

CONTENTS

Preface xi

1 Introduction: Wilson's Gift 1

PART I. THE FRANCHISE 21

2 Enjoy Delaware® 23

3 The Delaware Loophole 38

4 Delaware Has Our Money 57

5 Delaware Is Everywhere 89

PART II. HOW THE DELAWARE WAY BECAME THE DELAWARE WAY 115

6 Colonial Origins 117

7 A Very Delawarean Lynching 137

PART III. POLITICS AND REFORM 167

8 The Process: How the Corporate Code Is Made 169

9 Don't Screw It Up 186

10 Uncle Dupie 201

11 In Good Standing 213

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viii CONTENTS

12 Conclusion: No More Hiding in Plain Sight 237

Acknowledgments 243

Notes 245

Index 273

1

Introduction

WILSON'S GIFT

John Cassara first became aware that Delaware was a problem around the turn of the millennium.

Commanding, chiseled, and intense, with a thatch of graying hair, Cassara spent twenty-six years investigating international drug traffickers, arms dealers, and terrorist cells for the US government.

Cassara began his career as a CIA operative in the late 1970s, recruiting spies in Angola and writing reports that often found their way into President Ronald Reagan's daily CIA briefing. He went on to work for the Secret Service and then the US Customs Service. He went undercover to expose arms dealers trying to break the US trade embargo on apartheid South Africa. He worked with the Italian authorities to investigate money laundering by the Mafia. He worked in the Middle East, probing cases of fraud, intellectual property rights, smuggling, and high-tech crimes.

The United States at that time was a global leader in countering money laundering. In 1986, it became the first country in the world to make money laundering a crime, enacting a powerful law with tough penalties and extraterritorial reach and authorizing civil penalty lawsuits by the government.

These days, Cassara is widely recognized as an expert on the subject. He's one of very few people to have been both an intelligence agent for the Secret Service and a US Treasury special agent. He's testified to a string of congressional committees on complex issues such as alternative remittance systems and trade-based money laundering.

In the late 1990s, he was working back in Washington at the US Treasury, in the Financial Crimes Enforcement Network (FinCEN), a somewhat obscure department that had been established a decade earlier to help detect, investigate, and prosecute domestic and international money laundering and other financial crimes. Cassara toiled away in FinCEN's small international division, tasked with cooperating with similar agencies in other countries to investigate financial wrongdoing.

In 1995, the United States joined the Egmont Group, an alliance of these agencies from 152 countries that have pledged to share their expertise and financial intelligence to combat money laundering and terrorist financing. The group took its name from the location of its founding meeting: the Egmont Arenberg Palace, an elegant sixteenth-century mansion in Brussels that hosted the fencing events for the 1920 Summer Olympics. Today the palace houses Belgium's Ministry of Foreign Affairs.

FinCEN, which employs a few hundred people, takes in financial intelligence such as currency transaction reports, analyzes that information, and distributes it for law enforcement purposes. The agency shares the information with its colleagues in the Treasury, with other US government departments such as the FBI and the Drug Enforcement Agency, and with states and municipal authorities.

As part of its commitment as an Egmont Group member, FinCEN also shares information with foreign governments, if it's working on joint investigations with them. Cassara recalls fielding calls from his law enforcement counterparts in other countries who were on the trail of suspects in a terrorist investigation or a money-laundering probe. When the trail led to the United States, the foreign agency would ask Cassara if FinCEN could supply information to help their investigation. Cassara wanted to help, but often he couldn't. There was no information to be had.

Cassara knew there was no point in even asking. “Every time that happened, we would have to say, ‘There is nothing we can do,’” he recalls. “These weren’t isolated incidents. This happened repeatedly, on multiple cases. There were so many that I can’t even remember which the first one was, the first time I ever heard about it.”¹

One dead end that Cassara and his colleagues frequently ran up against was the US state of Delaware. The process of creating a company in Delaware didn’t require any information to be collected about the real, individual owners of companies—what lawyers call the “beneficial owners.” Even if Cassara had secured permission from Delaware authorities to pursue the investigation, he would not have been able to find any useful information.

His department would go through the motions. They knew they couldn’t get anything out of Delaware, but they would search their databases to see what they could find—information in the public domain or on commercial databases. It was rarely sufficient or particularly useful, and it made Cassara feel both irritated and embarrassed. “We’d write it up and send it back to them saying, ‘We’re sorry, we can’t get anything out of Delaware. We can’t answer your specific question, but we do have a little bit of additional information.’ We would always try to give them something, but far too often, the answer was, ‘There’s nothing in the database. We can’t assist.’ They were frustrated and we were frustrated.”

After Cassara left the federal government in 2005 he went around the world, training financial crime investigators in dozens of countries about money laundering and terrorist financing. During these presentations, Cassara would share his expertise and show the officials how to “follow the money.” When there was a break, one of the local officials would invariably approach him, Cassara recalls. “They’d come up to me and say, ‘Mr. John, we’re working on a money-laundering case in my country, and the trail goes to this place in the United States called Delaware. Have you heard of it?’ I’d nod, and they’d say, ‘Can you help us follow the money?’ It was extremely embarrassing. I was going out there telling them how to follow the money trail, kind of criticizing what they’re not doing, and then they’d just throw it right back in my face, very politely of

course. It underlined how hypocritical it was of the United States to preach to others when we didn't clean up our own mess."

Eventually, Cassara gave vent to his frustrations in a blistering op-ed in the *New York Times* in 2013. Delaware and a few other states allowed companies to wrap themselves in multiple cloaks of anonymity, Cassara argued, and had "become nearly synonymous with underground financing, tax evasion and other bad deeds facilitated by anonymous shell companies."²

That wasn't just speculation.

The first thing you notice is the lighthouses. You can't miss them on the way into Rehoboth Beach, a community on the Atlantic Coast in southern Delaware, about a 100-mile drive down the coast from Wilmington. The lighthouses are decorative rather than cautionary, adorning shopping malls and traffic signs. Rehoboth Beach is a typical seaside town—heaving in the summer, dead in the winter. It's about one square mile, with lots of trees almost all the way to the shore. Its main street is dotted with restaurants, bars, and curiosity shops selling shells and assorted maritime tchatchkes.³

The 1,400 or so permanent residents of Rehoboth Beach are a somewhat mixed bunch. Not racially—the town is overwhelmingly white—but they do include retired Midwesterners, assorted beach bums and hippies, middle-aged gay couples, and Tom Larson, imperial wizard of a Ku Klux Klan affiliate organization called the East Coast Knights of the True Invisible Empire.⁴

The town is particularly popular with the politicians, their staff, and lobbyists who work on Capitol Hill, roughly two hours away if you don't get stuck in a weekend traffic jam. In 2001, top Republican lobbyists Jack Abramoff and Michael Scanlon established what was billed to clients as a "premiere international think tank" with the generically pompous title the American International Center. Scanlon asked two of his childhood friends to run it: Brian Mann, a yoga instructor, and David Grosh, a lifeguard. They operated out of a small house at 53 Baltimore Avenue, across the street from the yoga studio where Mann worked and two blocks from the beach.

Neither Mann nor Grosh was qualified to run a think tank. In a 2005 Senate hearing, Grosh recalled his initial conversation with Scanlon, who he said had asked him, “Do you want to be head of an international corporation?” It was a proposal Grosh said was “a hard one to turn down,” particularly after “I asked him what I had to do, and he said ‘Nothing.’ So that sounded pretty good to me.”⁵

The think tank on the beach was part of Abramoff and Scanlon’s scheme to steal millions from the Native American tribes who were their clients. This involved tribes paying money to the American International Center and other shell companies, which, in turn, paid money to Abramoff and Scanlon. The American International Center paid Abramoff about \$1.7 million in lobbying fees from 2001 through 2003. Grosh got free accommodation in the beach house and \$3,000 in cash. Mann did better, scoring four lavish trips to the Caribbean island of St. Barts, paid for by Scanlon. Meanwhile, Abramoff and Scanlon each bought luxury real estate in Rehoboth Beach.

