

# Hearing on The Pandora Papers and Hidden Wealth

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HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEETH CONGRESS

FIRST SESSION

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December 8, 2021

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**HOUSE COMMITTEE ON WAYS & MEANS**  
CHAIRMAN RICHARD E. NEAL

# ***ADVISORY***

## **FROM THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT**

FOR IMMEDIATE RELEASE  
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CONTACT: (202) 225-3625

### **Chair Pascrell Announces Oversight Subcommittee Hearing on The Pandora Papers and Hidden Wealth**

House Ways and Means Oversight Subcommittee Chair Bill Pascrell, Jr. announced today that the Subcommittee will hold a hearing on “The Pandora Papers and Hidden Wealth” on Wednesday, December 8, 2021 beginning at 10:00 AM EST. The hearing will take place in 1100 Longworth House Office Building in addition to being accessible via CISCO Webex.

Pursuant to H. Res. 8, Members are encouraged to participate remotely in this hearing. Members will be provided with instructions on how to participate via the Cisco Webex platform in advance of the hearing. Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov/>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: [WMdem.submission@mail.house.gov](mailto:WMdem.submission@mail.house.gov).

Please ATTACH your submission as a PDF in compliance with the formatting requirements listed below, **by the close of business on Wednesday, December 22, 2021.**

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For questions, or if you encounter technical problems, please call (202) 225-3625.

## **FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in PDF format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

## **ACCOMMODATIONS:**

The Committee seeks to make its facilities and events accessible to persons with disabilities. If you require accommodations, please call (202) 225-3625 or request via email to [WMDem.Submission@mail.house.gov](mailto:WMDem.Submission@mail.house.gov) in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

**Note:** All Committee advisories and news releases are available at <https://waysandmeans.house.gov/>

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**COMMITTEE ON WAYS AND MEANS**  
Subcommittee on Oversight  
Hearing on The Pandora Papers and Hidden Wealth  
December 8 – 10:00 AM  
Witness List

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Beverly I. Moran, Professor of Law, Emerita, Vanderbilt University Law School

Daniel Hemel, Professor of Law, University of Chicago Law School

Erica Hanichak, Government Affairs Director, The FACT Coalition

David R. Burton, Senior Fellow, The Heritage Foundation

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THE PANDORA PAPERS AND HIDDEN WEALTH

Wednesday, December 8, 2021

House of Representatives,

Subcommittee on Oversight,

Committee on Ways and Means,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:03 a.m., in Room 1100, Longworth House Office Building, Hon. Bill Pascrell, Jr. [chairman of the subcommittee] presiding.

Chairman Pascrell. Good afternoon and welcome. I call to order the Committee on Oversight. We will be joined by a few more folks, and then there is some virtual. I thank you, everyone, for joining us today. We are holding this hearing in a hybrid format in compliance with the regulations for remote committee proceedings pursuant to House Resolution 8. So before we turn to today's important topic and our witnesses and our members, I want to remind members of a few procedures to help you navigate this hybrid format.

First, consistent with the regulations, the committee will keep microphones muted to limit background noise. I have got to remember that myself. Members are responsible for unmuting themselves when they seek recognition or when recognized for their 5 minutes. Committee staff will mute members only in the event of inadvertent background noise.

Second, when members are present in the proceeding via Webex, they must have their cameras on. If you need to step away to attend another proceeding, please turn your camera and audio off rather than logging out of the platform.

Finally, we will dispense with our practice of observing the Gibbons Rule and instead, go in order of seniority for questioning, alternating between the majority and the minority, beginning with members of the Oversight Subcommittee.

I thank you all for your continued patience as we navigate these procedures to continue serving our country together in this great time of need. And with that, I will now turn to the important topic of today's hearing, The Pandora Papers and Hidden Wealth.

So good morning to everybody. I consider this to be a very critical topic in an era when the Congress of Democrats and Republicans are trying to establish a fair tax system. It has been over 2 months since the so-called Pandora Papers were released by the International Consortium of Investigative Journalists. The consortium reviewed nearly 12

million financial records containing information about the secret offshore holdings of 130 billionaires from 45 countries. I like that number. I want to say it again: 130 billionaires from 45 countries. This total includes hundreds of politicians and public officials in 91 countries. I mean, facts matter, as they say.

