

TRUST THE PROCESS: SOUTH DAKOTA AND THE JURISDICTIONAL COMPETITION FOR TRUST ASSETS

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ABSTRACT

South Dakota has unexpectedly become the epicenter for trust assets, attracting billionaires and foreign elites with its legal and tax environment. This Note examines how a combination of legislative innovation and institutional infrastructure propelled the state to the top of the trust industry. Federal laws, such as the Foreign Account Tax Compliance Act, further entrenched South Dakota's appeal allowing it to function as an onshore tax haven. This Note offers a helpful framework for evaluating the consequences of jurisdictional competition in the trust industry. While South Dakota's dominance raises concerns about secrecy, it also highlights the complexities of governing mobile wealth in a fragmented federal tax system. By mapping the state's path to prominence, this Note provides context for ongoing debates about the future of trust regulation in the United States.

INTRODUCTION

South Dakota, with its sparse population and cold winters, may not seem like a place that the world's rich and powerful would want to visit, but as the Chief Justice of the South Dakota Supreme Court once said, “[w]hile many people may find a way to ‘fly-over’ South Dakota, their dollars find a way to land here.”¹ How did a state with less than a million people²

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1. Message from David Gilbertson, Chief Justice of the South Dakota Supreme Court, 2019 State of the Judiciary Message (2019), https://ujs.sd.gov/uploads/sc/judiciarymessage/printed/2019_STATE_OF_THE_JUDICIARY_MESSAGE.pdf [<https://perma.cc/7EPK-5KFU>].

2. See U.S. CENSUS BUREAU, RESIDENT POPULATION FOR THE 50 STATES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO: 2020 CENSUS TABLE 2 (2020), <https://www2.census.gov/programs->

become the “new Switzerland”?³ The answer lies with a series of changes that made South Dakota a leading player in the credit card, banking, and trust industries. South Dakota’s accession to the top of the trust industry is a new development in the long-running debate over state regulatory competition. The question of whether South Dakota is engaged in a race to the bottom or to the top is further complicated by federal laws intended to crack down on global financial improprieties. Laws, such as the Foreign Account Tax Compliance Act⁴ may have been well intentioned, but instead they have resulted in South Dakota becoming a financial destination on par with the Cayman Islands and Switzerland, countries known for their low tax rates and strict privacy protections.

Most people don’t think of South Dakota, but if they do, they think of cowboys, cornfields, and faces on a mountain. Despite this reputation, the Mount Rushmore State has become the go-to financial hub for the rich and powerful, including the President of Ecuador,⁵ Columbian business magnates,⁶ the family of Illinois Governor J.B. Pritzker,⁷ and Chinese billionaires.⁸ The South Dakota Trust Company alone works with over 118 billionaires⁹ and over 410 centi-millionaires.¹⁰ If Forbes’ annual listing of billionaires¹¹ is taken at face value, that would mean that a single trust

surveys/decennial/2020/data/apportionment/apportionment-2020-table02.pdf [https://perma.cc/C79K-F2UD].

3. See Kara Scannell & Vanessa Houlder, *U.S. Tax Havens: The New Switzerland*, FIN. TIMES (May 8, 2016), <https://www.ft.com/content/cc46c644-12dd-11e6-839f-2922947098f0> [https://perma.cc/Q45Y-BEMJ].

4. See Pub. L. No. 111-147, tit. V, subtit. A, 124 Stat. 97 (2010) (codified at 26 § U.S.C.A 1471).

5. See Debbie Cenziper et al., *Foreign Money Secretly Floods U.S. Tax Havens. Some of It Is Tainted.*, WASH. POST (Oct. 4, 2021), <https://www.washingtonpost.com/business/interactive/2021/booming-us-tax-haven-industry/> [https://perma.cc/U35P-KXP6].

6. See *id.*

7. See *Moguls Rent South Dakota Addresses to Dodge Taxes Forever*, PRIV. WEALTH (Dec. 27, 2013), <https://oldpw.fa-mag.com/moguls-rent-south-dakota-addresses-to-dodge-taxes-forever/> [https://perma.cc/CTJ4-HWWP].

8. Oliver Bullough, *The Great American Tax Haven: Why the Super-rich Love South Dakota*, GUARDIAN (Nov. 14, 2019, 1:00 AM), <https://www.theguardian.com/world/2019/nov/14/the-great-american-tax-haven-why-the-super-rich-love-south-dakota-trust-laws> [https://perma.cc/H7TL-BV4L].

9. See *Clients We Serve*, S.D. TR. CO., <https://sdtrustco.com/clients-we-serve/> [https://perma.cc/QM6C-FVWC].

10. See *id.*

11. See Chase Peterson-Withorn, *Forbes’ 37th Annual World’s Billionaires List: Facts and Figures 2023*, FORBES (Apr. 4, 2023, 6:00 AM), <https://www.forbes.com/sites/chasewithorn/2023/04/04/forbes-37th-annual-worlds-billionaires-list-facts-and-figures-2023/> [https://perma.cc/A9YS-NU96] (Forbes lists 2,640 billionaires in the world as of 2023; 118/2,640 is 4.5%).

company in South Dakota serves almost 5% of the world's billionaires. South Dakota has quietly become the best place in the world to hide your money.

Proponents and critics of competition among states have debated whether state actions, such as Delaware's efforts to be the leading jurisdiction for corporate law, are a race to the bottom that does more harm than good, or a race to the top in which competition among the states increases the welfare of all.¹² Delaware's preeminence in corporate law is a prominent example, but states compete on many dimensions. As other commentators have noted, the nature and mobility of the trust industry made it predisposed to competition.¹³ This Note provides an update on the competition within the trust industry, arguing that South Dakota has won that competition. This fact has not gone unnoticed. One example is the recent leak of the Pandora Papers, in which the International Consortium of Investigative Journalists (ICIJ) obtained millions of financial documents showing how the world's wealthy hide their money internationally.¹⁴ The Pandora Papers is the latest effort by the ICIJ following their blockbuster release of the Panama Papers, which exposed Panama as a center for financial impropriety.¹⁵ South Dakota's prominent role in the Pandora Papers¹⁶ has made many outside observers question how one of the least populated states in the country became so popular with ultra-high-net-worth individuals.

This Note attempts to answer that question by explaining what made South Dakota the biggest player in the trust industry by providing an

12. See William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L. J. 663, 701 (1974); see also Rolin P. Bissell, 'The Race to the Top' in *State Corporate Law: The Delaware Model*, ANDREWS SEC. LITIG. & REG. REP., Dec. 29, 2004, at 6; see also Mark J. Roe, *Delaware and Washington as Corporate Lawmakers*, 34 DEL. J. CORP. L. 1, at 2 (2009).

13. See Stewart E. Sterk, *Asset Protection Trusts: Trust Law's Race to the Bottom*, 85 CORNELL L. REV. 1035, 1037 (2000).

14. *Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak*, ICIJ (Oct. 3, 2021), <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/> [https://perma.cc/7DS2-7E47].

15. *Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption*, ICIJ (Apr. 3, 2016), <https://www.icij.org/investigations/panama-papers/20160403-panama-papers-global-overview/> [https://perma.cc/6RZ7-DGHS].

16. See Will Fitzgibbon et al., *Suspect Foreign Money Flows into Booming American Tax Havens on Promise of Eternal Secrecy*, ICIJ (Oct. 4, 2021), <https://www.icij.org/investigations/pandora-papers/us-trusts-offshore-south-dakota-tax-havens/> [https://perma.cc/2AGW-2FR3]. South Dakota had eighty-one trusts listed in the Pandora Papers, more than double the next closet state. *Id.*

analytic history leading up to the state's current trust landscape. Part I of this Note is separated into two sections that piece together a comprehensive history of how the sparsely populated South Dakota became a financial behemoth. Pieces of this story have been previously told,¹⁷ but existing histories are often incomplete and occasionally contain incorrect assumptions. Given that other commentators have bemoaned the state of the trust industry,¹⁸ it is important to provide the background of what led the trust industry to its current state.

Part I.A serves as a timeline of the development of South Dakota's financial industry to the present day, beginning with the story of how a deal with Citibank led South Dakota to become a financial powerhouse. The section will then trace the origins of the trust industry in South Dakota beginning with the repeal of the Rule Against Perpetuities. Finally, the section will discuss how federal and international law have combined to make South Dakota even more attractive to wealthy investors. The timeline will illustrate that South Dakota did not intend, at least originally, to become a leading trust jurisdiction. This history will show that many of the key moments were accidental innovations, rather than a deliberate attempt to compete for trust assets and jobs.

Part I.B uses that timeline to examine the "South Dakota Advantage"¹⁹ in the trust industry, showing how these accidental innovations work to its favor. This section points to the strengths and key components of South Dakota's trust laws.²⁰ It also analyzes why these components are attractive to would-be-settlors. This section includes a discussion and analysis of South Dakota's tax scheme (or lack thereof), its unique privacy protections, how much control South Dakota allows trust settlors to execute, and—most importantly—the role that the Trust Task Force and trust companies play in

17. See generally Bullough, *supra* note 8; see also *Frontline: Secret History of the Credit Card*, Interview Bill Janklow, PBS (Nov. 23, 2004), <https://www.pbs.org/wgbh/pages/frontline/shows/credit/interviews/janklow.html> [<https://perma.cc/F5SW-CABW>] [hereinafter *Frontline*]; see Al W. King III & Pierce H. McDowell III, *A Bellwether of Modern Trust Concepts: A Historical Review of South Dakota's Powerful Trust Laws*, 62 S.D. L. REV. 266, 270–71 (2017).