In 2005, Scanlon agreed to testify against Abramoff, pleaded guilty, and was ordered to repay \$20 million to his former clients. Abramoff was found guilty the following year and sentenced to six years in federal prison. In 2010, Abramoff’s story was made into a feature film, *Casino Jack*. Barry Pepper played Scanlon. Kevin Spacey played Abramoff.

The scandal was merely one in a string of international criminal and otherwise dubious activities—some illegal, some strictly legal but less than ethical—linked to Delaware in the first two decades of the twenty-first century.

There were US political scandals. In 2018, Paul Manafort, the flamboyant and vain former campaign chairman for ex-president Donald Trump, was convicted on eight counts of hiding millions of dollars in foreign accounts to evade taxes and repeatedly lying to banks to obtain multimillion-dollar loans. Manafort’s scheme was conducted using sixteen companies, nine of them registered in Delaware. The same year, Michael Cohen, Trump’s bungling former lawyer and fixer, was convicted of campaign finance violations, tax fraud, and bank fraud. Cohen had become a household name when he was revealed to have tried to pay adult movie star Stormy

Daniels \$130,000 to keep quiet about an alleged affair with Trump, via a limited liability company he formed in Delaware. Cohen used another Delaware LLC to pay \$120,000 to former Playboy Playmate Karen McDougal to buy her silence.

There were domestic and international corporate scandals.⁶ Jeffrey Skilling, Kenneth Lay, and Andrew Fastow, the most senior executives at Enron, perpetrated one of the biggest frauds in US corporate history using a sprawling, twenty-three-state network of two thousand corporate subsidiaries, 685 of which were registered in Delaware. In 2016, LAN, the Chilean airline, was found guilty of concealing bribes to Argentine labor union bosses by using a Delaware LLC.

There were cases of international kleptocracy and dirty-dealing. Malaysian officials used eight companies in Delaware to steal billions of dollars of public funds, some of which were used to produce the 2013 Hollywood movie *The Wolf of Wall Street*. Frederick Chiluba, Zambia's second president, siphoned at least \$25 million from the impoverished African country, using a company registered in Delaware to help hide the money. In 2015, the government of the United Arab Emirates looked for hitmen to assassinate its political opponents in nearby Yemen. It hired Spear Operations Group, a company of mercenaries registered in Delaware.

There were cases involving the trafficking of arms, drugs, and people. In 2011, Viktor Bout, an international arms trafficker known as the "Merchant of Death," was convicted of conspiring to kill US citizens and officials, delivering anti-aircraft missiles, and aiding terrorists. He disguised the profits from his weapons sales in part with at least two businesses registered in Delaware. Meanwhile, Serbia's most feared crime bosses, Luka Bojović and Darko Šarić, laundered proceeds from their narcotrafficking empire through two companies registered in Delaware. In 2018, US federal agents raided the homes of the owners of Backpage, a Dutch classified ads website that served as a front for child sex trafficking. The company's US operations were registered in Delaware.

Delaware wasn't the exclusive US home of wrongdoing, domestic or international. Viktor Bout, for example, used ten companies registered in Texas and Florida. Paul Manafort set up companies in

Virginia, Florida, and New York. Frederick Chiluba had a company registered in Virginia.

But often when misconduct was exposed, there was a connection to a company registered in Delaware. What was it that attracted shadowy political operatives, sketchy lawyers, fraudulent lobbyists, hitmen for hire, thieving foreign officials and kleptocratic leaders, arms smugglers, international crime bosses, child sex traffickers, and manipulative corporate managers?

In his last days as New Jersey's governor in the first two months of 1913, president-elect Woodrow Wilson gave Delaware a lasting gift. The previous summer, Wilson had been selected as the Democratic nominee at a highly dramatic convention. The delegates took forty-six ballots to decide on their candidate, the most since the Civil War half a century earlier. The choice of Wilson, who was not at the convention itself but golfing at Seagirt, the governor's summer house on the Jersey shore, was something of a surprise. He had even been on the verge of releasing his supporters to other candidates. But Wilson had gone on to win the election handily that November against a split opposition: the sitting Republican president, William Howard Taft, and former president Theodore Roosevelt, who was running on a Progressive Party ticket.

A big issue in the campaign was how best to regulate America's fast-growing corporations. Candidate Wilson promised to introduce better regulation and inject more competition into American capitalism. Roosevelt taunted him, saying that as governor of New Jersey, he had done nothing to rein in the growing number of corporations there.

This insult stung. Back in 1888, New Jersey had become the first state to allow corporations to own the stock of other companies, a measure that gave birth to "holding" companies with operations in several states.

The US Constitution had left the power to charter corporations in the hands of state legislatures, although from the earliest days of the United States this was in dispute. Alexander Hamilton and Thomas

Jefferson, two prominent members of President George Washington's cabinet, had disagreed about whether the federal government should issue a federal charter to incorporate the Bank of the United States. Hamilton supported the idea and won the argument.

By the nineteenth century, the United States was gripped by fear of the growing power of corporations. Louis Brandeis, the Supreme Court justice, summed up the reasons behind this trepidation:

There was a sense of some insidious menace inherent in large aggregations of capital, particularly when held by corporations. So at first the corporate privilege was granted sparingly; and only when the grant seemed necessary in order to procure for the community some specific benefit otherwise unobtainable. It was denied because of fear. Fear of encroachment upon the liberties and opportunities of the individual. Fear of the subjection of labor to capital. Fear of monopoly. Fear that the absorption of capital by corporations, and their perpetual life, might bring evils similar to those which attended mortmain [transfers of land to the church in perpetuity].⁷

But in the hunt for new sources of state government revenue, New Jersey had brushed aside these concerns and set out to make itself “the happy hunting ground of the large corporation.”⁸ In 1896 it loosened the law further, scrapping limits on the duration, purpose, and size of corporations, allowing them to carry on business anywhere, providing for mergers and acquisitions, and enabling them to change their charters more easily. All this happened without much corresponding increase in regulation.

If New Jersey was explicit in wooing corporations, corporations certainly reciprocated. By 1904, the Garden State was the registered home to the seven largest trusts in the United States, with a combined market capitalization of \$2.5 billion—about \$75 billion in 2021 dollars—as well as half of the United States' smaller trusts.⁹ This process had a huge impact on New Jersey's finances. By 1911, a franchise tax amounted to nearly one-third of the state's revenues.

Delaware and other states watched jealously. “Little Delaware, gangrened with envy at the spectacle of the truck-patchers,

sand-duners, clam-diggers and mosquito wafters of New Jersey getting all the money in the country into her coffers, is determined to get her little tiny, sweet, round, baby hand into the grab-bag of sweet things before it is too late,” observed an 1899 article in the *American Law Review*.¹⁰ Along with a few other states, Delaware copied New Jersey’s legislative lead, winning some business by undercutting New Jersey’s fees, but it could not shake the Garden State’s first-mover advantage.

But the argument that had first flared up between Hamilton and Jefferson resurfaced. In 1898, concerns about corporate power were so pervasive that Congress created a commission to investigate the issue. Four years later, the commission’s final report fretted about the competition for incorporations between the states: “Two or three States have apparently, for the sake of securing a more certain revenue easily collected, bid against each other by offering more liberal inducements to corporations,” the report noted.¹¹ The federal government, it recommended, should consider requiring all corporations engaged in interstate commerce to be licensed and registered with a federal bureau of corporations. At the time, some of America’s industrial titans welcomed the proposal. The leaders of Standard Oil, Federal Steel, the United States Tobacco Company, and American Steel and Wire all praised the idea of federal uniformity as superior to the fragmented patchwork of state variability.