This blockbuster investigation vividly demonstrates how the ultra-wealthy and powerful live under a different set of rules than everyone else. And I am not satisfied with my own political party's efforts to bring fairness to the tax system. At issue is an example of a bill we are voting for, Build Back Better, is a perfect example. Hear me. They are aided and abetted by a complex system of financial secrecy and accommodating laws that wealthy nations, including our own, created. They didn't fall out of the sky. And for all the reasons, and greedy reasons they are, to protect these folks who are protecting and hiding their income from someone in the blue sky, I guess, that is why we are here.

That the United States has become an international tax haven itself is a stunning indictment. It is an indictment of our laws, both at the Federal and State levels. Certain States have gone out of their way to craft laws to attract hidden wealth. And for our Democratic brothers and sisters, they are not all red. Get the picture? Bruce Springsteen sings in his rock anthem, Badlands, there is trouble in the heartland. It took a guy from Asbury Park, New Jersey, I want you to know, Mr. Kelly.

Among the States that loom large is South Dakota. South Dakota is home to a stunning 81 of the 106 trusts located in the United States. We are not talking about the Cayman Islands. I said South Dakota. And if I didn't say it, Delaware. Not exactly a red State either. The Mount Rushmore State is home to assets of \$360 billion, an amount that has quadrupled in the past decade.

To better understand why, the Oversight Committee invited the Governor of South Dakota, our friend who was on this committee, Kristi Noem. A governor, a former member



of this committee, but she declined. That will not stop us from reviewing how and why the wealthy and powerful are hiding their assets in South Dakota and other States that have similarly inviting trusts, asset protection, and banking secrecy laws. We will explore how these States and South Dakota have become the Grand Cayman of the Great Plains.

We have an enormous responsibility to the hardworking families in this country. Most of the people on this committee, on both sides, come from areas of hardworking families to ensure that everyone, especially the wealthy and the powerful, pay their fair share of taxes and abide by all laws. Simple. On my street where I live in Patterson, New Jersey, if someone doesn't pay their property taxes, I have got to pay more. So you see the similarity.

Letting this accumulation of hidden wealth go unchecked will only exacerbate our two-tier tax system. I will not be complicit in further cementing a have-and-have-not economy. That is not what the United States is all about, to me, or the one I learned about in school.

For a long time, our country has rightly raised alarms on hidden bank accounts in Switzerland and the Caribbean. It was a joke about Switzerland. Those assets are now being hidden right here within our borders. One need not go to Switzerland. It is a nice place, but you don't have to go there to hide your money. We will make it easier for you. We need to ask ourselves do we want America to stand for fairness or be just another spot for rich folks to bury treasure? We will keep pushing until it is understood.

The subcommittee has invited several expert witnesses to help us ferret out the facts about tax savings in our own country. I look forward to their thoughtful testimony. I hope we can utilize their expertise to craft solutions to this dangerous -- I consider it a very dangerous -- tax saving phenomenon, but first, I want to yield 5 minutes to my friend, Mr. Kelly, the ranking Republican, for his opening remarks.

Mr. Kelly, it is all yours.

Mr. Kelly. Thank you, Mr. Chairman. Thanks for having the hearing today, and to our panelists. Thanks for being here today. We really appreciate you taking time out of your lives to come here and testifying.

Now, due to a large database, reporting from the Pandora Papers revealed that high wealth foreign nationals have set up trusts in the United States. This information has created concern among some about the possibility that foreign bad actors could be using trusts here in the U.S. for money laundering purposes. Yet, the group that published the Pandora Papers says that they do not intend to imply that anybody mentioned, acted illegally.

Now, Mr. Chairman, I would like to introduce this Reuters article that demonstrates the actions taken are not illegal, for the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Kelly. So, I am left a little bit confused about exactly what are we aiming at today? If we really wanted to explore the money laundering issues discussed in the Pandora Papers, we would hear from the administration and law enforcement about efforts to crack down on illicit finance, but, perhaps, that is not the goal. No one here supports foreign nationals laundering money in the United States. Let's just be very clear about that. But we also don't support conflating that issue with basic tax policy. I worry that the majority wants to go after trusts in the U.S. generally through massive new reporting regimes and new regulations, but farmers, small businesses, and millions of average Americans use trusts to plan for the future. An overzealous regulatory approach could significantly burden millions of law-abiding Americans seeking to plan for the future of their families.