18. See Reid K. Weisbord, *A Catharsis for U.S. Trust Law: American Reflections on the Panama Papers*, 116 COLUM. L. REV. ONLINE 93, 98 (2016).

19. *The South Dakota Advantage*, GOOSMANN L. FIRM, <https://www.goosmannlaw.com/service/trusts-estates/the-south-dakota-advantage/> [<https://perma.cc/8PN6-EDY8>] (the South Dakota Advantage is used by practitioners to refer to the comprehensive statutory scheme in South Dakota's trust laws that make it the premier trust jurisdiction).

20. See, e.g., King & McDowell, *supra* note 17, at 304–05.

the state. This discussion will highlight that it is not one single factor or law that created the state's trust industry, but rather a combination of factors that built on each other to create the infrastructure necessary to win this jurisdictional competition.

Part II builds off the premise that South Dakota has “won” the competition for trusts and provides a framework for thinking through the implications of that victory. This section looks at the benefits and costs for the residents of South Dakota, the United States as a whole, and consumers (i.e., settlors, potential settlors, beneficiaries, trustees, etc.) in the trust industry. This framework, combined with the complete history, will provide a lens in which commentators can view South Dakota's trust laws and their consequences.

This leads to the Conclusion that South Dakota's role in the global financial system is something worth paying attention to. Understanding how the state got to its current position is crucial to helping figure out what comes next. In the modern economy, where capital is infinitely mobile, it is important for policymakers to understand where financial innovations are coming from and how it affects the global financial system.

I. HOW SOUTH DAKOTA BECAME THE KING OF TRUSTS

A. The History of South Dakota's Trust Industry

Part I of this Note is a discussion of how South Dakota has become a financial playground for the world's wealthiest individuals. Pieces of this story have been told through a variety of sources, but these pieces often contain inaccuracies or do not paint the full picture. Part I of this Note seeks to correct those inaccuracies by revealing how South Dakota became a top trust jurisdiction.

i. The State That Credit Cards Built

The story begins with a financial instrument typically associated with low-income individuals—credit cards. The 1970s are known as a period of

high inflation.²¹ Inflation rates reached 13.3% in 1979²² and 14.8% during the first half of 1980.²³ Interest rates were later raised to 20% to combat the persistently high inflation rates.²⁴ These high interest rates caused issues for lending institutions²⁵ because usury laws, which cap interest rates, were set by individual states and generally capped somewhere between 10% and 15%.²⁶ As a result, lenders, including credit card companies, were unable to make a profit as interest rates were higher than many states' usury caps. The landmark Supreme Court case, *Marquette National Bank v. First Omaha Services Corporation*,²⁷ changed this discrepancy and began South Dakota's journey to the top of the financial services industry. The *Marquette* decision allowed national banks to locate themselves in any state, make credit decisions in that state, and apply the laws of that state to all its customers nationwide.²⁸

Citibank was the first major bank to recognize the importance of the *Marquette* decision.²⁹ Citibank soon called³⁰ South Dakota Governor William Janklow³¹ about moving some banking operations to the state. As a result of the high interest rates, Citibank was paying more to borrow money than it could charge to lend out, leading to company-wide losses. Citibank's credit card operations were losing almost \$300,000 a day.³² The company was interested in South Dakota because of its recent attempts to

21. See Alan S. Blinder, *The Anatomy of Double-Digit Inflation in the 1970s*, in *INFLATION: CAUSES AND EFFECTS* 261, 265 (Robert E. Hall ed., 1982) (noting the mean inflation rate for the decade was 6.85%).

22. See *id.* at 273–74.

23. See *id.*; see Jean Folger, *What is the Relationship Between Inflation and Interest Rates?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/12/inflation-interest-rate-relationship.asp> [<https://perma.cc/6WQT-25QW>].

24. See *Federal Funds Rate — 62 Year Historical Chart*, MACRO TRENDS, <https://www.macrotrends.net/2015/fed-funds-rate-historical-chart> [<https://perma.cc/TTM9-9M7G>].

25. See, e.g., James Mateja, *Car Loans Becoming Hard to Get*, CHI. TRIB., Mar. 18, 1980, at C3.

26. See Martha H. Hamilton, *Usury Isn't What It Used to Be*, WASH. POST (May 10, 1980), <https://www.washingtonpost.com/archive/business/1980/05/11/usury-isnt-what-it-used-to-be/378a2c48-5d20-469f-aa84-b5aa67ffcafb/> [<https://perma.cc/HY6E-BUEV>].

27. 439 U.S. 299 (1978).

28. See *id.* at 311, 313.

29. See *Frontline*, *supra* note 17.

30. See *id.*

31. See Governor William J. Janklow, NAT'L GOVERNORS ASS'N, <https://www.nga.org/governor/william-j-janklow/> [<https://perma.cc/5GN8-M8G9>].

32. See Stu Whitney, *Whitney: What Really Happened to Land Citibank*, ARGUS LEADER (Apr. 4, 2015, 2:51 PM), <https://www.argusleader.com/story/stu-whitney/2015/04/04/whitney-real-story-behind-citibank/25296111/> [<https://perma.cc/97CW-G4RG>].

eliminate its usury cap.³³ There was just one problem, much like vampires, banks could not enter without being invited first.³⁴ Under the Douglas Amendment to the Bank Holding Company Act of 1956, banks were forbidden from interstate acquisitions unless the acquired bank's home state allowed the acquisition.³⁵ South Dakota was one of two states whose legislature was in session when Citibank was looking to make its move.³⁶ Shortly after its initial contact with Janklow, Citibank's CEO (Walter Wriston) came to the state and promised 400 jobs if South Dakota would invite the bank to the state.³⁷ South Dakota quickly passed a law that eliminated its usury cap and then passed a second law that allowed out-of-state banks to locate within South Dakota.³⁸ As promised, Citibank moved its credit card business to South Dakota in 1981 bringing \$250 million in capital³⁹ and 3,000 jobs to the state.⁴⁰ Citibank's deal with Janklow, described as "breathtakingly quid pro quo,"⁴¹ paved the way for South Dakota to become a financial powerhouse. Citibank was the first national bank to come to South Dakota, but it was not the only one; as Wells Fargo, Capital One, and other major financial institutions soon flocked to the Mount Rushmore State.⁴² Other states, such as Delaware, quickly followed South Dakota's lead and eliminated their usury laws.⁴³ However, by acting

33. See, e.g., S.D. CODIFIED LAWS § 54-3-13 (2024) (eliminating all limitations on the rate of interest that may be charged).

34. See Hrvoje Milakovic, *Here is Why Vampires Have to Be Invited In! Explaining the Old-Age Mythological Mystery*, FICTION HORIZON (Sept. 27, 2023), <https://fictionhorizon.com/why-do-vampires-have-to-be-invited-in/> [<https://perma.cc/N2VR-2J8G>]; Bank Holding Companies Allowed to Acquire New Banks Act of 1980 S.D. Sess. Laws, ch. 331 § 1 536.

35. See David L. Mengle, *The Case for Interstate Branch Banking*, FED. RES. BANK OF RICHMOND ECON. REV., Nov.–Dec. 1990, at 3, 4.

36. See *Frontline*, *supra* note 17.

37. See *id.*

38. See King & McDowell, *supra* note 17, at 2.

39. See Whitney, *supra* note 32.

40. See *Frontline*, *supra* note 17.

41. Amy Sullivan & National Journal, *How Citibank Made South Dakota the Top State in the U.S. for Business*, THE ATLANTIC (Jul. 10, 2013), <https://www.theatlantic.com/business/archive/2013/07/how-citibank-made-south-dakota-the-top-state-in-the-us-for-business/425661/> [<https://perma.cc/QY7C-2HGJ>].

42. See *id.*

43. See Sean H. Vanatta, *When South Dakota Became the New Cayman Islands for Banks and Finance*, WASH. POST (Oct. 14, 2021), <https://www.washingtonpost.com/outlook/2021/10/14/when-south-dakota-became-new-cayman-islands-banks-finance/> [<https://perma.cc/D6ZG-ASQL>]

("Delaware, a state ravaged by industrial decline, adopted virtually identical legislation the following year. Lobbying for the 'Financial Center Development Act,' Delaware Gov. Pierre 'Pete' du Pont promised the state would become 'the Luxembourg of the United States.'").

first, South Dakota kickstarted its financial industry.

Citibank's decision to move to South Dakota was a catalyst for massive growth in the states' financial services industry. As Governor Janklow's former Chief of Staff once said, "[t]he three best things that ever happened to South Dakota . . . were the Homestead Act, the sculpting of Mount Rushmore and Citibank coming to Sioux Falls."⁴⁴ Initially attracted to the state because of reduced interest rates on credit cards, many banks would eventually move some of their other operations there.⁴⁵ Finance quickly became the largest industry⁴⁶ in a state more commonly known for its connection to agriculture. South Dakota currently has approximately \$3.5 trillion in bank assets,⁴⁷ which is more than Illinois, California, and New York combined.⁴⁸ Sioux Falls, a city of roughly 200,000 people,⁴⁹ is the heart of South Dakota's financial industry with almost 15,000 residents working in the financial industry.⁵⁰ 8.9% of all jobs in Sioux Falls are in the financial industry,⁵¹ compared to 5.5% nationwide.⁵² It also has the second highest concentration of loan officers.⁵³ The financial industry has clearly

44. Whitney, *supra* note 32 (internal quotation marks omitted).

45. See *Frontline*, *supra* note 17.

46. See *South Dakota – State Economic Profile*, IBIS WORLD, <https://www.ibisworld.com/united-states/economic-profiles/south-dakota/> [<https://perma.cc/VPU6-S9P7>].