On taking office in September 1901, President Theodore Roosevelt took up the charge. Within seventeen months, he had persuaded Congress to establish the Bureau of Corporations as part of another new federal government agency, the Department of Commerce and Labor. Its first annual report to Congress in 1904 echoed some of the earlier commission’s concerns about the effects of interstate competition for business registrations:

Each State naturally desires, chiefly for the purpose of revenue, to attract incorporation to itself by lax corporation laws. The ground has been cut from under the feet of objectors to such laws by the unanswerable proposition that if incorporators or organizers were not accommodated in the given State they could

incorporate in a more complacent State and easily come back to the first State to do business. The logical result has been an inevitable tendency of State legislation towards the lowest level of lax regulation and of extreme favor toward this special class of incorporators, regardless of the interests of the other classes properly concerned.¹²

The bureau urged Congress to introduce federal licensing or franchising for corporations involved in interstate commerce, but to leave business formation in the hands of the states; it fell short of proposing federal chartering of corporations themselves at the moment of incorporation, which would have meant stripping the states of their power to register businesses. This “modest proposal” was met by industrial companies “with so much favor,” the *Wall Street Journal* noted, but the *New York Times* saw the idea as a Washington power grab, cautioning that “before resorting to the Federal power, the resources of the State power should be more thoroughly examined.”¹³ By 1908 a bill was introduced in Congress proposing a system of voluntary registration for corporations with federal agencies, but with incentives for companies to comply. However, sentiment in the business community had turned against the idea, and the bill was sent for a lingering death in the Senate Judiciary Committee. The following year Roosevelt’s protégé Taft became president and once again took up the issue, proposing a national incorporation law. But while there was still support for the idea in Congress, no specific legislation emerged with any significant support. Taft became more interested in pursuing his predecessor’s antitrust legacy and lost his focus on the incorporation issue.

Wilson’s two principal opponents in the presidential election of 1912, then—Roosevelt and Taft—both had records of trying to assert federal power over the states’ incorporation business. Wilson, a reformer by instinct, had promised to clamp down on New Jersey’s lax incorporation rules in his 1910 run for governor, but when Roosevelt launched a fierce personal attack on him during the campaign for failing to follow through, Wilson had no ready defense. The Democratic presidential contender had also been deeply affected by

meeting Louis Brandeis, an energetic campaigner against powerful corporations and monopolies, in August 1912. Wilson adopted the term “regulated competition” from Brandeis, whom Wilson would later nominate to the Supreme Court. Wilson was even under pressure from within his own state, where lawmakers and citizens were getting increasingly concerned about its reputation. A month before the election, both the Republican and Democratic state conventions included antitrust proposals in their platforms, with Wilson’s own party pledging “an immediate investigation of the method of incorporation pursued in this State under our laws.”¹⁴

In the wake of his November election victory, and with his inauguration scheduled for March, Wilson returned to New Jersey with a reforming zeal. He used his last annual governor’s message of January 1913 to argue for improved regulation:

It is our duty and our present opportunity to amend the statutes of the state . . . to provide some responsible official supervision of the whole process of incorporation and provide, in addition, salutary checks upon unwarranted and fictitious increases of capital and the issuance of securities not based upon actual bona fide valuation. The honesty and soundness of business alike depend upon such safeguards. No legitimate business will be injured or harmfully restricted by them. These are matters which affect the honor and good faith of the state. We should act upon them at once and with clear purpose.¹⁵

State legislators quickly introduced seven bills, dubbed the “Seven Sisters,” to ban holding companies and anticompetitive practices, require official permission for all mergers, restrict the issuing of stock, and combat price-fixing and price discrimination. A howl went up. Richard Lindabury, a lawyer whose clients included John D. Rockefeller, the founder of Standard Oil (and of the University of Chicago, my employer), told the *Newark Evening News* that a strict interpretation of the legislation “would halt all business in New Jersey.”¹⁶ Others fretted about the effects on the state’s finances. “Don’t Kill the Goose,” screamed the headline on an editorial in the *Daily State Gazette*. “Proper regulation of corporations cannot

be reasonably objected to by anybody,” the newspaper noted, “but there seems to be no demand from the people for corporation laws that will drive a great source of revenue from this to some other state.”¹⁷ But Wilson and his supporters were unmoved. The bills were quickly passed, and one of Wilson’s final acts as governor was to sign them into law. Once in Washington, he took up his predecessors’ attempts to extend the federal government’s oversight of corporations, proposing a federal licensing law in 1919 and 1920. Congress demurred. (The echoes of Hamilton and Jefferson’s original disagreement continued to simmer over the coming decades, bubbling up again in the early 1940s in an effort for a federal incorporation law. Calls for increased federal regulation returned in the 1970s but went nowhere.)

Wilson had moved on to a bigger stage, but the *Daily State Gazette*’s warning proved prescient. The number of corporations chartered in New Jersey declined rapidly and state revenues from franchise taxes plummeted, falling by more than \$600,000 between 1913 and 1919.

Thus was Delaware, which had long coveted its neighbor’s position as “the mother of trusts,” reborn as America’s incorporation capital.¹⁸ It had not been an innovator. It had copied New Jersey’s statutes, and only cemented its leading position once New Jersey dropped out of the few-strings-attached incorporation business.

Wilson’s legislation had not even hit its mark. Since they were not retrospective, the laws failed to rein in big trusts. Existing New Jersey-based holding companies, such as US Steel and Standard Oil, were left untouched.

For New Jersey, there was little upside and a great deal of downside. Because of Wilson’s efforts, spurred by campaign-trail barbs from Teddy Roosevelt, the state had thrown away its business-friendly reputation. All the benefits accrued to Delaware, which rapidly took off as the new leading state for incorporation.

By 1919, New Jersey realized what it had done. Its legislature hurriedly repealed the Seven Sisters. But it was too late. New Jersey had actually been losing business since before the legislation was

passed,¹⁹ and the trend had exacerbated so quickly that the state could not win the business back.

Meanwhile, Delaware had learned two important lessons. First, never let internal political debate endanger the incorporation business. In spite of its small size, the state had always been riven by social and political tensions. To this day, its leaders are vigilant and anxious about anything or anyone who might upset its social order or economic position. Second, Delaware learned that its neighbors' loss could be its gain. As we'll see, the First State became a specialist in taking advantage of other states.

Wilson's gift set Delaware on the road to becoming a facilitator of corporate secrecy, a host to money laundering and ill-gotten gains, and a harbor for criminals and tax dodgers.



Most Americans know no more than two things about Delaware:

1. It's where President Joe Biden is from
2. There is a lot of business activity there—they've heard of "Delaware corporations" or companies going to bankruptcy court in Delaware

Actually, many Americans don't even associate Delaware with the second point—only the first. But the two are intimately connected. To get a complete picture of our forty-sixth president, you need to understand where he is from—and that means understanding the industry that has come to underpin the economy of Delaware.

Delaware isn't the sort of place that typically inspires dreams or makes its way onto tourist bucket lists, like San Francisco, New Orleans, or the Grand Canyon (as famously parodied in an iconic scene from the 1992 comedy movie *Wayne's World*).

But even if you've never been there, you probably have many connections to Delaware. Most of us do. Delaware is inescapable. Delaware is everywhere.

If you bought this book (or anything else) on Amazon, you're giving money to a corporation registered in Delaware. If you used Google to find out about the book, you used a service run by a company incorporated in Delaware (as is its parent company, Alphabet). Perhaps you prefer shopping in real stores, so you went to Walmart. That too is incorporated in Delaware. If you're more upscale and went to Whole Foods, it's owned by Amazon, so that takes you back to Delaware. If you used a credit card to make your purchase, your credit card issuer may very well be incorporated in Delaware. If you got there in an Uber, you were generating revenue for a Delaware company. You may well be on Facebook or Twitter, which are also Delaware corporations. If you've saved money in a retirement account, like half of all working Americans, your funds are very likely invested in a range of companies incorporated in Delaware. If you have a student loan, your lender may well be a Delaware corporation. If you have a brokerage account to buy stocks, both your broker and most of the companies whose stock you're buying are likely incorporated in Delaware. Even if you just have a bank account, there's a good chance your bank is incorporated in Delaware. If you've ever given money to a US presidential campaign or a political action committee, it might well have been registered in Delaware. If you've ever bought anyone a gift card and they failed to spend all of it, you may have inadvertently paid into Delaware's public coffers.

