



“Wyoming’s Trust and Limited Liability Company Industries and Financial Secrecy”

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Introduction

Good morning, and thank you, Chairman Case, Co-Chairman Harshman and members of the Joint Revenue Committee for having me. For the record, my name is Ryan Gurule, and I am here as the Policy Director of the Financial Accountability and Corporate Transparency (or FACT) Coalition—a broad, nonpartisan alliance of over 100 member groups dedicated to standing up structural reforms that address vulnerabilities in the U.S. financial system relating to tax dodging, corruption, and criminal or other illicit financial flows.

I am here because the Equality State is engaged in a race with a limited handful of jurisdictions across the globe to attract capital based on financial secrecy. An unfortunate byproduct of this race, is that Wyoming has attracted and protected capital from people who threaten our national security, and undermine the stability of our financial and Main Street markets, including by using complex structures to avoid taxes, launder ill-gotten monies and hide assets.

Secrecy afforded under Wyoming law appeals to actors like Russian oligarch Igor Makarov. He protects portions of his immense fortune via a Wyoming trust, managed by an unregulated Wyoming private trust company. In case anyone assumed secrecy and avoiding public accountability was not at least partially Mr. Makarov’s aim, it should be noted that layered into Mr. Makarov’s trust are companies registered and assets titled in the more readily recognized “off-shore” tax haven of the British Virgin Islands, creating a Russian nesting-doll of secrecy.

We are not talking about working-class families putting their homes in simple trusts to avoid probate. Rather, we understand that trust companies in Wyoming hold at least \$31.5 billion worth of assets in trust; close to the GDP for the entire state.¹ Wyoming citizens might ask why there is so much desire to attract foreign capital, if doing so might fail to turn into measurable economic gains for local communities.²

This morning I will discuss: (i) first, the growing evidence that the U.S. is a singular financial secrecy jurisdiction, attracting problematic capital and potentially facilitating tax evasion, sanctions evasion or similar harms; (ii) second, how Wyoming’s unique laws inadvertently contribute to this problem; (ii) third, certain bipartisan reform efforts currently being implemented or considered to address this harm; and (iii) fourth, reforms Wyoming might

¹ See id.; Real Gross Domestic Product (GDP) of the federal state of Wyoming from 2000 to 2021, Statista (Apr. 13, 2022), <https://www.statista.com/statistics/188152gdp-of-the-us-federal-state-of-wyoming-since-1997/#:~:text=In%202021%2C%20the%20real%20Gross,at%2039.26%20billion%20U.S.%20dollars.>

² See Cenziper et. al., supra note 1 (“If you come in as a trust company or a banker, you don’t pay your way,” Von Flatern said. “We didn’t gain anything.”)(quoting former Republican lawmaker Michael Von Flatern).

consider to ensure that it attracts capital that is consistent with its core values as the Equality State.

1. The Pandora Papers and Current State of U.S. Financial Secrecy

We know from the Pandora Papers, that U.S. trusts, and Wyoming trusts—in particular—are being heavily abused in a way that erodes the U.S. and our allies’ tax base and undermines national security.³ The financial secrecy offered by the U.S. and our allies have also previously enriched and empowered potentially adversarial regimes.⁴

We should be clear, however, that the Pandora Papers are just one leak of data, and should not be viewed as indicative of the entire universe of problematic anonymous U.S. or Wyoming investment by corrupt or criminal actors. Rather, the Pandora Papers serve as an indictment on the financial secrecy afforded by U.S. laws, including those in Wyoming.

The risks that financial secrecy poses are why bipartisan efforts in Congress have prioritized bringing greater transparency to U.S. legal entities in the fight against corruption.⁵ Anonymous shell companies and arrangements capable of being formed or otherwise investing or doing business in the U.S. pose one of the biggest vulnerabilities to the U.S. financial system. According to an analysis by Global Financial Integrity, until recently, in all 50 states, “more personal information is needed to obtain a library card than to establish a legal entity that can be used to facilitate tax evasion, money laundering, fraud, and corruption.”⁶

2. Wyoming’s Race to Trust and LLC Secrecy

Unfortunately, Wyoming law lures the wealth of international bad actors through a potent combination of secrecy, durability, asset protection, and favorable tax treatment for out-of-state

³ Tax Justice Network, “2020 Financial Secrecy Index,” February 2020, <https://fsi.taxjustice.net/en/>.