47. See U.S. FED. DEPOSIT INS. CORP., STATE PROFILE: SOUTH DAKOTA (2024), <https://www.fdic.gov/analysis/state-profiles/kansascity/sd.pdf> [<https://perma.cc/5PR7-THJY>].

48. See *FDIC State Profiles*, FDIC, <https://www.fdic.gov/analysis/state-profiles/> [<https://perma.cc/9NP7-Y3YX>].

49. See *Quick Facts Sioux Falls City, South Dakota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/siouxfallscitysouthdakota/PST045222> [<https://perma.cc/2UWZ-5RGS>] (for numerical reporting on California, Illinois, and New York, click on each state on the interactive map).

50. See *Economy at a Glance, Sioux Falls, SD*, U.S. BUREAU LAB. STATS., https://www.bls.gov/eag/eag_sd_siouxfalls_msa.htm [<https://perma.cc/NSV5-V73Z>].

51. See *id.*

52. See *May 2023 National Occupational Employment and Wage Estimates*, U.S. BUREAU LAB. STATS., https://www.bls.gov/oes/2023/may/oes_nat.htm [<https://perma.cc/8B28-QVEZ>]; *Current Employment Statistics – CES (National)*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/web/empsit/ceseeb1a.htm> [<https://perma.cc/VBS6-QV8F>]; see *2023 Employment by Major Industry Sector*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/emp/tables/employment-by-major-industry-sector.htm> [<https://perma.cc/TC6P-6ESN>].

53. See *Occupational Employment and Wages, May 2022: 13-2072 Loan Officers*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/oes/2022/may/oes132072.htm> [<https://perma.cc/7JGV-MZUE>].

shaped the state—as business schools,⁵⁴ football stadiums,⁵⁵ and even hospitals⁵⁶ are named after influential figures in the industry.

ii. Growth of the Trust Industry

After its initial success with financial deregulation, South Dakota sought additional opportunities to bring economic growth to the state. In 1983, South Dakota eliminated the common law Rule Against Perpetuities (RAP).⁵⁷ In just thirteen words,⁵⁸ South Dakota eliminated a complex and often misunderstood rule that had been plaguing lawyers for over 300 years.⁵⁹ This decision accelerated the growth of South Dakota’s trust industry and kicked off a competition for trust assets that continues to shape the world financial system. Much like its decision with credit cards, the elimination of the RAP put South Dakota at the forefront of financial deregulation and created a first-mover advantage that allowed the state to benefit for decades to come. The first-mover advantage, which is the competitive advantage gained by the initial occupant of a market, paired with South Dakota’s willingness to continually innovate has made it the best state for an individual to create a trust.⁶⁰

The story in the previous paragraph is the common explanation for how South Dakota built its trust industry, but it is not entirely accurate. Unlike

54. See *Legacy of Achievement: Hall of Fame Inductee Miles K. Beacom*, S.D. HALL OF FAME, https://sdexcellence.org/Miles_K_Becom [<https://perma.cc/6Y8U-HV7U>] (noting Miles Beacom as one of the first employees Citibank hired when it moved to South Dakota).

55. See *Dana J. Dykhouse Stadium*, S.D. STATE UNIV. ATHLETICS, <https://gojacks.com/facilities/dana-j-dykhouse-stadium/2> [<https://perma.cc/E2UW-5MTB>]; see also *Legacy of Achievement: Hall of Fame Inductee Dana Dykhouse*, S.D. HALL OF FAME, https://sdexcellence.org/Dana_Dykhouse [<https://perma.cc/3PDT-PPSD>] (noting Dana Dykhouse as President of First Premier Bank).

56. See Daily Globe News, *Sanford Health: What's in a Name?*, THE GLOBE (July 26, 2010, 2:30 PM), <https://www.dglobe.com/news/sanford-health-whats-in-a-name> [<https://perma.cc/THZ4-RE47>]; see also *Leadership*, FIRST PREMIER BANK, <https://www.firstpremier.com/en/about-us/our-people/Leadership/> [<https://perma.cc/N8HQ-7953>].

57. See S.D. CODIFIED LAWS § 43-5-8 (2024).

58. See *id.* (“The common-law rule against perpetuities is not in force in this state.”).

59. See George L. Haskins, *Extending the Grasp of the Dead Hand: Reflections on the Origins of the Rule Against Perpetuities*, 126 U. PA. L. REV. 19, 20, 22 (1977).

60. See *Comparison: The Best Trust Situs & Laws by State*, WEALTH ADVISORS TR. CO., <https://www.wealthadvisortrust.com/best-trust-laws-by-state> [<https://perma.cc/28NJ-3UXP>]; see also *Best U.S. Trust Situs in 2022? South Dakota Named “Top-Tier Trust Jurisdiction” by Trusts & Estates Magazine*, BRIDGEFORD TR. CO. (Jan. 18, 2022), <https://www.bridgefordtrust.com/best-us-trust-situs-2022-south-dakota-top-tier-trust-jurisdiction/> [<https://perma.cc/LHW8-6QSC>].

its experience with the credit card industry, South Dakota's deregulation of the trust industry did not pay immediate dividends. Not only did the elimination of the RAP not make an immediate splash like the elimination of usury laws, but it also made almost no immediate impact on the landscape of South Dakota trusts. From 1983 to 1986, the elimination of the RAP played almost no role in the choice of trust jurisdiction, as the federal income tax could be avoided by creating successive life estates.⁶¹ In fact, during this period, the average size of a trust in South Dakota was only slightly larger than that of the average account in neighboring North Dakota and Iowa.⁶² The fact that abolishing the RAP did not make an immediate impact cuts against the narrative that it is the defining feature of South Dakota's trust laws.⁶³

The story that eliminating the RAP was part of a larger effort to attract the trust industry is also false. South Dakota did not set out to create a thriving trust industry, but rather, did so accidentally. Although much of South Dakota's legislative history is lost to time, it appears that the elimination of the RAP was intended to benefit the Homestake Mining Company.⁶⁴ The Homestake Mine, located in the Black Hills of western South Dakota, was the "largest, deepest and most productive gold mine in North America."⁶⁵ The Homestake Mine began operations in 1876⁶⁶ and it appears that South Dakota eliminated the RAP so that the Homestake Mining Company could operate for more than 100 years.⁶⁷

Although the RAP was a non-factor in 1983, Congress quickly changed this fact when it passed the Tax Reform Act of 1986.⁶⁸ Prior to 1976, when

61. See Robert H. Sitkoff & Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*, 115 YALE L.J. 356, 369–70 (2005) ("Prior to 1986, however, the estate tax could be avoided by using successive life interests.").

62. See *id.* at 394.

63. See Bullough, *supra* note 8.

64. See Bob Mercer, *South Dakota's Law Encouraged Rapid Growth of Financial Trusts*, KELOLAND (Feb. 3, 2023, 10:04 AM), <https://www.keloland.com/news/capitol-news-bureau/south-dakotas-laws-encouraged-rapid-growth-of-financial-trusts/> [<https://perma.cc/P4R6-2G5A>].

65. Andrew L. Yarrow, *Beneath South Dakota's Black Hills*, N.Y. TIMES (Aug. 9, 1987), <https://www.nytimes.com/1987/08/09/travel/beneath-south-dakota-s-black-hills.html> [<https://perma.cc/Z7R6-Y48G>].

66. See *id.*

67. See Bob Mercer, *South Dakota Leader in National Trust Field*, ABERDEEN NEWS (Feb. 18, 2018, 1:00 AM), <https://www.aberdeennews.com/story/news/politics/2018/02/18/south-dakota-leader-in-national-trust-field/116511290/> [perma.cc/4K5h-S5UA].

68. See Sitkoff & Schanzenbach, *supra* note 61, at 371 ("The GST tax provisions are located in Chapter 13 of the Internal Revenue Code. I.R.C. §§ 2601-2663 (2000). Congress attempted to close the

the first version of the Generation Skipping Transfer Tax (GSTT) was implemented by Congress, a family could avoid estate taxes by creating successive life estates for their children, grandchildren, great grandchildren, and so on because life estates were not subject to the estate tax.⁶⁹ Beginning with the Tax Reform Act of 1986, the GSTT⁷⁰ imposed a tax, equal to the top tax rate on estates,⁷¹ on gifts or transfers to the skipping generation,⁷² like a grandparent transferring property to a grandchild. The GSTT also applies to distributions from trusts.⁷³ Congress successfully eliminated the successive life estate loophole, but when one door closes, another one opens.

