partnerships." Within twenty years, every state had enacted LLC legislation, "establishing the LLC as a choice for doing business"—as well as one of the preferred methods of forming shell companies— "in all fifty states."[87]

In the time since, Wyoming, via a combination of strong liability laws, mandatory quick turnarounds on business filings, and continued emphasis on expanding secrecy provisions, has grown into one of Delaware's and Nevada's primary shell company competitors. (As one CSP advertisement said, "When it comes to incorporating a business, don't gamble on Nevada. The smart money is on Wyoming.")[88] Much like Nevada, state legislators point to the profits from filing and registration fees in defending the state's secrecy and "business-friendly" provisions, with the Wyoming Senate president recently praising shell company formation for, as NPR reported, "put[ting] a lot of cash into Wyoming banks, which leads to such things as job creation." And clients have been only too happy to route their corporate filings to Wyoming, which maintains no income tax on corporations. At last check, the state boasts roughly one business entity for every 4.5 residents in the state, more than half of which are LLCs. An LLC only costs about $100 to set up, but the state nonetheless generates tens of millions of dollars annually.[89]

But it is not simply cost or even Wyoming's status as the original home of the LLC that have attracted clients from across the world—including firms like Mossack Fonseca—to the state. As a journalist who covered the state's corporate registry industry observes, the state offers "secrecy perks" that parallel those in Nevada and Delaware.[90] Not only does the state require only a Wyoming-based address—which a registered agent can provide—out of the state's 450 registered agents, only 20 have been audited since 2009, according to a 2016 NPR investigation.[91]

Likewise, the state has made it exceptionally difficult for investigators searching for individuals tied to corporations registered in the state. As State Representative Dan Zwonitzer explains: "If you're just trying to find individuals, you can't search by an individual's name. You have to know the name of their company. And if they have a weird company name, you're never going to find them." Local attorneys also admit that they form companies on behalf of clients, such that, as Reuters found, they "can invoke attorney-client privilege—adding a layer of privacy anytime there is an inquiry about their identities." When it comes to corporate transparency, adds Sharman, "Somalia has slightly higher standards than Wyoming and Nevada."

Shell Companies on the Range

Cheyenne is perhaps one of the last places one would expect to find a post-Soviet kleptocrat registering his businesses. A quiet outpost on the western edge of the Great Plains, Cheyenne's downtown, even during the weekend, remains largely empty: businesses closed, storefronts neglected, and the town square vacant, save for a handful of oversized cowboy boots.

Nevertheless a few years ago, according to court records, former Ukrainian Prime Minister Pavlo Lazarenko registered a shelf company in Cheyenne. While perhaps not as well-known—or as reviled—as other Ukrainian politicos, Lazarenko once ranked eighth on Transparency International's list of the world's greatest kleptocrats, joining the likes of former Haitian leader Jean-Claude Duvalier, Serbian genocidaire Slobodan Milosevic, and Indonesian dictator Suharto. However, that didn't stop Lazarenko, as Reuters found, from heading "a shelf company incorporated in Cheyenne that owns an estimated $72 million in real estate in Ukraine through other companies." As it is, Lazarenko was sentenced to eight years in jail from a 2004 conviction for both extortion and money laundering. Meanwhile, the former home of his shelf company remains a typical, brick-face house in residential Cheyenne, bookended by a church and barber shop—a home that once served, as Reuters wrote, as "a little Cayman Island on the Great Plains."[92]

Like Nevada before it, there appears little appetite in Wyoming for anything approaching greater corporate transparency. As the Tax Justice Network noted, Wyoming, among other states, "indicated in late 2011 that they intended to crack down on secrecy business run out of their states. No concrete actions have yet been seen, however." Likewise, little has changed in Wyoming since the Panama Papers revelations—and Wyoming officials, following the leak, took umbrage at associations with Mossack Fonseca, despite the Panamanian law firm's decision to recommend the state to its clients.[93] A statement from the Wyoming Secretary of State's office was uncompromising in pushing back against those calling for greater oversight:

> The release of the "Panama Papers" has led to some renewed calls for transparency and the revealing of beneficial ownership information for entities registered not just in Wyoming, but across the United States. Such a move would increase red tape and limit business formation and innovation in Wyoming, thereby changing the very purpose and mission of the Wyoming Secretary of State's Office.... We are not naive as to the importance of the release of these "Panama Papers," but we will not compromise the privacy of our customers.[94]

The statement also included a remarkable passage that claimed that "Wyoming, alongside Delaware and Nevada, has been the most proactive in directly confronting those same concerns related to improper use of shell companies."