I was surprised that you asked the Joint Committee on Taxation to put together a summary document on the taxation on trusts and estates, since domestic taxation wasn't really a focus in the Pandora Papers reporting. Based on that, and what I have seen from our witnesses, it seems that this hearing will be another example of the hypocrisy coming forth from the other side. On one hand, Democrats are pushing for massive tax cuts for millionaires through changes to the SALT cap, while on the other hand, they claim to be going after the hidden wealth of foreign nationals. Tax the rich one day, cut taxes for the rich the next. It can be hard to keep up around here.

One final point. I expect today we will hear about the supposed need for the government to collect extensive additional reporting from business entities across the country. Given the Federal Government's very recent track of failing to keep confidential information secure, that strikes me as a bad idea. Tax records for thousands of Americans held at the IRS were leaked to the media. It has been 6 months, yet, we still have no answers. In 2020, FinCEN, the Financial Crimes Enforcement Network, had its own major leak to the press, and even the Pandora Papers arose from an unauthorized disclosure.

Despite this record, Congress recently passed a law requiring massive amounts of beneficial ownership reporting to FinCEN. Any entity, any entity with 20 or fewer employees, has an additional reporting requirement. And I think you will hear that in our testimony today, Mr. Burton, thank you for putting a dollar and cents figures as to what the cost of this is. I will tell you. If this wasn't for a double standard in Washington, there would be no standard at all.

And we are supposed to rely on FinCEN to keep that target rich database secure. All of this information was voluntarily submitted to the Federal Government and supposed to be kept secret, supposed to be kept hidden, right? Yet, they have it. The IRS has it. They can look at it any time they want. It is not out there for publication. Six months, and we still haven't heard what happened in ProPublica. The faith-confident trust that the American people have in this agency is being greatly damaged by the fact that we never get an answer on anything. I am tired of writing letters to agencies who never answer them. It is nice to get something back saying, thank you so much for writing us, we will get back to you sometime in the future, with no definition of what the future is.

Now, I don't have any confidence in the ability of our government to keep this type of data secure. The reason I don't is because of all the examples that we just stated. This is supposed to be private, voluntarily submitted, yet made public. We still don't know who did it. We just don't know how this possibly could have happened.

I am looking forward to hearing from our witnesses today, but I also urge us all to be cautious about any new reporting requirements and other regulations that may be proposed. I said this earlier, and I mean it. It is not some whimsical thing. It is based on what is taking place every day with voluntary information submitted to an agency that is supposed to be kept private, unless it doesn't fit whatever purpose we have that day to make it public, and then say, I have no idea how this happened. If there is something

wrong, could it possibly be in the Code itself?

None of these people, by the way, are accused of doing anything illegal. Nobody's talking about it being illegal. That is the thing that is amazing. We sit with a blind eye to what is taking place, paper that over, and then bring up something like this. I have just got to tell you. It is time for us to take a look in the mirror and say, it is time for us to start being faithful, trustful, and being the people that people have confidence in.

So, Mr. Chairman, thank you so much for having this hearing. For you, panelists, thank you so much for taking time out of your lives to come here. We really appreciate it, and it is important that the American people hear what it is that is most important. Thank you so much, and I yield back.

Chairman Pascrell. Thank you, Mr. Kelly. And that is exactly what we are doing: examining. No one said that anyone committed anything illegal that I heard. I am the only one that spoke before you. But I want to know why we can't find some of the people who have invested. We don't even know who they are. And the only way we can find it, whether one is providing his income tax, which is private, and business tax, which is private; but many times, there are situations where we need to -- the IRS has to investigate it, whether it is under a Democratic administration or a Republican administration.

So I am going to introduce four witnesses and then turn to each of them for their testimony. Our first witness is Beverly Moran. She is a Professor Emerita at the Vanderbilt Law School, a great school, and is joining us in person today. Thank you for being here. Our second witness is Daniel Hemel. He is a law professor at the University of Chicago Law School, and is joining us virtually today. Thank you very much, Daniel. Our third witness is Erica Hanichak. She is the Government Affairs Director at the Fact Coalition and is joining us in person today. And our final witness is David Burton. David, thank you for joining us. You are a Senior Fellow at the Heritage Foundation, and you are joining us in person today.