The Tax Reform Act of 1986 also included a lifetime exemption amount which allowed an individual to make a transfer up to that amount tax free.⁷⁴ Wealthy individuals could now fund a trust up to the GSTT exemption amount, equal to \$12,920,000 in 2023,⁷⁵ and use that trust to benefit future generations of the family. As time went on, the trust's principal would continue to grow, so future generations would not have to worry about running out of money. There was only one problem, the RAP prevented trusts from lasting indefinitely. South Dakota's elimination of the RAP went from an afterthought to a major selling point. By creating a lifetime exemption from estate and generation skipping transfer (GST) taxes, Congress incentivized states to compete in an industry that was ripe for disruption.⁷⁶ The discovery of gold at the Homestake Mine led to a gold rush causing people around the world to pour into South Dakota to seek their fortunes. As luck would have it, 100 years later, a law aimed at ensuring the mine's survival, created the conditions for a new kind of gold rush in South Dakota.

successive-life-estates loophole in the Tax Reform Act of 1976, but the 1976 scheme was later repealed retroactively.”).

69. See Mark E. Powell, *The Generation-Skipping Transfer Tax: A Quick Guide*, J. ACCT. (Oct. 1, 2009), <https://www.journalofaccountancy.com/issues/2009/oct/20091804.html> [<https://perma.cc/E2NM-6RQH>].

70. See 26 U.S.C.A. § 2601 (West, Westlaw through Pub. L. 118-106).

71. See *id.* § 2641.

72. See *id.* § 2601.

73. See *id.* § 2603.

74. See *id.* § 2631.

75. See *What's New — Estate and Gift Tax*, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax> [<https://perma.cc/A69M-HY5J>].

76. See Sitkoff & Schanzenbach, *supra* note 61, at 371.

Beginning in 1987, a gap between states that had altered their RAP statutes and ones that did not began to emerge. The former states increased their trust assets by 20% more than the latter states.⁷⁷ South Dakota was not unique in this regard, but key differences became evident. An article discussing the advantages of having a South Dakota based trust, written by Pierce McDowell III, was published in 1993,⁷⁸ and shortly after came to the attention of Citibank.⁷⁹ Citibank soon hired McDowell and began the process of creating Citicorp Trust South Dakota as a subsidiary of their credit card operation in the state.⁸⁰ In 1995, Citicorp Trust South Dakota became the third trust company to register in South Dakota.⁸¹ Citibank's initial move to South Dakota marked the beginning of the state's dominance in the financial industry, and the establishment of Citicorp Trust heralded the same result for the trust industry. Shortly after becoming the state's first public trust company,⁸² Citibank began to preach the gospel of South Dakota. Between 1995 and 2001, McDowell, now at Citibank, and Al King, the National Director of Estate Planning for Citibank from 1992 to 2001, averaged 125 speeches per year about the advantages of having a South Dakota trust.⁸³

Despite Citibank's enthusiasm for the state, it was not guaranteed that South Dakota would remain at the top of the competitive trust industry.⁸⁴ In 1996, Citicorp Trust was the only public trust company operating within South Dakota.⁸⁵ That would soon change as Citibank's old partner, Bill Janklow, reentered the governor's mansion in 1995 after eight years as a private citizen.⁸⁶ In 1997, Janklow established the Governor's Task Force

77. *See id.* at 410.

78. *See King & McDowell, supra* note 17, at 271 n.29.

79. *See id.*

80. *See id.*

81. *See* Bob Mercer, *Trust Companies Operating in SD in 2022*, KELOLAND (Feb. 3, 2023), <https://www.keloland.com/news/capitol-news-bureau/trust-companies-operating-in-sd-in-2022/> [<https://perma.cc/H4GF-EV29>].

82. *See id.*

83. *See King & McDowell, supra* note 17, at 271 n.29.

84. *See* Sitkoff & Schanzenbach, *supra* note 61, at 373.

85. *See* Mercer, *supra* note 81; S.D. DEP'T OF LAB. & REGUL., DIVISION OF BANKING: INDUSTRY OVERVIEW 11, https://dlr.sd.gov/banking/meeting_documents/agenda_121522_industry_overview.pdf [<https://perma.cc/F4WS-7DPT>].

86. *See A Timeline of Bill Janklow's Career*, MINN. PUB. RADIO (Sept. 5, 2003), http://news.minnesota.publicradio.org/features/2003/09/05_hetlandc_janklowtiimeline/ [<https://perma.cc/8UPA-NAVC>].

on Trust Administration Review and Reform (TTF, or Trust Task Force).⁸⁷ As one practitioner in the state put it, “[t]his partnership between representatives from the trust industry and state government working together to enhance South Dakota’s trust laws in a balanced and prudent fashion has proven effective. No other state has such a partnership.”⁸⁸ The Trust Task Force was structured to allow the governor to appoint as many members as he or she wanted.⁸⁹ Much like a South Dakota trust, the Trust Task Force was allowed to run in perpetuity.⁹⁰

South Dakota now had the infrastructure in place to dominate the trust industry and had Evangelists at one of the nation’s premier financial institutions. Once South Dakota had established itself as a premier trust destination, the Trust Task Force and a compliant Legislature ensured the state would remain competitive by continuing to pass bills that kept the state at the forefront of the industry.⁹¹ Along with the creation of the Trust Task Force, the year 1997 also brought directed trusts⁹² and trust protectors⁹³ to South Dakota. The next year, the state modified its trust statutes to make it much easier to modify an existing trust.⁹⁴ This, along with the 2007 addition⁹⁵ of the ability to decant⁹⁶ a trust, made it easy for South Dakota trusts to keep up with current law. Settlers could rest easy knowing that if South Dakota’s trust laws were to become more friendly, their trust could change along with it. Finally, the state added the domestic asset protection

87. See Bob Mercer, *South Dakota Quietly Became a Leader in National Trust Field*, CAP. J. (Feb. 18, 2018), https://www.capjournal.com/news/south-dakota-quietly-became-a-leader-in-national-trust-field/article_a9ce7fd8-1535-11e8-8917-07fb10e0b35f.html [<https://perma.cc/FB58-A9HS>].

88. Patrick G. Goetzinger, *A Dynamic Duo: South Dakota’s Trust Laws & Business Entity Statutes*, 61 S.D. L. REV. 339, 340 (2016).

89. See Mercer, *supra* note 64.

90. See *id.*

91. Bob Mercer, *South Dakota Trust Legislation by Year*, KELOLAND (Feb. 3, 2023, 10:30 AM), <https://www.keloland.com/news/capitol-news-bureau/south-dakota-trust-legislation-by-year/?ipid=promo-link-block2> [<https://perma.cc/J7K9-GUP7>].

92. See H.B. 1147, 72d Legis. Assemb., Reg. Sess. (S.D. 1997).

93. See H.B. 1279, 72d Legis. Assemb., Reg. Sess. (S.D. 1997).

94. See S.B. 236, 73d Legis. Assemb., Reg. Sess. (S.D. 1998).

95. See H.B. 1288, 82d Legis. Assemb., Reg. Sess. (S.D. 2007).

96. William R. Culp, Jr. & Briani Bennett Mellen, *Trust Decanting: An Overview and Introduction to Creative Planning Opportunities*, 45 REAL PROP., TR., & EST. L. J. 1, 1 (2010) (“Decanting is the term generally used to describe the distribution of trust property to another trust pursuant to the trustee’s discretionary authority to make distributions to, or for the benefit of, one or more beneficiaries.”).

trust⁹⁷ in 2005 and the special purpose trust⁹⁸ in 2006.

iii. Pouring Gasoline on the Fire

South Dakota's trust industry had been steadily growing since the 1990s but the passage of the Foreign Account Tax Compliance Act (FATCA)⁹⁹ greatly increased the incentives to establish a South Dakota trust. FATCA was passed in 2010 and went into effect in 2014.¹⁰⁰ It was established to combat tax evasion and increase transparency in the global financial system.¹⁰¹ FATCA requires that "foreign financial institutions," and other non-financial foreign entities report foreign assets held by U.S. citizens.¹⁰² FATCA also requires U.S. citizens to report their assets that are held outside of the country.¹⁰³

FATCA was shortly followed by the Common Reporting Standard (CRS), which required financial institutions to identify customers whose tax residency is outside of the financial institution's jurisdiction.¹⁰⁴ Financial institutions must then report information on those customers to the customers' local tax authority.¹⁰⁵ Since its initial inception, 121 countries have joined the CRS as of 2022, but the U.S. is not among them.¹⁰⁶ Countries are now sharing a large amount of financial information to crack down on tax evasion and other financial secrets. However, an enormous loophole has been created because the U.S. does not share the financial information of foreigners holding their wealth in the U.S. The U.S. is already considered to be the safest financial market in the world and now

97. See S.B. 94, 80th Legis. Assemb., Reg. Sess. (S.D. 2005).

98. See H.B. 1178, 81st Legis. Assemb., Reg. Sess. (S.D. 2006) (special purpose trusts are trusts created for a specific purpose such as the care of an animal, or a gravesite).

99. See Pub. L. No. 111-147, tit. V, subtitle A, 124 Stat. 71 (2010) (codified at 26 U.S.C. § 1471).

100. See *FATCA—Foreign Account Tax Compliance Act: Frequently Asked Questions*, HSBC, <https://www.fatca.hsbc.com/en/frequently-asked-questions> [<https://perma.cc/FM4Z-VTKD>]; see also *supra* note 92.

101. See *Glossary FATCA*, THOMSON REUTERS, <https://tax.thomsonreuters.com/en/glossary/fatca> [<https://perma.cc/7EC9-8KUH>].