To see how connected you are to Delaware, just think of the name of a company you do business with—a company whose stock you own, or the bank where your salary gets paid, or where you regularly shop. Type that name into a search engine (registered in Delaware or otherwise) and add “Edgar” and “10K.” If it's a public company, you should easily find a document that the corporation is required to file annually with the Securities and Exchange Commission, the federal agency that regulates financial markets. At the top the document states where the company is incorporated. Once you start looking, you'll likely see the extent of your connections to Delaware. (You can also check out companies at opencorporates.com, a free database of company registrations.)

In fact, two-thirds of the companies included in the Fortune 500—the biggest companies listed on America’s stock market—are registered in Delaware, accounting for about 45 percent of the United States’ gross domestic product. They are global corporations that sell American products and services all around the world, employ tens of millions of people, and coordinate vast and complex international supply chains. They make money in a wide variety of ways, but one thing most of them have in common is their connection to Delaware.

For a sense of Delaware’s relative importance, let’s imagine what the Fortune 500 would look like without corporations registered in Delaware. Here are the other states where America’s biggest companies choose to incorporate:

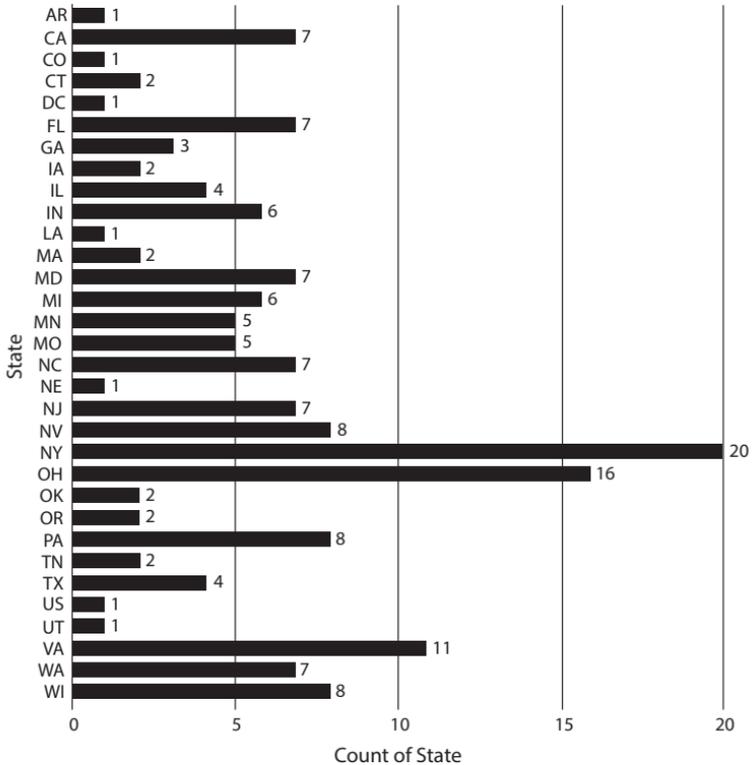


FIGURE 1. Number of Fortune 500 Companies by State (excluding Delaware) 2018.

But Delaware overshadows all of these states:

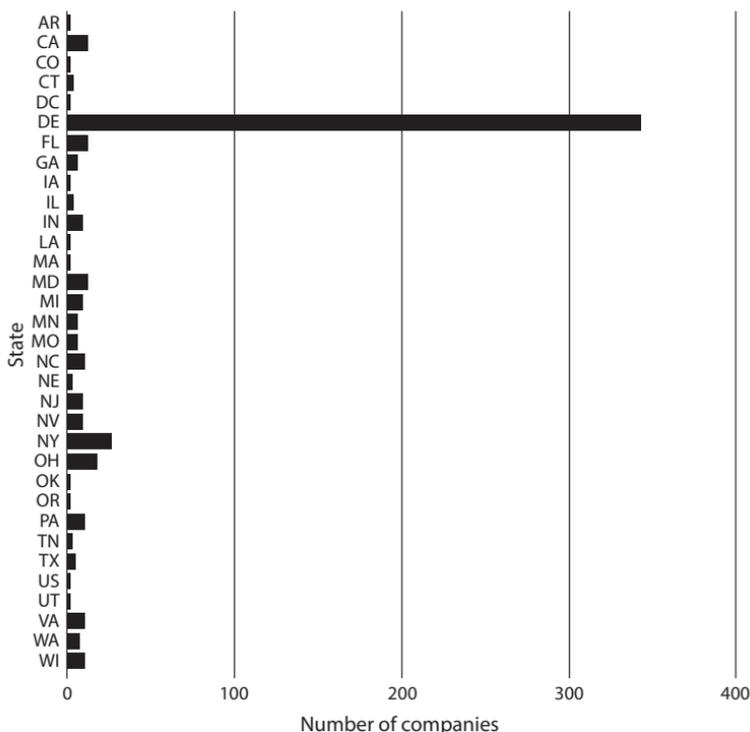


FIGURE 2. Number of Fortune 500 Companies by State Incorporation 2018.

The proportion of stock exchange-listed companies registered in Delaware has been growing over time. In the 1960s, 30 percent of companies listing for the first time on the New York Stock Exchange incorporated in Delaware. By the late 1990s, 77 percent of such companies chose the state as their corporate home.²⁰ By 2018, the figure was 82 percent.²¹ By 2020, it was 93 percent.²²

Publicly listed companies are just the beginning. The state has more registered businesses than residents—about 1.6 million companies in a state with a population of less than a million. Some 250,000 businesses register for the first time in Delaware each year—an average of 683 a day. Most of these are not large corporations that trade

on the stock market, but instead are formed as structures such as limited liability companies. LLCs began spreading in the late 1980s and are now one of the leading legal structures of US businesses. And they make up more than 70 percent of Delaware's new business registrations. In 2020, there were 180,376 new LLCs registered in the state, compared to 51,747 corporations.²³

LLCs have a number of advantages over traditional corporations. They can be used to pay less tax. They're more lightly regulated, so there's less paperwork to fill out. They have a lot of freedom to decide how to structure their management: in Delaware, an LLC's operating agreement need not be written down. It can be verbal, or even just implied. And you don't need a group of people to start a company—even an individual can form an LLC.

So it's a combination of both LLCs and corporations that have chosen to register in Delaware more than any other location. This is why Delaware matters. It is a critical component of the capitalist system. Think of Delaware as the closest thing the United States has to a registrar of corporate births, marriages, and deaths. Companies go there to get registered when they are first created. They go there to seek legal approval for mergers. They go there when they have legal disputes with each other. They go there when they enter bankruptcy. Delaware is for corporate life events.

While Delaware is, hands down, the business-formation capital of the United States, it is not, as it is sometimes mistakenly called, America's corporate capital. That would imply that lots of corporations physically locate themselves in Delaware. They do not. The large number of incorporations doesn't mean that any of these companies is actually based in Delaware or that they have much of a presence there. In fact, you're very unlikely to have much of a connection with a company that has its headquarters in Delaware. There are exceptions. Perhaps you live in Delaware. And you may eat foods that contain ingredients made by DuPont, an industrial giant (albeit less gigantic since its parent company was broken into three in 2019) based on the Delaware River in Wilmington—ingredients such as guar gum, a thickening agent used in ice cream, packaged foods, lotions, and laxatives. But for the most part, companies that

are registered in Delaware are based in other US states or other countries. They get all the benefits of being in Delaware without actually having to locate there. And for the most part, the residents of Delaware have no more connection to “Delaware corporations” than the rest of us, and play little role in the incorporation industry.