Each of your statements will be made part of the record in its entirety, and I would ask that you summarize your testimony in 5 minutes or less so we hear everybody, and we get all the questions. To help you with that time, please keep an eye on the clock in front of you. If you do go over your time, I will notify you with a little tap of the gavel.

Professor Moran, you may begin.

**STATEMENT OF BEVERLY I. MORAN, PROFESSOR OF LAW, EMERITA, VANDERBILT LAW SCHOOL**

Ms. Moran. Thank you for the opportunity -- can you not hear me? All right. Can you hear me now? Okay. Great.

Thank you for the opportunity to address you today. My testimony is based on many years of work with local taxing authorities. My coauthor's work in one of the classic tax havens of the 20th century, the Isle of Man, and the tax competition that we all witness between the States. We have two messages for you:

1. The time is now, and
2. all you can do is regulate.

The time is now because tax havens are contagious. Once they enter, they spread. All you can do is regulate because destroying tax havens is nearly impossible. Strong taxpayer incentives lead to extreme pressures on governments to provide benefits.

So, what are the consequences of tax havens?

Tax havens are attractive because they promise new revenue. Nevertheless, the money that flows to tax havens often comes from criminal activities. For example, The Washington Post identified nearly 30 U.S.-based trusts with assets tied to people or companies accused of fraud, bribery, or human rights abuses.

Tax havens are sold as a solution, but they don't deliver on their promise. Forbes reports that South Dakota collected a mere \$1.5 million in fees from trust companies last year, out of the \$2.2 billion State budget and over \$300 billion in assets in trust.

In the meantime, other jurisdictions want their share. They convert to tax havens as well. Taxpayers use the competition to gain ever greater concessions. The race to the

bottom is now in full swing.

In the end, countries lose over \$427 billion each year to tax evasion, more than enough to fund the recently passed infrastructure bill and Build Back Better combined. Thus, tax havens rob their citizens of revenues for school, hospitals, and roads while they weaken sovereignty and the rule of law.

How do tax havens work?

Tax havens, and the legal structures that support, then evolve. By the time a government figures out how to stop one, another has emerged.

In the past, tax havens offered zero tax rates plus secrecy. Think of suitcases of cash arriving discreetly at a Swiss bank. That kind of tax haven is out of fashion today.

International pressure has finally forced secrecy jurisdictions like Switzerland to grant access to account information.

At the same time, tax competition is so fierce that many jurisdictions offer zero tax rates. These ubiquitously low rates undergird the recent worldwide 15 percent minimum corporate tax that the United States Treasury championed this year.

So, what are the new tax havens?

Tax havens are not mistakes. They are not discovered and then exploited by vigilant accountants. The tax haven industry creates havens and promotes them to governments on their clients' behalf.

Tax havens are hard to combat because they constantly change. As governments push for greater transparency, tax havens preserve secrecy, either by creating new financial instruments, or using old structures in new ways. In the United States, the instrument is the non-charitable purpose trust. For now, these trusts are available in Delaware, New Hampshire, South Dakota, and Wyoming. In the near future, you can expect them to spread across the Nation.



So, what can be done?

Tax havens don't just offer an escape from tax. They provide wealthy and powerful elites with secrecy in all manner of ways to shrug off the laws and duties that come with living in and obtaining benefits from society; taxes, prudent financial regulation, criminal laws, inheritance rules, and many others. Offering these escape routes is the tax haven's core line of business. It is what they do. It is a place that seeks to attract money by offering politically stable facilities to help people or entities get around the rules, laws, and regulations of jurisdictions elsewhere. As one commentator declared after the release of the Panama Papers; "so-called tax havens and their service providers are nothing short of enemies of humanity."

The problem needs regulation that goes to the heart of tax competition between the States. Without that, new tax havens will constantly rise up. That is why we respectfully ask you to regulate tax havens with a sensitivity to eliminating competition between the States. Thank you.

[\[The statement of Ms. Moran follows:\]](#)

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Pascrell. Thank you, Ms. Moran. And now -- I want to thank you.

And, Mr. Hemel, you are now recognized for 5 minutes.

**STATEMENT OF DANIEL HEMEL, PROFESSOR, UNIVERSITY OF CHICAGO LAW SCHOOL**

Mr. Hemel. Chairman Pascrell, Ranking Member Kelly, members of the subcommittee, thank you for inviting me.