102. *Id.*

103. See *id.*

104. See *CRS Overview and Latest Developments*, INLAND REV. AUTH. OF SINGAPORE, [https://www.iras.gov.sg/taxes/international-tax/common-reporting-standard-\(crs\)/crs-overview-and-latest-developments](https://www.iras.gov.sg/taxes/international-tax/common-reporting-standard-(crs)/crs-overview-and-latest-developments) [<https://perma.cc/VYP2-Z3XN>] (last updated Jan. 14, 2025).

105. See *id.*

106. See *All 98 Non-CRS Countries in 2025 (Common Reporting Standard)*, AURE'S NOTES (April 4, 2023), <https://auresnotes.com/non-crs-countries/> [<https://perma.cc/TG4Q-KUPU>].

the world's wealthiest have an additional incentive to hide their money within the country's borders. Moreover, under § 862 of the Internal Revenue Code, "foreign-sourced" income is not taxed by the U.S. even if the asset is located within the U.S.¹⁰⁷ That means that non-U.S. citizens can use a South Dakota trust to hide their assets and not even have to file a federal tax return. This has resulted in the U.S. becoming one of the top tax havens in the world with the Tax Justice Network ranking the U.S. number one in their Financial Secrecy Index in 2022.¹⁰⁸

The U.S. becoming the best place in the world to hide money has resulted in increased enabling of states, such as South Dakota, by the U.S. federal government. The total trust assets in South Dakota have grown exponentially over the past decade, skyrocketing from \$104 billion in 2011 to \$607 billion in 2021.¹⁰⁹ Over half of that growth has come since 2018 as the world catches up to the new reality of benefits that exist in the U.S.¹¹⁰ The massive growth in trust assets held in South Dakota has resulted in the number of trust companies almost doubling from 56 in 2011 to 108 in 2021.¹¹¹ South Dakota now has over \$600,000 in trust assets per person in the state.¹¹² More impressively, the trust assets reported by the Division of Banking only include those assets under the management of trust companies.¹¹³ Depository banks with trust departments do not report to the Division of Banking unless that bank is chartered in South Dakota.¹¹⁴ South Dakota had 41 chartered banks as of June 2022 with total assets of roughly \$23 billion,¹¹⁵ a small fraction of the \$2.5 trillion in total banking assets in the state.¹¹⁶ South Dakota chartered depository banks add an additional \$16

107. I.R.C. § 862.

108. See *Financial Secrecy Index 2022*, TAX JUST. NETWORK (2022), <https://fsi.taxjustice.net/> [<https://perma.cc/6AYU-UM5>].

109. See Mercer, *supra* note 64.

110. See *id.*

111. See S.D. DEP'T OF LAB. & REGUL., *supra* note 85, at 11.

112. See *id.*; see also U.S. CENSUS BUREAU, *supra* note 2 (\$607 billion /886,667 is roughly \$684,586).

113. See PATRICK GOETZINGER, DENVER EST. PLAN. COUNCIL, SOUTH DAKOTA TRUST LAW: PULLING BACK THE CURTAIN A SOUP TO NUTS TOUR OF SOUTH DAKOTA TRUST LAW at 2 (2018), <https://www.denverestateplanningcouncil.org/assets/Councils/Denver-CO/library/111518%20Presentation%20SD%20Trust%20Law.pdf> [<https://perma.cc/7KPB-J8EE>].

114. See *id.* at 2; S.D. DEP'T OF LAB. & REGUL., *supra* note 85, at 12.

115. See S.D. DEP'T OF LAB. & REGUL., *supra* note 85, at 3.

116. See Sullivan & National Journal, *supra* note 41.

billion in trust assets.¹¹⁷ If South Dakota chartered banks have \$16 billion in trust assets against \$23 billion in banking assets, how many trust assets do non-chartered banks that make up the rest of the \$3.5 trillion in bank assets hold? Given that Wells Fargo and Citibank, both of whom have headquarters in South Dakota,¹¹⁸ are the third and fourth largest banks in the U.S. respectively,¹¹⁹ the \$607 billion in trust assets is almost certainly an underestimate.

B. The South Dakota Advantage

Part A of this section provided a broad overview of the history of South Dakota's trust industry. Part B will expand on that history by diving into the key factors that separated South Dakota from other trust jurisdictions. The "South Dakota Advantage" can be explained by four key aspects. First, the lack of an income tax makes the state advantageous for settlors wishing to shield their assets from additional taxation. Second, South Dakota's trusts laws give an unusual amount of power to settlors. Third, South Dakota grants total secrecy to trusts. Fourth, and finally, South Dakota has created an environment so friendly that agglomeration effects have taken hold in the industry.

i. Tax Free Growth

Trusts are generally used to protect and maintain assets for both the settlor (the creator of the trust) and the trust's beneficiary.¹²⁰ To protect those assets, it is important for a settlor to consider the costs of maintaining the trust, so that fees and taxes do not erode the corpus of the trust. South Dakota has combined its friendly tax system with a low-cost environment, allowing trusts located in the state to maintain its assets.

One of the key advantages that South Dakota has over other

117. See S.B. 236, 73d Legis. Assemb., Reg. Sess. (S.D. 1998).

118. Jodi Schwan, *The Bancorp Bank Completes HQ Move to Sioux Falls*, *SIouxFALLS.BUSINESS* (Feb. 3, 2023), <https://siouxfalls.business/the-bancorp-bank-completes-hq-move-to-sioux-falls/> [https://perma.cc/H686-UA29].

119. See Cassidy Horton, *10 Largest Banks in the U.S. 2023*, *FORBES* (Aug. 21, 2023, 10:54 AM), <https://www.forbes.com/advisor/banking/largest-banks-in-the-us/> [https://perma.cc/V6PL-B5KP].

120. See generally *Top 8 Reasons to Have a Trust*, *TR. & WILL*, <https://trustandwill.com/learn/reasons-to-have-a-trust> [https://perma.cc/4JW2-T3B6].

jurisdictions is the lack of an income tax. Many states tax resident trusts directly on the trust's income and tax income source to that state. Since South Dakota does not have an income tax,¹²¹ a South Dakota trust would only have to pay state income tax on the income that is directly sourced to a separate, particular state. Since trusts are taxed differently than personal income, and quickly reach the top marginal tax rate,¹²² state taxes can add up fast. South Dakota trust companies also benefit even when the trust is not a South Dakota-based trust. In neighboring Minnesota for example, a trust that is not administered in the state is not considered a resident trust, even if the settlor and beneficiary are Minnesota residents.¹²³ This means that a Minnesota trustee can cross the border into South Dakota to administer the trust and save the trust from paying anywhere from 5.35% to 9.85% of its income in taxes.¹²⁴

The theory that a lack of an income tax is a driver of trust asset growth is evidenced by South Dakota's competitor states. Alaska, Delaware, Nevada, and Wyoming are frequently listed alongside South Dakota as the best states for trusts.¹²⁵ These states, with the exception of Delaware, all reject a personal or corporate income tax.¹²⁶ Delaware does not tax most trusts administered in the state¹²⁷ and has a distinct advantage in corporate law,¹²⁸ with a majority of Fortune 500 companies being incorporated in the state.¹²⁹ In addition to having no income tax, each of these states have a

121. See *Taxes in South Dakota*, TAX FOUND., <https://taxfoundation.org/location/south-dakota/#:-:text=South%20Dakota%20does%20not%20have,tax%20rate%20of%206.40%20percent> [<https://perma.cc/VJ4N-5MP4>].

122. See Devin Hecht & Leah Mitchell, *Income Taxation of Trusts and Estates: Current Rates and Keeping an Eye to the Future*, EIDE BAILLY, <https://www.eidebailly.com/insights/articles/2018/2/tax-reform-trust-and-estate-key-changes> [<https://perma.cc/9QTA-HF34>].

123. See *Fielding v. Comm'r of Revenue*, 916 N.W.2d 323, 329–31 (Minn. 2018).

124. See *Fiduciary Tax Rates*, MINN. DEP'T OF REVENUE, <https://www.revenue.state.mn.us/fiduciary-tax-rates> [<https://perma.cc/T3X3-RM7Y>].

125. See, e.g., Blake Harris, *The 5 Best Asset Protection States*, BLAKE HARRIS L., <https://blakeharrislaw.com/blog/best-asset-protection-states> [<https://perma.cc/5FKK-HLQW>]; see WEALTH ADVISORS TR. CO., *supra* note 60.

126. See Lauren Perez, *9 States with No Income Tax*, SMART ASSET (Sept. 12, 2023), <https://smartasset.com/taxes/states-with-no-income-tax> [<https://perma.cc/8RUH-7ED>].

127. See Jeffrey C. Wolken, *The Delaware Income Tax Advantage for Trusts*, WILMINGTON TR. (2024), <https://www.wilmingtontrust.com/library/article/the-delaware-income-tax-advantage-for-trusts> [<https://perma.cc/45F8-FB4U>].

128. See Jan Ting, *Why do So Many Corporations Choose to Incorporate in Delaware?*, WHYY (Apr. 27, 2011), <https://whyy.org/articles/why-do-so-many-corporations-choose-to-incorporate-in-delaware/> [<https://perma.cc/UW3A-2KW4>].