So what does it actually mean to be incorporated or registered in Delaware?

It’s what is sometimes called a “legal fiction.” In fact, any company is a legal fiction, but given that most companies registered in Delaware do little actual business there, they might be considered more fictional than the norm. A company that is registered in Delaware can do business anywhere and doesn’t have any obligations to the state, other than to pay annual fees to the Delaware Department of Corporations. In some years that could be the only interaction a company has with Delaware. But in many cases, when it goes to court it will do so in Delaware and be subject to Delaware’s corporate laws. These state laws govern the company’s “internal affairs,” spelling out the rights of its shareholders and the duties of its managers. They guide what happens if there is a dispute between the company and some of its shareholders, or if a legal issue arises when another company tries to take it over, or if the company goes bankrupt. As we’ll see, there are reasons that companies like to go to court in Delaware, if they have to go to court at all.

One parallel for Delaware-style corporate legal fiction is in the maritime world, where jurisdictions such as Panama and Liberia offer to register ships and fly flags for countries looking to evade international sanctions.

As a tiny state, Delaware has thrived as an exporting economy. In the seventeenth century, one of the state’s top exports was tobacco; in the eighteenth century, wheat and lumber; in the nineteenth century, peaches; in the twentieth century, chemicals. Nowadays, Delaware’s main export is laws. The standards set in Delaware govern a great deal of life in the United States and across the world. “The main benefit of Delaware incorporation is freedom from restriction by the corporate laws of other states and countries,” argues UCLA’s Lynn LoPucki. “The ‘internal affairs’ of a corporation are governed

by the law of the state or country of incorporation. For a Delaware corporation, that means Delaware law, regardless of where in the world the corporation actually does business.”²⁴

If Delaware is such an important part of America’s (and, therefore, the world’s) corporate landscape, why is it so rarely discussed, outside of legal conferences, executive boardrooms, and analyst meetings? It may be because what goes on there seems obscure, complex, and arcane. It may also be because Delaware likes it that way. It wants to fly under the radar, largely unnoticed and taken for granted. It wants to be like background noise or telephone hold music, something that we tune out and live with, something whose ubiquity we don’t even notice.

But Delaware’s influence on US corporate life is immense. Its corporate code is the United States’ corporate code. It has effectively set the rules on how much interest credit card companies can charge their customers. It has helped companies and wealthy individuals avoid paying taxes, harming the public finances of other US states. It has shielded the illicit and unethical use of corporate entities.

If you care about tax dodging, if you care about how corporations behave and how to hold them accountable, if you care about regulating the financial sector, if you care about the secret funding that flows into US political campaigns, if you are even just curious about what happens to the money on gift cards when the cards themselves get lost down the back of the sofa and the money is never spent, you should care about Delaware.

John Cassara describes the weary resignation with which he and his colleagues responded to their failure to secure financial information from one of the smallest states in their country. “The culture was: there’s nothing weird about this,” he says. “I’m not going to go to my superiors to question it. The general reaction at FinCEN was just to shrug our shoulders and say, ‘This is just embarrassing.’ We were all aware that Delaware was Delaware and there’s not much anybody can do about it. Nobody can crack that nut.”²⁵

INDEX

- Abramoff, Jack, 4–5, 66
Adams, James, 197–98
Adams, John, 125
Alabama, 44, 156, 160
Alaska, 30, 60, 98
Alito, Samuel, 72
Allen, William T., 193
Allison, Francis, 123
Alphabet, Inc., 14, 46–47
Amazon.com, 13, 14, 61, 64, 74, 92, 180
American Civil Liberties Union (ACLU), 68–69, 160–61
American International Center, 4–5
Apple, Inc., 108, 180
Applebee's, 47–49
Arizona, 41–42, 98, 227
Arkansas, 44, 72, 78, 154
art investment, 57–63, 66
asset protection companies, 63–64, 240
- Babiarz, John, 156
Backpage.com, 6, 226–27
Bahamas, 26, 90, 99, 108
Bainbridge, Stephen M., 194
Balick, Helen, 84–85
bankruptcy, 18, 42, 43, 87, 173, 206–8;
 Chapters 7, 11, and 13, 84, 86, 204;
 Delaware, filing for bankruptcy in, 13, 17;
 legislation on, 202–3, 207, 208; reform,
 Biden championing, 202–4, 207
Bedford, Gunning, Jr., 128
Belfort, Jordan, 212
Belize, 93, 94
Bell, Richard, 96
Belton, Ethel Louise, 151
beneficial ownership information, 18,
 103–4, 219–22, 234, 241; Bullock collec-
 tion proposal, 227–28; Financial Action
 Task Force reportings on, 101, 110–11;
 for high-end real estate market, 223–24;
 registries of, 216, 229, 236, 237
Bermuda, 26, 46, 54, 93, 109
Bevin, Matt, 44
Bezos, Jeff, 64, 180–81
Biden, Joseph, 13, 26, 31, 50, 64, 84, 108, 111,
 135, 145, 159, 206, 218, 234, 235; attitude
 toward busing, 136, 160–66; as epitome
 of the Delaware Way, 119, 162, 201; links
 to MBNA, 204, 205, 207, 208; as presi-
 dent, 118, 210; proposed global minimum
 corporate tax rate, 40, 54; Rehoboth
 Beach house purchase, 66–67; support
 for financial lenders, 201–3, 208, 209; as
 vice president, 108, 202, 205, 222, 224;
 Bignari, Sardar, 175
Bin Laden, Osama, 100
Biondi, O. Francis (Frank), 80–81
Birth of a Nation (film), 144
Bishop, E. A., 137, 142
Bishop, Helen, 137–42
Bishop, Joseph W., Jr., 187
Black, George, 142, 143–44
Black & Decker Inc., 173
Blackrock Investment Management, 181
Blasio, Bill de, 165
Bogenschneider, Bret, 46–47
Bojović, Luka, 6, 95–96
Boltraffio, Giovanni, 59
Booker, Cory, 165
Botsch, Matthew J., 207
Bout, Viktor, 6, 97
Bouvier, Yves, 59
Boyer, William, 82
Brandeis, Louis, 8, 11, 32, 238
Branson, Richard, 222
Brexit referendum, 107, 214
Bright, William, 133–34
British Virgin Islands, 90, 109, 229
Brooke, Edward, 163

- Brown, Howard, 161
Brown v. Board of Education, 153, 155, 160, 161, 165
Brunori, David, 45, 56
Buffet, Warren, 65
Bulah, Shirley, 149–51
Bullock, Jeff, 28, 30, 221; beneficial ownership registry and, 218, 227, 228; coordinated efforts with Carper, 218, 222, 224; as Delaware secretary of state, 23, 76, 178, 218, 220, 222; and mandatory consultation of criminal checklists, 210–11; pitch for Delaware, 23, 24, 26
Burch, Christopher, 195, 196
Burch, Tory, 195–96
Burton, William, 131
Bush, George W., 203
business judgment rule, 25, 193–94, 241
Business Roundtable, 180–81
busing, 160–65, 260n44