The U.S. is the world's leading investment destination for offshore wealth. Our laws enable foreigners, through offshore intermediaries, to invest anonymously in the U.S. and to grow their wealth tax-free. We are, in this respect, the world's ultimate tax haven.

The Pandora Papers spotlight Panama, a source of 2 million documents in that leak, but most offshore wealth booked in Panama won't stay there. According to the IMF, 51 percent of the outbound portfolio investment from Panama pours into the U.S. We are also the number one destination for portfolio investment from other offshore financial centers, including the Cayman Islands, Ireland, Jersey, Luxembourg, and Switzerland.

The U.S. never deliberately decided to become the world's ultimate tax haven, but whether we continue to play this part is very much within Congress' control. Lawmakers can either acquiesce to our tax haven status, or catalyze change.

Countries involved in offshore tax evasion fall into three groups: First are origin countries where owners of offshore wealth reside; second are intermediary countries where wealth hides in bank accounts and trusts; third are destination countries where offshore wealth is ultimately invested in stocks, bonds, and other assets.

The U.S. is occasionally an origin country, sometimes an intermediary country, and very often the destination country. Start with our origin country role. U.S. households own 30 percent of global wealth, but we account for only 7 percent of shell company

shareholders identified in the Panama Papers and 3 percent of offshore wealth in secretive Swiss banks. We are doing a relatively good job of preventing offshore tax evasion by Americans.

As for our intermediary status, a recent article in the Journal of Public Economics estimates that 7 percent of the world's offshore wealth is booked in the U.S. That still puts us behind Switzerland, Hong Kong, Singapore, the U.K., Luxembourg, and the Cayman Islands.

What makes us unique is our leading role as the investment destination for offshore wealth. Offshore wealth holders want to earn reliable returns, and we let them do it here tax-free. Since 1984, the U.S. has not taxed foreigners on portfolio interest, such as interest on corporate bonds. And while we still nominally impose a 30 percent withholding tax on dividends, we exempt stock buybacks. Buyback gains are taxable in the shareholder's home countries. If the shareholder successfully hides her assets from home country authorities, she won't pay tax anywhere.

In recent years, buybacks have replaced dividends as the primary channel through which large U.S. corporations return cash to shareholders. Of the 10 largest U.S. companies by market cap, five pay no dividend, and four pay dividend yields below 1 percent. Foreigners can invest offshore wealth in those companies essentially tax-free.

To illustrate, consider two companies, AT&T and Facebook, or now Meta. A foreigner who holds \$1 million of AT&T stock in an offshore account would pay \$27,000 per year in U.S. tax. By contrast, a foreigner who holds \$1 million of Facebook stock offshore would pay zero. The reason is that AT&T returns cash to shareholders primarily through dividends, while Facebook returns cash to shareholders exclusively via buybacks.

The offshore wealth that flows into the U.S. brings real benefits. It finances corporate investment, mortgage loans, and government debt, but these benefits pale next

to the costs. First, our choice to exempt foreigners from U.S. tax on portfolio interests and buyback gains imposes a massive revenue cost on the Federal fisc, hundreds of billions of dollars each decade. Second, by helping other countries' citizens evade taxes, we compromise our own national security and foreign policy interests. The global rule of law depends upon a network of capable national governments. We subvert other members of that network when we aid and abet tax evasion by their citizens.

So what to do? First, we need to apply our withholding tax to buybacks, or push U.S. corporations back to dividends. The excise tax on buybacks in the Build Back Better Act is a modest first step in the right direction.

Second, we ought to reconsider the withholding tax exemption for portfolio interest, especially if interest rates rise in the coming years. The revenue costs of this exemption will mount.

Third, we need to work multilaterally with other countries that are home to strong and stable capital markets, especially Japan, the U.K. and the EU, Canada, South Korea, and Australia. If these countries all agree to impose comprehensive withholding taxes, offshore wealth holders who want to earn reliable returns will no longer have the option to evade tax entirely. By contrast, trying to shut down every offshore intermediary will be a game of whack-a-mole because dozens of countries can play the intermediary role.

We cannot rue the problem of offshore tax evasion without recognizing the United States' essential part. Hopefully, this hearing and the legislative efforts that come of it will move us closer toward shedding our status as the world's ultimate tax haven.

Thank you, again, for the opportunity to share these views.