⁴ See e.g., Anders Asland & Julia Friedlander, *Defending the United States Against Russian Dark Money* (Nov. 17, 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf>.

⁵ As discussed below, the Corporate Transparency Act—creating the first U.S. beneficial ownership registry for legal entities and currently being implemented—was enacted on a bipartisan basis. See P.L. 116-283. See also U.S. White House, “United States Strategy on Countering Corruption,” December 6, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

⁶ Global Financial Integrity, “The Library Card Project: The Ease of Forming Anonymous Companies in the United States,” March 2019, <https://gointegrity.org/report/the-library-card-project>. And as international tax and financial transparency measures have begun to peel back secrecy in traditional off-shore “tax havens,” cross-border deposits in U.S. financial institutions, often held in trust or via other legal anonymous vehicles, have substantially increased. See Sebastian Beer, Maria Delgado Coelho & Sebastian Leduc, *Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion*, (IMF Working Paper WP/19/286, Dec. 2019); Elisa Casi, Christoph Spengel & Barbara M.B. Stage, *Cross-border Tax Evasion After the Common Reporting Standard: Game Over?*, 190 J. PUB. ECON. 1, 11 (2020).

individuals with no intention of meaningfully investing in Wyoming.⁷ Additionally, Wyoming is one of only a handful of states that allow unregulated private trust companies.

Historically, trusts served as legal arrangements where legal title to assets was transferred to a third-party trustee to manage assets on behalf of identified beneficiaries for a limited number of years.⁸ Through Wyoming's unregulated private trust companies, however, individuals that might transfer assets into trust and those that get to benefit from trust assets—who may be the same individuals—are able to continue to effectively control trust assets.

With careful planning, unregulated Wyoming private trust companies can currently exist completely outside of Wyoming or federal banking or securities laws. Federal customer due diligence rules that may apply for financial institutions may not apply to identify trust grantors, protectors or beneficiaries, and the U.S. banking system may further be entirely circumvented in some cases.⁹ Simply put, Wyoming law enables investment that exists outside of any meaningful rules meant to prevent corruption, money-laundering, terrorist financing, and similar harms. As an unintended consequence, Wyoming law can therefore frustrate efforts to keep U.S. markets clean, transparent, and well-functioning, as well as to frustrate key national security measures—such as targeted sanctions.

Wyoming's relationship with the LLC is one for the history books. Wyoming was the first state to introduce the LLC in 1977, and has followed other states in making LLC's more secretive.¹⁰ Recently, Wyoming has created the decentralized autonomous organization—or DAO—limited liability company.¹¹ Management of these organizations may be conducted by the members or algorithmically.¹² There appears to be a tremendous amount of flexibility in the ways that membership interests may be held, such as via digital tokens, and in the ways that DAO LLCs may be operated. It is less clear whether DAO LLC's must be capable of “knowing” who owns them.

3. The Corporate Transparency Act, Trusts and Bearer Share Entities

Last year, Congress finally took steps to address threats posed by anonymous legal entities and passed the bipartisan Corporate Transparency Act on January 1, 2021 – a measure that requires

⁷ See, e.g. First Western Trust, Eight Reasons to Establish a Wyoming Trust, <https://myfw.com/articles/why-wyoming-trusts-2/>.

⁸ Christopher M. Reimer, The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction, Wyo. L. Rev. 167 (Jan. 2011), available at <https://scholarship.law.uwyo.edu/cgi/viewcontent.cgi?article=1249&context=wlr>.

⁹ See 31 CFR 1010.230; 81 Fed. Reg. 29412 (May 11, 2016).

¹⁰ See id. at 198; see also 2021 Wyo. Stat. Sec. 17-29-201, 203.

¹¹ 2021 Wyo. Stat. Sec. 17-31-101 et. seq.