Caldwell, Leslie, 212
California, 49, 55, 97, 103, 122, 165, 208, 218, 223
Cambridge Analytica, 214
Cameron, David, 107
Campeau Corporation, 173
CardFact (Card Compliant), 75
Carney, John, 197, 269n9
Carper, Tom, 58, 118, 203, 218, 224; as archetype of the Delaware Way, 238; blocking legislation, 219, 221–22; support for financial industry, 119, 208, 209;
Cary, William L., 31–34, 87–88, 189, 190, 198
Casino Jack (film), 5
Cassara, John, 1–4, 19, 96–97, 99, 100–101, 104, 234
Castro, Fidel, 24
Cawley, Charles, 204–5, 206
Cayman Islands, 26, 54, 93, 106, 108
C corps, 209–10
Chancery Court, 25, 85, 148, 164, 197, 198; business disputes in, 192–93; Loan Till Payday case, 77–78; private arbitration and, 199; review of court operations, 194–95; Strine as chancellor of, 183, 195–96, 241
Chapter 11 bankruptcy, 84, 85–87
Chase Manhattan, 78, 80, 81
Cheever, John, 198
Chemours Company, 50
Chevron Corporation, 55
Chile, 6, 105
Chiluba, Frederick, 6, 7
Citigroup Inc., 80
Citizen's United, 232
Civil War, 120, 129–31, 133, 134, 135, 136
Clinton, Bill, 203, 217
Clinton, Hillary, 108, 203, 217
Clinton Foundation, 217
Coca-Cola Company, 23–24, 26, 108
Cohen, Michael, 5–6, 209
Cohen, Michael T., 102
Colbert, Stephen, 231–33, 235, 236
Coleman, Norm, 220, 222
combined reporting, 43–45, 47, 53, 129
Common Cause, 68
Company State, The (survey), 206
Condos, James, 222
Congress of the Articles of Confederation, 121
Connecticut, 26, 124
Constitutional Convention, 123
Continental Airlines, 84–85
Continental Congress, 122, 123, 125, 127–28
Cook, Tim, 154, 180–81
Cook Islands, 112
Coons, Chris, 224
Cooper, William Barkley, 132
Cooper, William T., 132
Cornell, Arthur, 140, 143
corporate anonymity, 35, 100, 211–12, 216, 222, 225, 228, 232; corruption concealed by, 109, 236; foreign interest in, 234, 235; the Franchise and, 98, 227
Corporate Transparency Act (2021), 210, 227, 230, 231, 234, 236, 238–39, 240, 241
Corporate Transparency Coalition, 223
Corporation Law Council, 170, 172–75, 177–80, 184, 187, 189, 192, 195, 239–41
Corporation Trust Center (CTC), 72, 108
Council on State Taxation, 74, 77
COVID-19 pandemic, 29, 30, 69, 86, 106, 182, 215
credit cards, 105, 178, 206; in bankruptcy proceedings, 202–4; credit card businesses in Delaware, 14, 78, 201; interest rates, 19, 82, 201, 204, 207–8; introduction of affinity cards, 205; usury laws and, 79–80. *See also* gift cards
Crime Control Act (1990), 202
Crompton, Charles S., Jr., 193
Cruz, Ted, 214
Customer Due Diligence Rule, 224, 225
Cygan, Kimberly, 42
Cyprus, 93, 105, 229

- Daniels, Stormy, 5–6, 209
dark money, 230, 234, 236
Da Vinci, Leonardo, 59
Declaration of Independence, 121, 122, 152
Delaware Coalition for Open Government, 199
Delaware Division of Corporations, 18, 92
Delaware General Corporation Law (DGCL), 24, 174, 178
Delaware Loophole, 25, 42, 43, 46, 49;
benefits to Tax Cuts and Jobs Act, 45;
economic value, not providing, 55–56;
reduction of corporate state income tax,
47, 52, 62; reduction of global tax rates,
40–41, 54;
Delaware State University, 145–49, 159, 160
Delaware Way, 88, 171, 185, 195, 241; Biden
as promoting, 165, 166; dark side of, 119,
120; economic aspects of, 191–92; Financial
Center Development Act case study, 81–82,
83, 208–9; link to the Franchise, 119–20,
129, 144–45, 209; unity and deal making
as goals of, 118, 136, 166
Del Toro, Natasha, 94
desegregation, 145, 147–49, 152, 155, 161–64,
261n44
Dickinson, John, 124
Dietl, Fritz, 60–61, 66
Dimon, Jamie, 180–81
Đinđić, Zoran, 95–96
disclosure settlements, 188–89, 191
Dodd-Frank Act (2010), 208
Doherty, Joseph W., 86
Double Irish Dutch Sandwich, 46
Dred Scott v. Sandford, 135
Dunbar-Nelson, Alice, 141
Du Pont, Henry, 131, 132
Du Pont, Pierre Samuel, IV (Pete), 79–81,
82, 151, 206
Du Pont Bird, Charles, 132–33
DuPont Company, 17, 29, 30, 50, 79, 174,
183–84, 206
Dyreg, Scott, 40, 55, 248n14

Easterbrook, Frank, 34
Eastland, James, 163
Educational Advancement Act (1968), 156
Egmont Group, 2
Eisenhower, Dwight D., 154
Elson, Charles, 191
Elwood, Robert, 141, 142–43
escheatment, 71, 72
Essential Consultants LLC, 209
Evraz Claymont Steel, 29–30

Facebook, 14, 31, 35, 213–15
Farage, Nigel, 214
Farnan, Joseph J., 86
Fastow, Andrew, 6
Ferrer, Carl, 226
Fifteenth Amendment of US Constitution,
135–36
Financial Action Task Force on Money
Laundering (FATF), 93–94, 100–101, 110–11,
210, 218, 221, 223–24
Financial Center Development Act (1981),
79, 81–84, 172, 201, 204, 208–9
Financial Crimes Enforcement Network
(FinCEN), 2, 19, 223–24, 228, 230
Financial Secrecy Index (2020), 108
Financial Services Modernization Act
(1999), 202
Findley, Michael, 93, 94, 95, 108–9
Finger, David, 197
Fink, Larry, 181
First Amendment of US Constitution, 197, 199
Fisker Automotive, 50
Florida, 6, 7, 44, 75, 97, 106, 223
Fonseca Mora, Ramón, 90, 107
foreign derived intangible income (FDII), 45
Fortune 500 companies, 15–16
Fourteenth Amendment of US Constitution,
135
Fox, Bill, 53–54
Franklin, Benjamin, 124
Freeborn, Bill, 28
Freemont Michigan InsuraCorp, 175–76
Friedman, Milton, 180, 181, 183, 185
Furlow, Clark W., 194
Furman, Igor, 234–35

Gascoigne, Clark, 99, 223
Gbedemah, Komla Agbedi, 154
Gebhart, Francis B., 152
Gebhart v. Belton, 151–52, 153
Geisenberger, Rick, 219–20, 228
Gelety, John, 235
General Accountability Office (GAO), 101, 104
General Motors, 50, 206
General Services Administration (GSA), 103–4
Geneva, 61, 92
Geoffrey, LLC, 42
geographic targeting orders (GTOs), 223
Georgia, 39, 47, 124
Ghana, 95, 153, 229
gift cards, 14, 19, 71–75
Giuliani, Rudy, 235
Glass-Steagall Act (1933), 202, 208