[\[The statement of Mr. Hemel follows:\]](#)

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Pascrell. Thank you for your statement. The first two statements were very concise. I hope everybody is listening.

Now, Ms. Hanichak, you may begin.

**STATEMENT OF ERICA HANICHAK, GOVERNMENT AFFAIRS DIRECTOR, THE FINANCIAL ACCOUNTABILITY AND CORPORATE TRANSPARENCY (FACT) COALITION**

Ms. Hanichak. Chairman Pascrell, Ranking Member Kelly, all, thank you for this very important hearing. I am here on behalf of the Fact Coalition and its more than 100 civil society, business, and labor members to discuss bipartisan reforms that will help mitigate tax dodging and improve U.S. tax compliance.

In the wake of the Pandora Papers that exposed widespread corruption and tax evasion through U.S. financial instruments, this hearing could not be more timely. As I will describe, it is imperative that Congress fulfill its oversight and appropriations role to aid the administration in denying financial safe haven, not only to tax evaders, but also to drug traffickers, human rights abusers, kleptocrats, terror financiers, and sanctions dodgers.

The fact is simple: The U.S. has become one of the most secretive jurisdictions in the world. This undesirable status harms average Americans, undermines our national security, weakens democracy, and erodes our tax base and that of countries around the world. The Pandora Papers opened the world's eyes to the insidious effects of this secrecy. Political elites, criminals, and adversaries exploit offshore financial systems that are not offshore at all, but, rather, nurtured in the United States in our own back yard.

For instance, a sugar baron and vice president of the Dominican Republic sought to evade new transparency measures enacted in the Bahamas, itself an historically opaque tax haven. Facing scrutiny of his offshore funds, he instead chose to move his assets to the

sleepy tax haven of South Dakota. In another case, Colombian clothing magnate Jose Douer Ambar was implicated in laundering money for an infamous drug cartel. Discovered by U.S. investigators, he was forced to forfeit \$20 million to the United States, but that pales in comparison to the \$100 million he was believed to have tucked safely away in a trust in South Dakota.

The Pandora Papers, writ large, have pointed the finger squarely at U.S. trusts as one of the most significant gaps in the U.S. regulatory regime, alongside other anonymous entities. These trusts create a major blind spot for law enforcement and tax authorities in ensuring compliance with the law. According to a 2019 analysis by Global Financial Integrity, more personal information is needed to obtain a library card in all 50 States than to establish a legal entity that can be used to facilitate tax evasion, fraud, money laundering, and corruption.

A 2020 Treasury analysis based on IRS data found that legal entities were used in a, quote, "substantial portion of cases to commit tax evasion and fraud." That is exactly why the Corporate Transparency Act is so important. Passed by Congress in January, this new bipartisan law will give officials new tools to enforce U.S. law, counter tax evasion and fraud, and support U.S. national security.

The Corporate Transparency Act was enacted under the Trump administration and now has its first draft rule under the Biden administration. The Act reasonably requires corporations, limited liability companies, and, quote, "other similar entities," to disclose their true, natural owner to a secure directory housed and maintained at Treasury's Financial Crimes Enforcement Network.

The Corporate Transparency Act is the most significant update to U.S. anti-money laundering framework in 20 years. According to the Act, information is to be made accessible to authorized law enforcement officers, national security officials, the IRS, and

Federal functional regulators, as well as financial institutions like banks that have requirements to know their customer under applicable laws. As the new rule was just released yesterday, the Fact Coalition is still digging through the 188-page draft rule, so we can confidently say that the Treasury Department and FinCEN are to be commended for delivering a robust draft rule of the Corporate Transparency Act within the timeframe identified by Congress.

Two things have caught our attention that will help authorities go after Pandora's notorious abusers. First, the draft rule defines a reporting company broadly enough such that certain trusts not expressly exempt by the law, as well as other notoriously opaque entities, will be required to report their beneficial owners.

Second, the draft rule requires new and existing entities to report information in a truly timely fashion, equaling or surpassing international standards on beneficial ownership disclosure. The draft rule, likewise, demonstrates FinCEN's efforts to partner with legitimate businesses to ensure the directory provides useful information for law enforcement, and keeps the costs of compliance for business low.

Treasury officials this week pledged costs on average of \$50 per company. Steps like verifying the data as it is entered into the directory, for instance, pinging driver license numbers off in existing government database would further keep compliance costs low and data quality high. On the next rulemaking, Congress should reiterate that authorized law enforcement and IRS officials should have timely and uncomplicated access to the directory.