129. See Charlotte Morabito, *Here's Why More Than 60% of Fortune 500 Companies are*

relatively small population.¹³⁰ Given that there are high population states, Texas and Florida, and medium population states, Washington and Tennessee, that have no income tax but are not considered to be friendly states for trusts,¹³¹ it seems not taxing income does not independently create a thriving trust industry. The advantages of creating a trust in a state that does not tax trusts is obvious, and trust lawyers have taken advantage of that. The absence of a state income tax seems to be a necessary condition, but it is not sufficient by itself to create a thriving trust industry within the state.

ii. Settlor Sovereignty

The typical way a trust is formed is when one party, a settlor, gives an asset to a second party, a trustee, for the benefit of a third party, a beneficiary. The asset is held in the trust under the control of the trustee. This can be a very powerful tool as trusts can provide a shield from creditors and can provide tax benefits.¹³² However, this arrangement comes with drawbacks, as the settlor loses some control over the asset. The trust document provides guidance for trustees, and it is the trustees' responsibility to ensure that the trust document is followed. Settlers can make their wishes known by putting them in the terms of the trust, but it can be hard to foresee every situation. Adding additional instructions also brings further complexity and limits the trustee in the actions they can and cannot take. With the rise of dynasty trusts, control became an even greater issue, and states created innovative solutions to take power away from the trustee and give it back to the trust's settlor. South Dakota already gave broad powers to the settlor statutorily,¹³³ but it further expanded settlor control by

Incorporated in Delaware, CNBC (Mar. 13, 2023, 8:00 AM), <https://www.cnbc.com/2023/03/13/why-more-than-60percent-of-fortune-500-companies-incorporated-in-delaware.html> [<https://perma.cc/Y38U-3ZBL>].

130. See *US States – Ranked by Population 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/states> [<https://perma.cc/2QZS-VLY9>] (noting that Wyoming, Alaska, South Dakota, and Delaware are among the six lowest population states).

131. See *id.*

132. See Malcolm Tatum, *What are the Tax Benefits of Trusts?*, SMART CAP. MIND (May 16, 2024), <https://www.smartcapitalmind.com/what-are-the-tax-benefits-of-trusts.htm> [<https://perma.cc/G4J9-WMN6>].

133. See S.D. CODIFIED LAWS § 55-4-30 (2024).

enacting “directed trust”¹³⁴ and “trust protector”¹³⁵ statutes.

In 1997, South Dakota became the second state, to enact a “directed trust” statute.¹³⁶ Directed trust statutes allow trust settlors to appoint a trust advisor or a committee that can direct the trustee on investment decisions. Trustees are often trusted partners such as a family friend, a lawyer, or banker that helped the settlor create the trust. The trustee’s primary responsibility is to act as custodian of the assets. The person best suited to act as trustee may not be an expert in investment strategy. Having the ability to appoint an investment advisor gives settlors the peace of mind that their money will be well taken care of and creates additional flexibility when it comes to investment strategy. Perpetual investments like endowments or dynasty trusts, have a different risk profile and cash management needs than an individual. As a result, a dynasty trust’s investment strategy may look more like a university endowment or a pension fund than a typical person’s brokerage account. Additionally, the assets in the trust are often derived from a family-owned business or other special investment that the typical advisor is not well suited to manage.¹³⁷

In addition to the Trust Task Force and the directed trust statute, 1997 brought the nation’s first trust protector statute to South Dakota.¹³⁸ A trust protector is generally an individual or committee that is given certain powers over the trust by statute and the terms of the trust.¹³⁹ A trust protector does not act like an administrator, but rather has powers such as adding or removing trustees, altering or terminating the trust itself, and changing the situs or governing law of the trust.¹⁴⁰

When combined, the directed trust and trust protector statutes allow

134. See S.D. CODIFIED LAWS § 55-1B-1.1 (2024).

135. See Goetzinger, *supra* note 88, at 359.

136. Compare DEL. CODE ANN. tit. 12, §3313(b) (West 2024) (Westlaw through ch. 524 of the 152d Gen. Assemb.) with S.D. CODIFIED LAWS §§ 55-1B-2(1), 55-1B-5 (2024) (noting Delaware was the first state to enact a directed trust statute in 1994).

137. See J.P.MORGAN OUTSOURCED CHIEF INV. OFF., THE ENDOWMENT APPROACH: AN INVESTING MINDSET 3 (2023), https://assets.jpmprivatebank.com/content/dam/jpm-pb-aem/global/en/documents/JPMorgan-OCIO-The-endowment-approach-An-investing-mindset_ADA_vF.pdf [<https://perma.cc/VQN7-3HNX>].

138. See S.D. CODIFIED LAWS § 55-1B-6 (2024); see *Directed Trusts*, S.D. TR. CO., <https://sdtrustco.com/directed-trusts/> [<https://perma.cc/R3EB-XYJE>].

139. See Troy Werner, *Trust Protector: What It Is and Why Every Trust Should Have One*, THE WERNER LAW FIRM (July 16, 2020), <https://wernerlawca.com/trust-protector-what-why-every-trust-should-have-one/> [<https://perma.cc/QC5Y-9MXX>].

140. See *id.*

settlor to take back some of the traditional powers of the trustee. Trustees are left in an administrative role in which they prepare and sign tax returns, establish bank accounts, make distributions, and more. The ability for a settlor to maintain control over the trust is especially important when it is paired with a dynasty trust. Since dynasty trusts involve decades long time horizons—decisions such as choice of investment can significantly alter the ability of the trust to pay benefits over time. The ability for a settlor to maintain some control over the trust, ensures that the trust continues to achieve the goals of the settlor throughout its existence.

iii. Complete Privacy

Another reason that the world's wealthiest individuals continue to choose South Dakota is the state's privacy laws. South Dakota allows for the complete seal of all documents in court proceedings.¹⁴¹ As noted in *Trust and Estates Magazine*, "South Dakota has the best trust privacy laws."¹⁴² It is easy to see why this privacy would be attractive, especially in a post-FATCA world. One of the attractive features of many offshore jurisdictions was complete trust privacy, but FATCA and the CRS have done away with offshore privacy protections. Wealthy individuals worldwide can still put their money into a South Dakota trust and not have to worry about that information being shared or having it exposed during litigation. If offshore jurisdictions can no longer offer complete privacy, then trust jurisdictions must compete for assets in other areas. By leveling the playing field in privacy, the stability of the U.S. and its financial markets became more attractive to potential trust settlors. However, South Dakota's privacy statutes are one area in which the goals of the state and trust settlors do not necessarily align with national and international interests.

iv. Institutional Framework

While the first three explanations for South Dakota's success are valid, they are not completely unique to the state. South Dakota is certainly not

141. See S.D. CODIFIED LAWS § 21-22-28 (2024).

142. Daniel G. Worthington & Mark Merric, *Which Trust Situs is Best in 2022?*, WEALTH MGMT. (Dec. 17, 2021), <https://www.bridgefordtrust.com/wp-content/uploads/2022/01/Trusts-and-Estates-Magazine-Which-Trust-Situs-is-Best-in-2022.pdf> [<https://perma.cc/DB4F-QG9Q>].

the only state without an income tax. While South Dakota was an early adopter of directed trust and trust protector statutes, most states have followed along and enacted similar laws. So, what best explains why South Dakota seems to have such a dominant position in the trust industry compared to other states that frequently make best trust state lists? South Dakota is unique because of its institutional framework that ensures the state remains atop a competitive industry. Similar to the “Delaware System” in corporate law,¹⁴³ South Dakota’s preeminence in trust law is more than a function of having favorable laws. First, the Trust Task Force ensures that South Dakota’s trust laws are always at the forefront of the doctrine and allows for coordination among interested parties. Second, South Dakota’s successful financial industry and the number of trust companies operating within the state has created a professional network of experienced operators that provide value beyond the written laws.

a. Trust Task Force

South Dakota has not been the first state to innovate in every instance, but it always moves quickly to ensure the state receives first-mover advantages. The driving force behind this is the Trust Task Force. The Trust Task Force has no formal powers, but it is charged with reviewing the state’s trusts laws and making recommendations to the governor.¹⁴⁴ Since its inception, the Trust Task Force has been staffed by key players in the state’s trust industry.¹⁴⁵ In a state like South Dakota—which has a low-paid, part time legislature,¹⁴⁶ and is dominated by one political party¹⁴⁷—the governor has an outsized influence on legislation. This has generally meant that the recommendations made by the Trust Task Force have been broadly accepted

143. Rolin P. Bissell, *The Race to the Top’ in State Corporate Law: The Delaware Model*, ANDREWS SEC. LITIG. & REG. REP., Dec. 29, 2004, at 3.

144. See S.D. Exec. Order No. 2017-08 (2017).

145. See Mercer, *supra* note 67 (noting that the Trust Task Force includes the chair of the State Banking Commission, a retired South Dakota Supreme Court justice, and a prominent businessman, among others).

146. See *Full- and Part-Time Legislatures*, NAT’L CONF. OF STATE LEGIS., <https://www.ncsl.org/about-state-legislatures/full-and-part-time-legislatures> [<https://perma.cc/RK5U-PPAM>].