- Global Energy Producers (GEP), 235
global intangible low taxed income (GILTI), 45
global minimum corporate tax, 40, 45
Global Witness, 223
good faith, acting in, 11, 25, 76, 193, 194
Google LLC, 13, 46–47
Government Accountability Office (GAO), 103
Grant, Stuart, 198
Great Recession, 29, 207
Greenberg, Jack, 147, 148, 149, 152, 153
Greenfield, Kent, 180, 194
Gregor, David, 76
Griffith, Sean J., 188
Grosh, David, 4–5
Gunnlaugsson, Sigmundur Davíð, 106
Gurney, Edward, 161, 162
Gustin, Abe, 48
- Hamermesh, Lawrence, 170, 174–75, 189
Hamilton, Alexander, 7–8, 9, 12
Hamlin, Hannibal, 132
Hamra, John, 48
Hancock, John, 124
Harris, Kamala, 165, 208
Hart, Oliver, 181
Harvard Business Services, 96, 211
Hastings, Reed, 31
Hatch, Orrin, 203
Haugen, Frances, 215
Hay, John, 132
Hays, Mark, 102
Hays, Michael, 99
HB57 legislation, 171–72
Heilmeier, Ruth, 47
Heller, Dean, 224
Helms, Jesse, 163
Henry, James, 90, 229–30
Hoang, Kimberly Kay, 110, 230
Hoffecker, Carol, 157
holding companies, 7, 201, 204–8, 217
Home Depot, 41–42
Homeland Security Committee, 219, 221–22
Homer TLC, 39, 41–42
Hong Kong, 26, 108
hostile takeovers, 173
Hotel du Pont, 77, 127, 206
Howard Johnson restaurant franchise, 153–54
Huffington, Arianna, 222
Hunn, John, 144
Hurley, Patrick, 76
- Icahn, Carl, 173
IHOP restaurant chain, 48
- Illinois, 156, 157
incorporation fees, 26, 27, 71–72, 98, 187, 191
innkeeper’s law, 154
intangible investments, 39, 40, 45
interest rate-caps, 78, 83, 208, 209
Internal Revenue Service (IRS), 98, 219,
222, 224, 227, 233
International Consortium of Investigative
Journalists, 105
Investment Bankers Association, 32
Isen, Robert, 196
Iverson, Benjamin Charles, 207
- Jamaica, 95, 158
James, Albert W., 148
James, Gloria, 77–78, 83
Jason, William C., 145
Jefferson, Thomas, 7–8, 9, 12
Jim Crow legislation, 129, 136
Johnsen, Diane, 42
JPMorgan Chase, 81, 180, 225
- Kahan, Marcel, 194
Kamar, Ehud, 194
Kaplan, Stanley, 34
Katzenberg, Jeffrey, 31
Kelmar Associates, 76–77
Kennedy, John F., 32
Kentucky, 44, 135, 154
Kenya, 95, 105, 229
Kincaid, Doug and Bill, 38
King, Martin Luther, Jr., 157
Kluger, Richard, 152
Konesey, Jan, 68–69
Kowalko, John, 171–73, 190, 191, 210
KPMG International, 45, 53
Kuhns, Paul, 67–68, 69
Ku Klux Klan, 4, 144, 154
Kuykendall, Mae, 194
- Lacey, Michael, 226
La Poitrine (painting), 58
Larkin, James, 226
Larson, Tom, 4
Laster, J. Travis, 77–88, 164
Laundromat, The (film), 107
Lauren, Ralph, 196
Lay, Kenneth, 6
Lazarenko, Pavlo, 102
Leahy, Patrick, 222
Lebanon, 94, 95, 105
Lee, Allison Herren, 63
Lee, Robert E., 133

- Levin, Carl, 219, 220, 221, 222, 227
Lieberman, Joe, 221
limited liability companies (LLCs), 17, 27, 28, 62, 63, 75, 94, 195, 217–18, 223, 229, 236; Backpage LLC, 227; as governed by General Corporation Law, 24; illicit uses of, 95–97; local elections, ability to cast votes in, 67–68; loose regulation of Delaware LLCs, 91, 190, 209, 211–12, 216; super PAC donations to, 233–34; Trump allies as creating, 6–7, 209, 235; umbrella companies as series LLCs, 110; walls created between assets, 112. *See also* shell companies
Lincoln, Abraham, 130, 135
Lindabury, Richard, 11
Lindholm, Doug, 77
Lindsey, Bradley, 40
Loan Till Payday, 77–78
LoPucki, Lynn, 18, 27, 85, 86
Louisiana, 42, 43, 44, 193
Luce, Edward, 100
Luna, LeAnn, 45, 56
Luxembourg, 26, 60, 61, 82, 229

Macey, Jonathan R., 187–88
Mahmud, Abdul Taib, 103–4
Malaysia, 6, 103, 212
Maloney, Carolyn, 219, 227
Manafort, Paul, 5, 6–7, 214
Mann, Brian, 4–55
Marathon Petroleum, 75
Markell, Jack, 30, 50, 76, 92
Marley, Bob, 158
Marshall, Thurgood, 152–53
Martin, Edward Livingston, 131
Maryland, 44, 68, 123, 124, 127, 128, 132, 135, 204
Maryland National Bank, 204
Massachusetts, 42, 76, 98, 121, 124, 144, 161, 182, 220
Mazero, Michael, 45
MBNA holding company, 204–8
McBride, David, 81
McCain, John, 232
McComb, James, 140
McDougal, Karen, 6
McDowell, Harris, 81, 83
McGonigle, Tom, 76
MCI Communications Corp., 43
McKean, Thomas, 121–28
McKinley, William, 132
medical debt, 203, 207, 208
mergers and acquisitions, 8, 93, 119, 188–89
Mexico, 39, 93, 97
Michel, Casey, 99–100
Michigan, 40, 51, 156, 175–76
Middle States Commission on Higher Education report (1949), 146–47
Milford Eleven, 155
Miller, Geoffrey P., 187–88
Mineta, Norman, 190
Mississippi, 43, 44
Missouri, 48–49, 135
MoneyGram International, 72
money laundering, 1, 58, 89, 91, 95, 104, 216, 219, 228, 237; anti-money laundering efforts, 95, 224–25, 238; in Delaware, 3, 13, 96; FATF investigations into, 93–94, 100–101, 110–11; international money laundering, 2, 234; via shell companies, 93, 97–98, 103, 230. *See also* *The Wolf of Wall Street*
Montana, 60, 78, 98
Moody, Daniel, 146
Morgan, Donald P., 207
Morgan, J. P., 79
Morris, Hugh M., 147, 149
Mossack, Jürgen, 107
Mossack Fonseca (law firm), 90, 106, 107, 109–10
Mueller, Robert, 233
Musk, Elon, 64

Nader, Ralph, 82, 205–6
Netherlands, 6, 46, 117
Nevada, 35, 44, 56, 83, 98, 100, 224, 226
Nevis Island, 112
New Hampshire, 60, 78, 124, 170
New Jersey, 26, 42, 44, 78, 124, 156; as company formation leader, 32–33; lax incorporation rules, 7–9, 11–12; segregation banned in, 150
New Mexico, 43, 44, 252n33
New York, 62, 72, 78, 102, 223; bankruptcy filings in, 85, 87; colonial New York, 117, 121, 122, 124, 126; corporate headquarters in, 25–26, 80; banks of, 81, 82; New York–based LLCs, 6–7; sales taxes in, 60, 61, 66, 251n11
New York Stock Exchange, 16, 32, 204
New Zealand, 93
Nguema Obiang Mangue, Teodoro, 102–3
Nielsen, Daniel, 93, 94, 95, 108–9
Nixon, Richard, 154, 161
Noriega, Manuel, 89–90