Corporate service providers, meanwhile, are only too happy to join legislators in fighting attempts at increased transparency, or any kind of beneficial ownership registry. As one of the state's most prominent CSPs wrote on its website, "Please don't be mislead [*sic*] or misinformed by the current furor over the 'Panama Papers' and role of shell vs shelf companies."

There was, however, at least one Wyoming audit prompted by the Panama Papers: an audit targeting M.F. Corporate Services Wyoming LLC, the provider tied directly to Mossack Fonseca. Per the Secretary of State's office, the company "failed to maintain the required statutory information" regarding its work. The company itself was also tied to AAA Corporate Services Inc., which is housed in the yellow brick Deming Building in the heart of Cheyenne's modest downtown. (On the back of the building: a faded mural advertising, of all things, the Wyoming Business College, peeling in the sunlight.) Beyond the audit of one of Mossack Fonseca's connections in Cheyenne, though, state officials appear distinctly uninterested in any kind of transparency in an industry that continues to pile tens of millions of dollars into the state's general fund.

5. South Dakota: Bermuda of the Prairie

> *"The legislators are turning the Mount Rushmore State into the Bermuda of the prairie."*
> –Zachary Mider in the *Washington Post,* 2014[95]
>
> *"[I]f you want to obtain trust-based privileges and protections from society, then transparency is a minimal price to pay."*
> – Tax Justice Network's Andres Knobel, 2017[96]

In the 1980s South Dakota's legislature was casting about for ways to attract further business to the state. Led by Governor Bill Janklow, the state gained national media attention by becoming the first to repeal limits on interest rates, helping pull in Citicorp's credit card business.[97] A few years later the state led a parallel push which earned less fanfare but which, more than three decades later, has had perhaps an even larger impact.

In 1983, the South Dakota legislature moved to repeal a law that capped the tenure of trusts, effectively allowing them to continue in perpetuity. (Trusts generally expire after approximately a century.) Unlike the other two states without such a chronological cap (Idaho and Wisconsin), South Dakota also has no income tax. Soon thereafter, South Dakota had a booming trust industry on its hands, establishing a model that other states, and other jurisdictions outside of the United States, would try to emulate.

Known as "perpetual trusts" or "dynasty trusts," the ownership mechanisms offered by South Dakota allowed clients to shield assets from investigators as long as they wished. As mentioned in the introduction, trusts carry secrecy mechanisms comparable to shell companies, with the added benefits of both privacy provisions (trusts, after all, are generally associated with familial, rather than public, wealth) and a general lack of knowledge about their uses and abuses among the media and government regulators. Even in 2017, information about South Dakota's trust industry, including both the magnitude and the clientele, remains negligible. A 2013 Bloomberg investigation revealed that trust companies administered more than $120 billion—triple the rate of just a few years before—and "almost all of it from out of state. The families needn't actually move to South Dakota, or deposit their money at a local bank, or even touch down in the private jet. Little more than renting an address in Sioux Falls is required to take advantage of South Dakota's tax-friendly trust laws." More recent numbers place the total assets even higher, at upwards of $226 billion.[98]

The explosive growth of trusts has taken some in the state by surprise. As one South Dakotan in the trust industry said last year. "I was surprised at how many [accounts] were coming across that were formerly Swiss bank accounts, but they want out of Switzerland."[99]

Perpetual Problems

But the difficulties in discerning the contours of South Dakota's trust regime—which has since been mimicked by states like Alaska and foreign jurisdictions like New Zealand, Nevis, and the Cook Islands—aren't limited simply to grasping the scale of the industry. South Dakota, even more so than Nevada and Wyoming, is perhaps the clearest example of a "captured state." Not only is it exceptionally easy to seal court records pertaining to trusts in South Dakota, but in 1997 Governor Janklow enacted a "Trust Task Force," including legislators and members of the trust industry alike, charged with monitoring and recommending laws pertaining to the trust industry. As one state legislator said, this task force is "writing laws essentially for themselves." While South Dakota receives little revenue from shell companies, relative to Nevada and Wyoming, private business in the state's trust industry has boomed.