147. See *Former Governors — South Dakota*, NAT’L GOVERNORS ASS’N, <https://www.nga.org/former-governors/south-dakota/> [<https://perma.cc/SPX8-VUKS>] (noting South Dakota has had a Republican governor for the past forty-four years).

by the legislature.¹⁴⁸ This direct ability to influence what laws are passed has allowed South Dakota to continually update its laws to stay current in an evolving area of law. Subsequently, this allows South Dakota to remain at the top of the rankings of trust jurisdictions. It also gives potential settlors the confidence that their money will be safe in the state, which is especially important given the long-time horizon that dynasty trusts are operating with.

b. Trust Companies

South Dakota had 108 chartered trust companies at the end of 2021.¹⁴⁹ Not every state reports the number of trust companies operating in the state, but this appears to be the most trust companies of any state in the U.S.¹⁵⁰ The large number of trust companies operating in South Dakota creates a competitive environment which in turn creates the incentive to offer more services at a lower price. These companies employ roughly 500 people in South Dakota,¹⁵¹ creating a level of expertise in the state that compliments its friendly laws. South Dakota's financial industry also provides a foundation of support that allows trustees and trust companies to provide additional support such as accounting or investment services to trusts. Many trust companies in South Dakota are full service, meaning that in addition to administering trusts—they provide investment, tax, and other financial services.¹⁵² South Dakota also has the second highest concentration of accountants and auditors in the country,¹⁵³ which allows trust companies to hire from a wide range of financial backgrounds and experience levels.

148. See Mercer, *supra* note 67.

149. See S.D. DEP'T OF LAB. & REGUL., *supra* note 85, at 11.

150. See, e.g., KALENA THOMHAVE & CHUCK COLLINS, INST. FOR POL'Y STUD., BILLIONAIRE ENABLER STATES 10–11 (2022), https://ips-dc.org/wp-content/uploads/2022/09/IPS-Billionaire-Enabler-States.pdf?utm_source=pocket_list [<https://perma.cc/2B9U-AVL3>] (listing the number of trust companies for various states and notes that Nevada does not report this information).

151. See Lee Strubinger, *The Decades-long Push for South Dakota to Remain a Top Jurisdiction for Trust Industry*, S.D. PUB. BROAD. (Jan. 25, 2018, 8:25 AM), <https://listen.sdpb.org/politics/2018-01-25/the-decades-long-push-for-south-dakota-to-remain-a-top-jurisdiction-for-trust-industry> [<https://perma.cc/K3ZX-J67D>].

152. See DORSEY & WHITNEY TR. CO., <https://dorseytrust.com/services/service-list/> [<https://perma.cc/Z78S-PPQF>]; see also *Trust Administration Services*, STERLING TRUSTEES, <https://sterlingtrustees.com/services/trust-administration-services/> [<https://perma.cc/EP4M-75EQ>].

153. See *Occupational Employment and Wages, May 2023: 13-2011 Accountants and Auditors*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/oes/current/oes132011.htm> [<https://perma.cc/WX86-ZBR8>].

This overall level of financial expertise and experience with trusts is not just an advantage by itself, it is also the key element that makes the state's other advantages work. For example, to take advantage of South Dakota's lack of income tax, the trust's situs (or state with primary jurisdiction)¹⁵⁴ would need to be in South Dakota. For many states, the situs of a trust is determined by which state the trustee resides.¹⁵⁵ This can create tension for the trust settlor as their desire for the trust to not be taxed at the state level can conflict with their desire to have a trustee that the settlor can rely on and knows will be competent to handle the required administration. South Dakota's high level of expertise in trust administration gives prospective trust settlors the confidence that their trusts will be taken care of at the highest level. Without this high level of confidence, outside investors would likely be hesitant to lock their money up in the state. Instead, the high level of expertise in South Dakota has created a virtuous cycle. As the amount of trust assets in the state grows, trust companies hire more employees, and these new employees become experts in their own right. This expertise trickles up to the Trust Task Force which in turn acts to make South Dakota's trust laws more favorable. This attracts more and more assets into the state continuing the cycle. This basic dynamic has been the engine of growth for South Dakota's trust industry over the past few decades as the state has gobbled up more and more trust assets from outsiders. South Dakota has arguably become the dominant player in the industry and shows no signs of slowing down, but what effect has winning the competition for trust assets had on the state and on the nation as a whole?

II. JURISDICTIONAL COMPETITION

Justice Brandeis famously called states the "laboratories" of democracy because each individual state is free to experiment with policy and governance.¹⁵⁶ Given that trusts are extremely mobile, and trust settlors have the financial resources to shop around, it seems natural that the industry would be ripe for competition. South Dakota was not alone in its attempt to

154. See Mira Fine, *Simplify Asset Transfers and Reduce Associated Taxes with Trust Situs*, MOSS ADAMS (July 29, 2020), <https://www.mossadams.com/articles/2020/07/trust-situs-benefits-for-trustees> [<https://perma.cc/86ZK-7DSZ>] (“[S]itus is a legal term that means the state whose courts have primary jurisdiction over a trust.”).

155. See *id.*

156. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

seize control of the trust industry; its efforts were just quicker and arguably better than other states. Once South Dakota began to act, other states quickly followed its lead. When Delaware eliminated its RAP,¹⁵⁷ it specifically mentioned in its statute that South Dakota and other states that had previously eliminated rule.¹⁵⁸ As noted in *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Texas*, “[b]etween 1997 and 2000, Alaska, Arizona, Illinois, Maine, Maryland, New Jersey, Ohio, and Rhode Island authorized perpetual trusts. By late 2005,” Colorado, Florida, Missouri, Nebraska, Nevada, New Hampshire, Utah, Virginia, and Wyoming “had followed suit.”¹⁵⁹

When jurisdictional competition over the trust industry began to take off, no state had a clear advantage. As one commentator put it, “the field of trust law remains wide open; no jurisdiction has yet obtained the dominant position and first-mover advantages.”¹⁶⁰ Now that South Dakota has positioned itself atop the industry, the question has become whether South Dakota’s interests are aligned with those of the U.S. as a whole or whether the competition in the trust industry made all parties worse off.¹⁶¹ After the release of the Pandora Papers, many were quick to criticize South Dakota¹⁶² and argue that the U.S. is worse off because of the competition in the trust industry. Although aspects of South Dakota’s emergence as the world’s premier trust jurisdiction are troubling, it may not necessarily be the case that the state is engaged in a race to the bottom.

This Note is not making a normative judgment, but rather attempts to provide a framework in which to analyze competition in the trust industry. Jurisdictional competition can create good incentives and increase the collective welfare by creating jobs and increasing tax revenues. However, the trust industry may be particularly ill-suited for competition. Allowing one state to dominate the trust market may not align with national and international priorities. In making that determination, there are a number of

157. See 70 Del. Laws 428 (1995).

158. See Sitkoff & Schanzenbach, *supra* note 61, at 376 (quoting H.B. 245, 138th Gen. Assemb., Reg. Sess. (Del. 1995)) (“Several states, including Idaho, Wisconsin and South Dakota, have abolished altogether their rules against perpetuities, which has given those jurisdictions a competitive advantage over Delaware in attracting assets held in trusts created for estate planning purposes.”).

159. *Id.*

160. Sterk, *supra* note 13, at 1039.

161. See *id.* at 1061.

162. See Vanatta, *supra* note 43.

considerations to think through such as: (1) what do states like South Dakota get out of their relationship with the trust industry, (2) does the U.S. as a whole benefit from keeping trusts onshore and how does that align with its stated goals, and (3) does interstate competition make the trust industry more efficient and provide benefits to consumers, namely the settlors and beneficiaries of trusts?

A. *The Benefit to South Dakota*

The previous section of this Note gave a lengthy history of how South Dakota became the best state for trusts. It is striking how accidental that history is, and only creates further questions about why the state has continued down the path of enacting friendly laws. The simplest explanation is that South Dakota benefits from its arrangement with the trust industry. Having a large amount of trust assets located within the state results in the creation of high paying jobs and generates economic growth and tax revenue. South Dakota does not report how many people work in the trust industry, but unofficial estimates put that number at more than 500.¹⁶³ This may not seem like a large figure, but the state as a whole only has roughly 474,500 people employed,¹⁶⁴ even though the unemployment rate in the state is incredibly low at 2%.¹⁶⁵ Additionally, these jobs pay well. Estimates show that the average trust officer makes almost \$90,000 annually.¹⁶⁶ In a low-cost of living state like South Dakota,¹⁶⁷ jobs in the trust industry are a path to prosperity. It is notable that the trust industry employs relatively few people compared to the amount of assets it manages. This discrepancy may be the reason why states that rank among the most favorable for trusts,¹⁶⁸ like South Dakota, are among the least populated in the U.S.

South Dakota clearly benefits from its arrangement with the trust

163. See Mercer, *supra* note 64.

164. See *Labor Market Information Center: Overview of the Current Labor Market*, S.D. DEP'T OF LAB. & REGUL., <https://dlr.sd.gov/lmic/overview.aspx> [<https://perma.cc/2HA6-ZFQF>].

165. See *id.*

166. See *Trust Officer Salary in South Dakota*, ZIP RECRUITER, <https://www.ziprecruiter.com/Salaries/Trust-Officer-Salary--in-South-Dakota> [<https://perma.cc/VT4A-643V>].

167. See *Cost of Living*, U.S. NEWS, <https://www.usnews.com/news/best-states/rankings/opportunity/affordability/cost-living> [<https://perma.cc/NSM4-8GU2>].