- North Carolina, 124, 163
North Dakota, 121
Northern Ireland, 222
Noti, Adav, 236
- Obama, Barack, 108, 202, 203, 207, 208, 220–23
Ocasio-Cortez, Alexandria, 217–18
Oesterlund, Robert, 111–12
Office Depot, Inc., 75
Office of Foreign Assets Control, 171
Ohio, 31, 44, 75
Oklahoma, 42, 44, 97–98
Open Markets Committee, 177
Oregon, 60, 98
Organisation for Economic Co-operation and Development, 30, 46
Overstock.com, 75
- Padilla, Andrew, 226
Panama, 89–90, 93, 107, 108
Panama Papers, 90, 107–10, 230, 231, 239
Pandora Papers, 104–7, 229, 230, 231, 239, 240
Parker, Brooks, 147
Parker, Sean, 31
Parker v. University of Delaware, 148, 149, 152
Parnas, Lev, 234–35
pass-through companies, 62–63
Patterson, Greg, 76
Paul, Rand, 177
Paxton, Ken, 70, 72–73
Paycheck Protection Program (PPP), 69–70
payday loans, 77–78, 83
Peck Madigan Jones, 220–21
Pennsylvania, 25, 53, 120–22, 124, 126, 127, 133, 135, 150, 160
Pepper, Barry, 5
perpetuities, 105–6
Peterson, Russell, 159
PFOA chemicals scandal, 183–84
Pika, Joseph, 205
Pileggi, Francis, 178, 179, 199
Planet Money (podcast), 94
Plessy v. Ferguson, 146, 152, 153
Pollack, Sheldon, 40
Polman, Paul, 222
Ponsoldt, William R., 110
Potter, Trevor, 232, 233, 236
predatory lending, 83, 201, 208
private equity investing, 63
Public Interest Research Group, 82
Pursglove, Sarah, 111–12
- Quinn, Brian, 178
- Rajan, Raghuram, 178, 181
Rasmussen, Robert K., 85
Razak, Najib, 212
Read, George, 121, 122–28
Read, John, 123
Reagan, Ronald, 1, 202
real estate, 63, 102, 104, 110, 204; Congressional action on real-estate agents, 240; high-end real estate, 223–24; luxury real estate of Rehoboth Beach, 5, 68; private real estate purchases, 211–12; Real Estate Roundtable, 228
Rehoboth Beach, 4–5, 66–70, 134, 158
Reconstruction era, 136, 144, 145
Redding, Louis, 147–49, 150–52, 154–55, 161, 162–63
Republic of Ireland, 46, 54, 123
Reynolds, Pat, 74
Rhode Island, 124
Ribstein, Larry, 179
Richards, Layton, & Finger, 127, 173, 262n2
Rochester, Lisa Blunt, 164
Rockefeller, John D., 11, 33
Rodney, Caesar, 121, 122–28, 128–29, 164
Rodney, Thomas, 126
Roe, Mark, 36–37
Romney, Mitt, 67
Roosevelt, Theodore, 7, 9–10, 12, 33, 36, 132, 140
Rosen, Jordan, 62
Roth, William, 119, 201–2, 203
Roth IRA, 202
Ruggles, Timothy, 121
Rybolovlev, Dmitry, 59
- Salman, Mohammed bin, 59, 60
Salvator Mundi (painting), 59–60
Sandberg, Sheryl, 214
Sarbanes-Oxley Act (2002), 36
Šarić, Darko, 6, 95–96
Saudi Arabia, 59, 94
Saulsbury, Willard, 132
Sawyer, Geoff, 76
Scanlon, Michael, 4–5, 66
S corporations, 64
Second Continental Congress, 120, 123, 125
Security and Exchange Commission (SEC), 14, 31, 32, 209
Seitz, Collins J., Sr., 148, 152–53
Serbia, 6, 95–96
Seven Sisters legislation, 11, 12
1776 (musical), 122
Seymour, Jane, 125

- Shachtman, Douglas, 81
shadow banks, 208, 224
Shapira, Roy, 184
Shapiro, Irving, 80
shareholders, 18, 107, 174, 175, 188–89, 191, 209, 220, 232, 241; business leaders' responsibility to, 170, 180, 18; Chancery Court litigation, 193; lawyers as representing, 177–78; shareholder welfare, 99, 181, 183–84; and stakeholder capitalism, 182, 239–40
Sharman, Jason, 93, 94, 95, 108–9
Shaxson, Nicholas, 65
shell companies, 90, 95, 97, 100, 102, 217, 222; Anonymous Shell Corporation, 232–35; basic information on, 209–12, 238; money laundering via, 93, 94, 97–98, 101, 103, 230; onshore or offshore options, 108, 109; reasons for using, 93, 99; trucking companies' utilization of, 112–13
Simon, Robert, 59
Sinaloa drug cartel, 93
Singapore, 26, 60, 103, 108, 212
Skilling, Jeffrey, 6
Sleet, Gregory, 73–74
Smith, Melanie George, 172–73, 190–91
social media, 14, 35, 213–16
Solomon, Steven Davidoff, 200
Soros, George, 64, 214
South Africa, 1, 229
South Carolina, 42, 44, 124, 126, 163
South Dakota, 26, 44, 56, 78, 80, 83, 105–6
spiderweb capitalism, 110, 231
Stamos, Alex, 215
Stamp Act Congress, 121, 125
Standard Oil, 9, 11, 12
“Statement on the Purpose of a Corporation” (Business Roundtable), 180–81
Steak ‘n Shake restaurant chain, 175
Steele, Myron, 36
Stigler, George, 176, 184–85
Stolen Asset Recovery Initiative, 102
Strine, Leo, 176, 178, 182–83, 195–96, 241
student loans, 14, 202
Sullivan Jack, 62
super PACs, 232–34, 235, 236
Swann v. Charlotte-Meckleburg Board of Education, 160–61
Switzerland, 60, 92, 95, 108, 212

Taft, William Howard, 7, 10, 33, 36
Taney, Roger, 154–55
Tax Cuts and Jobs Act (2017), 45
tax dodging, 4, 13, 19, 25, 50, 55, 63, 209, 230–31
tax havens, 40, 46, 54–55, 60, 62, 64, 90, 92, 109, 219
Tax Justice Network, 107, 108
tax planning, 52–56
Taylor, William, 164
TCFC Hotel Company LP, 69
Temple-Inland, 73–74
Tennessee, 44, 45–46
Terry, Charles Layman, 157, 158–59
Texaco, Inc., 55, 173
Texas, 6, 70, 73, 83, 87, 97, 218, 223
Thirteenth Amendment of US Constitution, 135
Thomas, Gareth, 23
Thomas, Garrett, 134–35
Thomas, Randall S., 85
Thornock, Jake, 40
Thurmond, Strom, 163, 165
Till, Gertrude Ross, 123
Toys “R” Us, 42
Transparency International, 101
Tremor Enterprises, 97–98
Trillium Asset Management, 214
Trump, Donald, 5–6, 64, 70, 107, 209, 236; administration's support for Corporate Transparency Act, 227; as client of Cambridge Analytica, 214; as a CTC client, 108; filing of Federal Election Commission filings on, 217; as implementing Tax Cuts and Jobs Act, 45; support from America First Action SuperPac, 235
trusts, 62, 66, 69, 91, 208, 229, 239; Cook Islands trusts, 112; inapplicability of Corporate Transparency Act to, 238, 240; local voting rights for, 68; New Jersey trusts, 8, 12; South Dakota trusts, 105–6; wealth managers and, 64–65
Truth in Lending Act, 77
2008 financial crisis, 202, 207, 208
Tyler, Daniel P., IV, 133, 134

Udinski, Mark, 76–77
Ugland House, 108
Ukraine, 102, 229, 235
unclaimed property, 27, 28, 71–77, 134, 209, 238
University of Delaware, 145–49
US Constitution, 7–8, 27, 40, 67, 128, 152, 197
US Declaration of Independence, 120, 121, 122
US Model Business Corporation Act (MBCA), 33

Virginia, 7, 44, 75, 87, 124, 129–30, 131, 132–33

- Wallace, Jen, 67
Walmart Inc., 14, 43, 108
Ward, Herbert H., 138
Warren, Elizabeth, 182, 203
Washington, George, 8, 122
West Virginia, 135, 183
White, George, 138–44
Williams, John, 25
Williams, Yohuru R., 141
Wilson, Woodrow, 7, 10–13, 33, 36
Winters, Jeffrey, 65–66
Wisconsin, 83
Wolf, Tom, 44
Wolf of Wall Street, The (film), 6, 212
Wolters Kluwer, N. V., 108
Woodward, Edward, 138
World Bank, 94, 102
Worldcom, Inc., 43
Wyeth, Andrew, 205
Wyoming, 26, 35, 44, 56, 98, 102, 121, 226
Yale Law Journal, 31–32, 190
Young, Pauline, 156
Zetas drug cartel, 97–98
Zingales, Luigi, 181, 184, 240
Zuckerberg, Mark, 214
Zucman, Gabriel, 54