Congress should also note that there are certain trusts and other entities exempted from the Corporate Transparency Act in subsequent draft rule that may still pose tax evasion and other risks. Congress should examine these exemptions and consider if they warrant further legislative action.

Finally, FinCEN will need additional resources and staff to finalize a rulemaking and

stand up a database that meets modern standards in security and data quality. Congress should appropriate additional funds so that FinCEN can meet the 21st century financial threats that our country faces.

In conclusion, despite the strong rule, Congress still has an important role to play over the next year in ensuring that the U.S. financial system is not a vehicle for illicit finance, and this subcommittee hearing is an excellent first step. We can discuss more ideas for Congress to carry out during the question and answer. I welcome your questions.

[\[The statement of Ms. Hanichak follows:\]](#)

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Chairman Pascrell. And now we are going to turn to our final witness, Mr. Burton. You are now recognized for 5 minutes, sir.

**STATEMENT OF DAVID R. BURTON, SENIOR FELLOW, THE HERITAGE FOUNDATION**

Mr. Burton. Thank you, Mr. Chairman. I would like to thank you, Ranking Member Kelly, and members of the subcommittee for the opportunity to be here this morning.

Financial and personal privacy is a key component of life in a free society. A high degree of privacy for both individuals and groups, and limits on both disclosure and surveillance are the foundation of a liberal democratic society. In contrast, in an authoritarian or totalitarian State, the regime relies on secrecy for itself, but all other groups are subject to surveillance and mandatory disclosure.

The U.S. financial regulatory framework is increasingly consistent with these ideas. We should be under no illusion on whether personal or financial privacy are inextricably linked. A government or a private organization, for that matter, that knows everything about our financial life will know virtually everything about our private life, including our business, political, social, and religious associations, and inclinations, what we buy, what we own, where we travel and more.

Ever-increasing surveillance and mandatory reporting endanger the freedom of the American people. In the recent controversy over the Biden administration's proposed bank account surveillance program, demonstrates that the American people still care about financial privacy.

The current regulatory regime is overly complex, burdensome, and its ad hoc nature has likely impeded efforts to combat terrorism, enforce laws, and collect taxes. Furthermore, the inability of the IRS, FinCEN, OPM, the SEC, and other Federal agencies to

protect the private data in their hands should give Congress pause about creating larger, more lucrative databases for hackers to target.

There is also a largely newer problem in this area involving various international treaties and tax information exchanging limits that I discuss in my written statement in greater detail.

The Corporate Transparency Act was enacted in January as part of the NDAA. It will impose a large compliance burden, over \$1 billion annually, on approximately 11 million small businesses with 20 or fewer employees, or less than \$5 million in gross receipts. Those institutions most able to abuse the financial system are, however, exempt. Assuming a 90 percent compliance rate, the CTA is likely to create over 1 million inadvertent felons out of ordinary small businesspeople throughout country.

The bottom line is the CTA is going to be a massive burden on small businesses, but it is misdirected. The problems in this country are not the dry cleaners, the retailers, and the restaurateurs on Main Street. Yet, that is whom the CTA burdens. It is a remarkably poorly drafted piece of legislation rife with ambiguities and inept provisions. FinCEN's proposed rules yesterday do little to address the problem. An example would be they create the oxymoronic term, a dominant minority without defining what that is, and they define substantial control with a phrase like, quote, direction, determination, or decision or substantial influence over important matters affecting the reporting company without bothering to define what is substantial influence, or what is an important matter.

Your local dry cleaners, restaurateurs, and retailers are being forced to deal with this on pain of criminal sanctions. Perhaps the Fact Coalition, FinCEN, or members of this committee could work to improve these definitions so small businesses owners aren't having to make these decisions. There is a long, long list of problems with it, but I will move on.

The regulatory costs do not increase linearly with size, so heavy regulation accords a competitive advantage to large firms. The number of broker dealers in this country have declined by 30 percent over the past 15 years. We lose about 2- to 300 broker dealers each year, and usually the smallest ones, the ones that help entrepreneurs and smaller communities raise capital. Out of the 5,001 insured depository institutions in the United States, the largest 10 account for nearly half of the deposits. This degree of concentration is largely driven by regulation, and it needs to stop.