168. See Dan Flanagan, *Best States for Trusts: How to Choose One That's 'Trust-Worthy,'* KIPLINGER (Oct. 18, 2022), <https://www.kiplinger.com/retirement/best-states-for-trusts-how-to-choose-one-thats-trust-worthy> [<https://perma.cc/YK49-XZ6C>].

industry, and if there are downsides to this close relationship, it does not appear that they are being borne by citizens of the state. South Dakota is one of the most conservative states in the country with Republicans holding the governor's mansion for the past forty-four years.¹⁶⁹ Voters in the state are clearly happy with the low-tax, small government philosophy practiced by the state's politicians. The lack of an income tax has not resulted in any budget issues in the state. South Dakota's pension system is fully funded¹⁷⁰ and the state has had to open a second "rainy day" fund because of its frequent budget surpluses.¹⁷¹ South Dakota has chosen to implement a certain philosophy, and all the evidence suggests that it has been successful for the state.

B. The Stated Goals of the U.S. v. the Reality

Whether the U.S. has benefited from becoming a global tax haven is a separate question from whether it is hypocritical. The answer to the latter question is clearly yes. Over the past few years, politicians in the U.S. have proposed a variety of measures intended to combat income inequality and prevent the super-rich from escaping a heavy tax burden. Proposals have ranged from increasing the estate tax¹⁷² to eliminating stepped up basis, which allows beneficiaries of an estate to adjust their cost basis in assets to the fair market value at the date of the previous owner's death.¹⁷³ Additionally, the Biden administration has reached an agreement on a global corporate minimum tax¹⁷⁴ and has pledged to crack down on

169. See NAT'L GOVERNORS ASS'N, *supra* note 147; see generally Gov. Kristi Noem, NAT'L GOVERNORS ASS'N, <https://www.nga.org/governor/kristi-noem/> [https://perma.cc/E7MN-KWH4].

170. See S.D. RETIREMENT SYS., ANNUAL REPORT OF THE FUNDED STATUS OF THE SOUTH DAKOTA RETIREMENT SYSTEM TO THE GOVERNOR AND LEGISLATURE OF THE STATE OF SOUTH DAKOTA 2 (2023), <https://mylrc.sdlegislature.gov/api/Documents/Attachment/242834.pdf>. [https://perma.cc/3CTM-7KPP].

171. See Bob Mercer, *SD Budget Reserves Flood Rainy-day Accounts*, KELOLAND (July 27, 2022, 2:24 PM), <https://www.keloland.com/news/capitol-news-bureau/sd-budget-reserves-flood-rainy-day-accounts/> [https://perma.cc/J7K9-GUP7].

172. See, e.g., Bernie Sanders, *Making the Rich Pay Their Fair Share in Taxes*, BERNIE SANDERS, <https://berniesanders.com/issues/tax-increases-for-the-rich/> [https://perma.cc/7JSG-7SRS] (Senator Sanders has proposed the 99.8 Percent Act which would raise tax rates on inheritances).

173. See, e.g., Cheryl Winokur Munk, *The Biden Tax Proposals that Could Hit Baby Boomer, Family Businesses*, CNBC (Apr. 29, 2023, 9:51 AM), <https://www.cnbc.com/2023/04/29/the-biden-tax-proposals-that-could-hit-baby-boomer-family-businesses.html> [https://perma.cc/3LXA-W65Y].

174. See Jeff Stein & Seung Min Kim, *Biden, Other G-20 World Leaders Formally Endorse Groundbreaking Global Corporate Minimum Tax*, WASH. POST (2021), <https://www.washingtonpost.com>.

offshore financial secrecy. The contrast of these high-minded proposals with the reality of South Dakota gobbling up an ever-increasing amount of trust assets is stark.

This contrast raises an important question, do the goals of the U.S. as a whole and individual states such as South Dakota align, or is there an irreconcilable tension between the two? It is easy to question why a state that has just 0.28%¹⁷⁵ of the American population and a part-time legislature¹⁷⁶ should be able to dictate the financial policy for the entire nation, but it is harder to provide a solution. That problem is further compounded when considering that the result of any solution may just be a game of financial whack-a-mole, in which the world's wealthiest stay one-step ahead of financial regulators. There is a lot of truth to the criticisms of South Dakota's trust industry, but it may also be true that an uneasy equilibrium has been reached. There is at least some regulation of the industry and unlike the Cayman Islands, South Dakota is subject to the jurisdiction of the U.S. and its taxing authority.

C. The Role of Consumers in the Trust Industry

There may be an irreconcilable difference between the goals of trust friendly states like South Dakota and the goals of the U.S. as a whole. One thing that is often left out in that debate is any discussion of whether competition in the trust industry has benefited consumers. Much of the discussion over jurisdictional competition in corporate law has focused on whether that competition increased shareholder value.¹⁷⁷ Leading scholars have argued¹⁷⁸ that the competition created by Delaware's actions, has created "optimal legal systems" whose end result equates to better economic outcomes. Critics of South Dakota argue that the state is "enabling"

com/us-policy/2021/10/30/biden-g20-global-minimum-tax/ [https://perma.cc/QX3Z-ZXK8].

175. See *US States — Ranked by Population 2024*, WORLD POPULATION REV. (2024), <https://worldpopulationreview.com/states> [https://perma.cc/8GTP-7ZUC].

176. See *Legislative Branch*, S.D. SEC'Y OF STATE, <https://sdsos.gov/general-information/about-state-south-dakota/summary-south-dakota-state-government/legislative-branch.aspx> [https://perma.cc/7553-9QSU].

177. See, e.g., Robert Daines, *Does Delaware Law Improve Firm Value?*, 62 J. FIN. ECON. 525, 529-49 (2001); Ralph K. Winter Jr., *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251, 258 (1977).

178. See Winter, *supra* note 177, at 290.

billionaires¹⁷⁹ and speculate on the negative effects of South Dakota's trust laws.¹⁸⁰ What is missing from the criticisms, beyond generalized hand waving about tax benefits, is any examination of the benefits that trust settlors receive from locating their trusts in South Dakota. These benefits can be separated into two categories: the general benefits from the climate created by South Dakota and the specific benefits created by South Dakota's trust laws.

Both settlors and beneficiaries of trusts benefit from being in South Dakota, a low-tax state that has built up an infrastructure dedicated to serving trusts. It makes sense that trust consumers would want to avoid additional taxation. This general desire to avoid unnecessary expenditures from the trust is the reason why having no income tax is a necessary, but not sufficient condition of having a successful trust industry. Given that trusts are in many ways fictitious creations existing only on paper, it can hardly be said that any one state has the right to the tax revenue generated by them. Consumers also benefit from the expertise and efficiencies created by having a large number of workers concentrated in a small geographic area.

Agglomeration effects,¹⁸¹ where companies and talent cluster together in a geographic area, are a well-studied area of economics—and the concentration of trust companies in South Dakota fits the definition perfectly. Since most of the state's trust companies are in Sioux Falls, there would naturally be some spillover of knowledge between firms. Trust consumers can pick between a wide variety of companies and benefit from the competition, as firms must either provide a higher level of services or reduce prices to maintain their competitive edge.

Others have noted the specific provisions in South Dakota's trust laws that are attractive to settlors and laid out exactly how settlors benefit from these laws.¹⁸² So this Note takes that as a given. South Dakota's law gives an unusual amount of control to settlors—as well as the ability to modify trusts and retain complete privacy. These provisions are undoubtedly attractive to settlors, but there does seem to be a tension between how

179. See, e.g., THOMHAVE & COLLINS, *supra* note 150, at 10–11 (2022).

180. See, e.g., Bullough, *supra* note 8.

181. See KATHLEEN BOLTER & JIM ROBNEY, W.E. UPJOHN INST. FOR EMP. RSCH., AGGLOMERATION ECONOMIES: A LITERATURE REVIEW 4 (2020), <https://research.upjohn.org/cgi/viewcontent.cgi?article=1256&context=reports> [<https://perma.cc/LHT8-E8QF>].

182. See, e.g., King & McDowell, *supra* note 17, at 271.

settlers benefit from these laws and how beneficiaries benefit from them. Beneficiaries of the trust may be subject to strict rules imposed by the settlor. The issue of dead hand control is exacerbated by the elimination of the RAP. The result of this is that any discussion of how consumers have benefitted from jurisdictional competition in the trust industry must consider how the laws seem to benefit settlers at the expense of beneficiaries.

CONCLUSION

South Dakota has quickly become one of the world's premier financial destinations and the publication of the Pandora Papers has brought both attention and criticism to the state. As the implications of South Dakota's rise to the top of the trust industry become clearer, the state's favorable trust laws will come under increasing scrutiny. This Note can help future commentators by providing an update to the question of jurisdictional competition in the trust industry. This Note shows that South Dakota has become the top jurisdiction for trusts in the U.S. and is becoming an increasingly important piece of the global financial system. During the past several years, the U.S. has led the effort to crack down on financial improprieties and tax avoidance. At the same time, it has allowed a tax haven to blossom in the heartland of the country.

As commentators begin to unpack the implications of money shifting from places like the Cayman Islands to South Dakota, it is important to understand how South Dakota got to where it is. From its initial forays in the credit card industry to the modern day, South Dakota has been on the forefront of financial deregulation. It is important to understand South Dakota's history because it shows that oftentimes governments do not understand or appreciate the broader consequences of their actions. The trust industry in South Dakota was born on accident through the state's attempts to resolve its economic troubles. Now that South Dakota's laws affect more than those beyond its borders, it is important to understand how the goals of the state align with those of the U.S. and the world more broadly. By providing a framework for thinking through the costs and benefits for South Dakota, the U.S., and consumers in the trust industry—this Note can serve as a guidepost for future discussion of the trust industry.