Moreover, the state's original innovation, the perpetual trust, has increasingly fallen out of favor with financial analysts. After all, if the trust remains intact in a few centuries' time, there may be thousands upon thousands of beneficiaries to deal with. A 2013 paper from University of Michigan Law Professor Lawrence Waggoner, revised in 2016, noted that "the American Law Institute recently declared the perpetual-trust movement 'ill advised,'" with one additional analyst calling these types of trusts "loony."[100]

South Dakota's trust industry, which has attracted an expanding clientele, has also begun drawing the attention of critics. South Dakota has "creat[ed] laws that are conducive to a massive exploitation of a federal tax loophole," Edward McCaffery, a professor at the University of Southern California's Gould School of Law, told Bloomberg. "We have a tax haven in our midst." State legislators have begun to take notice as well, expressing concern about both oversight and the damage to the state's reputation. "We need adequate mechanisms to make sure people aren't abused," State Senator Craig Kennedy recently said. Added his colleague State Senator Jason Frerichs, "If we're caretakers, what are we giving up?"[101]

But like Nevada and Wyoming before them, the appetite for reform—for adding a dose of transparency to an industry that appears to be the next growth area for those offshoring their wealth—appears minimal, at both federal and state levels. "Is there concern [about transparency]? Sure," South Dakota Director of Banking Bret Afdahl said. "But, you know, there's a difference between confidentiality and secrecy. I think we do provide, as a state, confidential treatment of that information. Just like your bank account, I can't walk into your bank and ask for your bank records as an individual. It's the same thing as a trust." Legislators expressed little familiarity with the state's trust industry, although a recent article from a local newspaper noted that South Dakota is now "one of the best places in the world for the wealthy to stash their cash in secret."

There appears to be little interest among constituents in reforming the trust industry sector. While protestors recently descended on the capitol in an unprecedented show of support for ethics oversight—South Dakota remains the lone state in which lobbyists can provided unlimited, and undisclosed, gifts to politicians—the state's trust industry received little focus.[102] With its innovations and secrecy provisions, South Dakota has helped push the United States to the fore of global offshoring, joining, as the Tax Justice Network's Andres Knobel recently wrote, other abusive trust regimes in a brand-new "race to the bottom."[103]

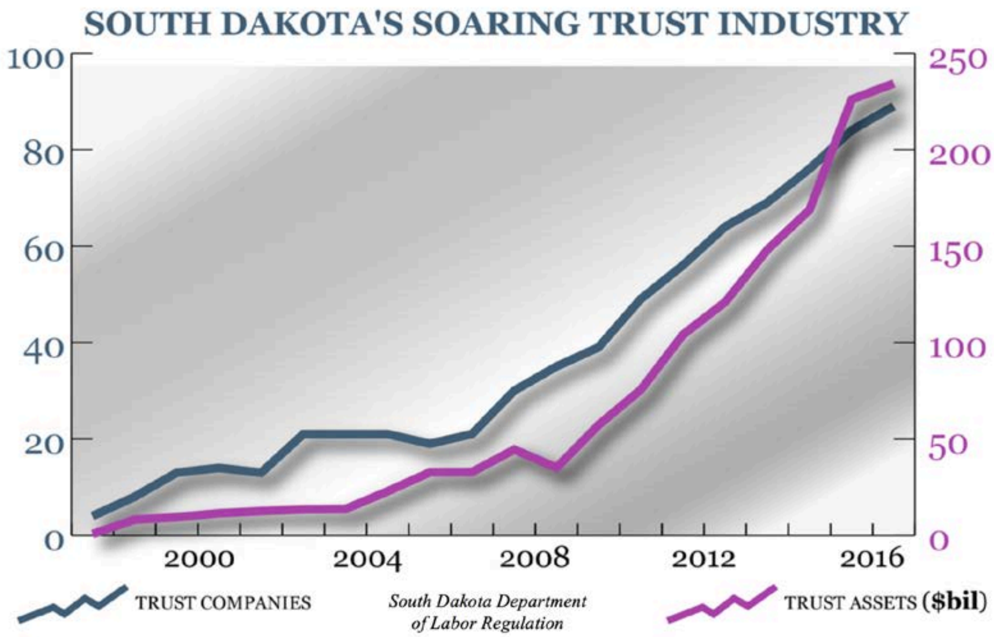

Figure 3: South Dakota's increasing number of trusts and assets held in them. Data from South Dakota Department of Labor Regulation.

6. Lifting the Veil

> *"[T]here is strong reason to think that the United States ... is the worst in the world when it comes to regulating shell companies."*
> – Jason Sharman, *The Despot's Guide to Wealth Management*, 2017[104]

Viktor Bout, the notorious global arms dealer, remains behind bars after accessing U.S.-based offshore services to conduct business, and both Pavlo Lazarenko and Teodoro Nguema Obiang Mangue remain internationally discredited. But in the time since their ties to U.S.-based shell companies were revealed, America's status as one of the world's foremost offshore havens has only grown more prominent. And as other jurisdictions, from the Cayman Islands to the City of London, have moved to increase oversight of their own offshore services, more and more clientele have moved their assets to one of the few jurisdictions that combines the political stability of the West with the lack of oversight of traditional offshore havens: the United States.