¹² 2021 Wyo. Stat. Sec. 17-31-109.

corporations, LLC, and “other similar entities” formed or registering to do business in a state by a filing with a secretary of state or “similar office,” to disclose their true, natural owner. The information is to be housed at a *secure* directory maintained at Treasury’s Financial Crimes Enforcement Network, or FinCEN.¹³

The CTA also banned bearer share companies—or companies that evidence ownership by issuing certificates in bearer form—to ensure that companies cannot claim total ignorance to their ownership, including to contravene the CTA’s rules.¹⁴ Doing so also cracks down on an entity structure that has time and time again been linked to corruption, money-laundering, terrorist financing, and other illicit flows.¹⁵

The FACT Coalition previously filed comments on best practices for establishing the CTA’s secure directory in response to FinCEN’s first proposed rulemaking, including addressing who should file disclosures, when they should file, what information they should provide, and how certain exemptions should be handled.¹⁶ FinCEN has announced that it plans to issue a second proposed rulemaking addressing access to the directory, including by state, tribal and local law enforcement agencies. FACT has advocated for uncomplicated and complete access for authorized users.¹⁷

Based on current practices, the CTA should bring some well-tailored transparency to unregulated private trust companies organized as Wyoming LLCs or corporations—and in doing so, bring some transparency to certain Wyoming trust structures that are so attractive currently to international bad actors.

Yet, the application of the CTA to certain trusts and Wyoming DAO LLCs remains unclear. For those Wyoming trusts that do not file at all in connection with formation or other key events, the CTA may apply to varying degrees based on final rules when promulgated. For DAO LLCs, it is clear that these organizations must be able to identify their true owners in real time; however, as mentioned, Wyoming law currently is unclear on this point.

¹³ Title LXIV of P.L. 116-283.

¹⁴ 31 U.S.C. section 5336(f).

¹⁵ See, e.g., Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, Recommendation 24 (Rev. Mar. 2022), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> (recommending the prohibition on bearer share entities and identifying such entities as higher risk).

¹⁶ See Financial Crimes Enforcement Network (FinCEN), “Beneficial Ownership Information Reporting Requirements,” Federal Register, 86 FR 69920-74 (Docket Number: FINCEN-2021-0005, RIN: 1506-AB49), Dec. 8, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26548.pdf> (hereinafter “First Proposed Rule”); Re: Beneficial Ownership Information Reporting Requirements, FACT Coalition (Feb. 7, 2022), available at https://thefactcoalition.org/wp-content/uploads/2022/02/FINCEN-2021-0005-0421_attachment_1.pdf [hereinafter “FACT Proposed Rule Comments”]; Re: Beneficial Ownership Reporting Requirements, FACT Coalition (May 5, 2021), available at <https://thefactcoalition.org/wp-content/uploads/2021/05/FACT-CTA-ANPRM-Comment-20210505-0329am-FINAL.pdf>.

¹⁷ See FACT Proposed Rule Comments *supra* note 12 at 88.

4. What Wyoming Can Do:

Wyoming is taking an encouraging first step today by seeking to better understand the potentially unintended consequences of its own laws. We would encourage Wyoming to consider taking the following next steps:

- A. Consider leveraging bipartisan federal reforms to ensure that Wyoming has the information it needs to determine true beneficial ownership of all trusts, LLC's, corporations, or other arrangements, associations, or entities formed, governed, operating or investing in the state.
 - For example, the state of Alaska—historically seen as competing with Wyoming for secrecy—is considering legislation that might bring greater transparency to its trust and real estate sectors, without imposing meaningful additional burdens on these sectors.¹⁸
 - These reforms might further advance the bipartisan CTA, as well as shore up certain gaps in information or access questions relating to Wyoming's real time use of related information that remain subject to final rulemaking.
- B. Consider making clear that DAO LLC's must keep track in real time of any holder and beneficial owner of DAO LLC membership interests to avoid any possibility that DAO LLC's might contravene with the CTA's prohibition of bearer share entities and international best practices meant to deter terrorism financing and other risks.
- C. Encourage the state legislative services office to further consider risks posed by effective anonymity afforded by the Wyoming trust and limited liability company industries and ways that the state might advance greater transparency to encourage investment in line with Wyoming priorities.

Conclusion

In conclusion, our system of Federalism is made better when states innovate in ways that reinforce our democracy, our open and transparent markets, and our national security; the opposite is true when states compete for investment through financial secrecy, which may have unintended consequences, such as to allow potentially corrupt, illicit or criminal capital to find a safe haven. This legislative body—just like Congress—has an important role to play in ensuring that the Wyoming and U.S. financial systems are not vehicles for bad actors.

¹⁸ See Alaska 32nd Leg. H.B. 405, 406 (2022).

I want to thank you again for inviting FACT to participate in this important process, and I look forward to our conversation.