At this point, American officials, at both the federal and state levels, can no longer plead ignorance of the fallout from the country's offshore services—be they shell companies or trusts—nor can they simply point to the U.S.'s enforcement mechanisms elsewhere as an excuse to continue conducting business as usual. Moreover, the offshore provisions in states like Nevada, Wyoming, and South Dakota only serve to undercut, or even negate, America's noteworthy anti-kleptocracy efforts elsewhere. "The combination of the attraction of the U.S. for superior secrecy, and the deterrence of the long arm of U.S. law enforcement—it means that the net effect is kind of hard to work out," Sharman said. "You've got those two forces pushing in opposite directions, and it's unclear whether they cancel each other out, or which one predominates."[105] Or as Global Witness observed, "[I]t's particularly crazy that our legal system offers a way for would-be con artists to submit fraudulent procurement bids and squirrel away the money they've stolen behind shell companies they set up in the U.S."

It is clear, however, that pressure for transparency in offshore services will not come from state-level officials. Not only do these states—especially Nevada and Wyoming—depend on their corporate services as a significant source of revenue for both general funds and teachers' salaries, but like other offshore jurisdictions before them, they display all the traits of "captured states," with industry interests guiding legislation to their benefit (see the section on South Dakota's "Trust Task Force" above).

While bottom-up pressure will remain a necessary part of pressuring states to increase oversight and reform, if the U.S. role as a leading global offshore haven is to end, Washington will have to take up the cause. There have been recent signs of interest in expanding oversight, ranging from proposed bills such as the Incorporation Transparency and Law Enforcement Assistance Act, as well as budgetary proposals from the Obama Administration to close the loopholes that allow perpetual trusts and further force registered agents to identify beneficial owners of shell companies registered in the United States. But so far, few measures have caught on.

Registry Required

If there is one key step the United States could take to relinquish its role as a global offshore leader, it is to follow the European model in setting up some form of national beneficial ownership registry. Myriad non-governmental organizations, including both the FATF and World Bank, have pushed for the United States to do just this.

The benefits of such a registry—with information maintained by the corporate service providers—are difficult to overstate. Not only would it facilitate both foreign and domestic investigations into money laundering and grand corruption cases, but it would also help deter toxic arms dealers like Bout and world-class kleptocrats like Lazarenko and Obiang from utilizing American companies to hoard their ill-gotten gains. To borrow a phrase from Congresswoman Dina Titus (D-NV), the "sleazeballs and rip-off artists" flocking to the United States would likely uproot and look elsewhere rather than allow their networks of American-based shell companies to see the light of day. Likewise, the pertinent information collected by the service providers should also be maintained within the United States—and preferably within the state in question—with commensurate strengthening of both penalties and investigative capacities, to say nothing of actually aligning the FATCA with the OECD's CRS requirements.

For the time being, arguments against such a registry have focused on capacity. As UNLV law professor Eric Franklin says, "If you imagine the administrative burden that [a beneficial ownership registry] would take, it would be unbearable."[106] But it's clear that other jurisdictions have managed to overcome this apparent hurdle. For instance, not only did the UK begin implementing a beneficial ownership registry in 2016, but the effort, despite certain flaws, has been "generally excellent," per Global Witness.[107] "I just don't buy the argument that it's a capacity question, or an expense question," BYU's Nielson observes. "It seems like a willingness question."

And such a registry does not need to be limited to shell companies. While trusts have seen comparatively less exposure to kleptocrats and cases of grand corruption relative to shell companies, there's little reason trusts should not receive their own form of public registry—especially with the advent of boutique trusts, which are little more than offshore vehicles. As Knobel wrote, "[I]f you want to obtain trust-based privileges and protections from society, then transparency is a minimal price to pay." Over the past few months, the European Union has seen an upsurge in support for a trust registry. States like South Dakota, and the United States as a whole, could easily follow suit.

Washington's Folly, Washington's Hope

While the exit of the Obama Administration appears to have ushered in a period of uncertainty regarding oversight efforts in Washington (see recent moves to gut anti-corruption efforts in the hydrocarbon industry, for instance), there still appears to be some appetite for strengthening the country's financial transparency regime. In 2016, for instance, the Treasury Department increased reporting requirements for suspicious property purchases, seeking to curtail property sales involving anonymous shell companies; these requirements have been extended under the Trump Administration, and have been expanded to include wire transfers. The New York City Finance Department, according to the *New York Times*, even went so far as to begin to require shell companies purchasing real estate to "report their members to the city."[108]

Aside from a beneficial ownership registry, the U.S. offshoring sector needs enforcement more than it needs a grand overhaul. Playing to America's strengths when it comes to transparency should suffice to encourage compliance. "By far the most productive area for improvement is in better enforcement, and better implementation of existing rules on the books," Sharman says. "There are a few legislative fixes that would be helpful, but the idea of planning more law, either domestic or international—on top of the laws and regulations we already have—seems to be the triumph of optimism over experience there."[109]

But in the aftermath of Russian interference efforts in the 2016 U.S. election, there appears to be a newfound sense of both energy and urgency in pursuing transparency within America's offshore industry. Not only will anyone opening a U.S. bank account be required to provide beneficial ownership information by early 2018, but The Clearing House, the oldest bank association in the U.S., has for the first time formally endorsed a beneficial ownership registry.[110]

Likewise, federal legislators—who have failed to enact beneficial oversight in years prior—have taken a newfound interest in pursuing related transparency.[111] Rhode Island Sen. Sheldon Whitehouse, who has co-sponsored a bill that would enact a beneficial ownership registry, has pushed such transparency publicly throughout 2017. One of Whitehouse's recent speeches, from March 2017, is worth quoting at length, both for its policy advice as well as its descriptions of those who continue to buttress the U.S.'s offshore industry:

> The UK, Spain, Germany, Italy, and France have already enacted their transparency laws, so the light of corporate transparency is about to shine on criminal assets hidden in European shell companies, which means that a lot of money will be looking for new, dark homes. The United States of America should take swift action to make sure that these criminal assets don't wind up in opaque American shell corporations.... We know criminals and even terrorists view the United States as their haven to hide illegal activity.... This is a weaponizable weakness to harm our society and to enable it to be corrupted, and to be so for deliberate political purposes by Putin, who has this in his playbook....

> Where you're dealing with people for whom their business proposition is to facilitate this dark market, tough bounce. Far as I'm concerned, go get honest work. I'm not going to whittle back the bill to protect people who do that. Frankly, you know, I've got something of a law enforcement background, and to me they're not a whole lot better than pimps or drug dealers in suits.[112]

Some state-level officials, pressured anew by federal regulators, have shown initial interest in possible reforms in 2017. But given the lucrative nature of their domestic industries, they have little incentive to increase oversight. "As long as incorporation itself is big business, I really doubt we're going to see much stronger regulation," says Nielson. Adds Sharman, "The senators from Delaware have these gatekeeping positions in regulating incorporation law, corporate law, and banking law. And there are more corporations in Delaware than there are people, so their constituents, in a very real sense, are companies. So as long as U.S. politics has the shape it does, it's hard to see how it changes." Still, a handful of new bills introduced in 2017 have pointed to the newfound desire in Washington to push change—although it remains to be seen whether there is sufficient momentum, or interest, to see these bills into law.

Currently, the jurisdictions that have thrust the United States to the fore of global offshoring and undercut its reputation as a bulwark of financial enforcement are, in effect, captured states, with blurred lines separating regulators, legislators, and offshoring interests. This is to some extent to be expected; these states all share the trappings of traditional offshore havens. They are relatively small, isolated, and have access to few alternative sources of revenue. Moreover, these states—like Jersey, the British Virgin Islands, or St. Kitts and Nevis before them—have citizens who have little reason to pressure lawmakers to enact oversight reforms, given that corporate registration provides significant public funding for everything from teachers' salaries to the general budget.

For too long, America's status as one of the foremost global offshore havens has gone unnoticed, allowing states like Nevada, Wyoming, and South Dakota to both expand and entrench their offshoring services. Still, if jurisdictions like the Cayman Islands, which now has its own beneficial owner registry, can improve their transparency regimes, U.S. states should be able to follow suit. If they don't, the United States will continue to tear a giant hole in international efforts at financial transparency, and will continue turning itself into the United States of Anonymity.

About the Author

Casey Michel is a journalist and researcher who has worked in both the U.S. and former Soviet Union. He also holds a Master's degree in Russian, Eurasian, and East European Studies from Columbia University's Harriman Institute.

His writings and research have been featured in *Foreign Affairs, Foreign Policy, The Atlantic, The New Republic, POLITICO Magazine, Organized Crime and Corruption Reporting Project, Washington Post, The Guardian*, and *ThinkProgress* among others, and he has offered analysis and commentary for outlets including NPR, Deutsche Welle, *The Economist*, and BBC. Casey has additionally provided consultancy services for the Nuclear Threat Initiative, Freedom House, the United States Institute of Peace, and the Center on Global Interests. He also served as a Peace Corps volunteer in Kazakhstan.

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