I suppose the last thing I would like to address in my oral remarks is the question of trusts. There is a newfound war on trusts. Evidently, trusts are a massive problem. It has been a point of fact, most small businesses, farms, and ranchers have trusts, or at least a very substantial portion of them for purposes of succession planning, spendthrift provisions to keep their children from wasting their inheritance; incapacity planning; avoiding expensive probate provisions; and having a more accelerated estate settlement plan. So, there are a lot of reasons to do it.

If you are worried about the generation skipping tax, as one of my co-panelists is, the simple expedience is to amend the generation skipping tax so that the trust provisions are disregarded for purposes of the TST. This was proposed by the joint committee staff as many as 15 years ago. Thank you very much.

[\[The statement of Mr. Burton follows:\]](#)

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Chairman Pascrell. Thank you.

Before we get into questions, we do not want to hamper legitimate businesses. First, we have got to find out if they are legitimate. We don't know that beforehand. And I was shocked to hear Ms. Hanichak talk about what you need to get a library card in many of these States compared to what you need to do now when you are investing and putting a deposit into some bank or financial institution, and we don't even know who the heck it is. I mean, that is questionable.

But we are going to go to the questions period right now, and I am going to open the hearing for questions. Without objection, each member will be recognized for 5 minutes to question our witnesses. If the witnesses will respond with short and concise answers, all members should be able to ask questions. As mentioned earlier, we will not observe the Gibbons Rule in this hybrid setting, and will, instead, go in order of seniority for questioning, alternating between the majority and the minority, beginning with the members of the Oversight Subcommittee. Members are reminded to unmute yourself when you are recognized for your 5 minutes. I am going to begin by asking my questions.

Professor Moran, thank you for your testimony. You say that tax savings will never be eliminated. The Pandora Papers show how state laws – for instance, we mentioned some of the States contribute greatly to the creation of tax havens in the U.S. When you use the word “haven,” people are going to think about what we have been talking about for a couple of decades, like the Cayman Islands, other places like Ireland, a lot of places where U.S. businesspeople and non-businesspeople put their money so they don't have to pay taxes in the United States. Are you following me?

Ms. Moran. Yes, sir.

Chairman Pascrell. Good. What is the best first step for us to take at the Federal level to try to rein in this dangerous domestic tax haven phenomenon even if we can't

eliminate it?

Ms. Moran. The most important way to eliminate tax havens is to trace beneficial ownership. This is why these non-charitable, special purpose trusts are so attractive to people because not only do they make it difficult to trace beneficial ownership, they actually don't have beneficial ownership, so it becomes almost impossible to trace it. If you don't know who owns what, it becomes very difficult to prevent a tax haven.

Chairman Pascrell. I saw a graph about what you are talking about. But why would somebody not want anybody to know that they are the owner of this money? Why would you use someone else in your place? What are you hiding?

Ms. Moran. Well, there are at least two different reasons. One would be a tax reason. So, for example, as Professor Hemel was discussing, the way that domestic and foreign trusts are defined in the Internal Revenue Code, you can have a trust that is created in South Dakota that benefits a U.S. citizen in Colorado. But if the supposed owner of the trust is a foreign national, then it is possible for monies to go to the foreign national who is not taxed, and then that foreign national to gift back to the American. So, hiding who owns what, or having people who are not the true owners set up as the owners can have tax advantages.

Based on that, which is really disturbing, is that you can hide illegal funds. You can hide funds associated with human rights abuses. You can hide all sorts of other things that you might not want people to know. So, it is not just about hiding the money, but hiding the activity behind the money, or hiding the person who owns the true beneficial.

Chairman Pascrell. Thank you, Professor Moran.

Professor Hemel, I wanted to thank you for your very thoughtful insights, I read them very carefully, into this investigation. In your testimony, you suggest that the U.S. needs to work multilaterally, we are talking about international money now, with other countries

with large and liquid capital, those markets, to align our anti-evasion efforts, using the recent OECD corporate tax agreement as an example.

So, would the two tax changes you mentioned, discouraging stock buybacks, and imposing a withholding tax on portfolio, on portfolio interest, have to be adopted by our OECD partners, in your estimation?

Mr. Hemel. I think they would be effective even if not adopted by our OECD partners, but would be more effective if they were adopted.

So, first, on the buybacks issue, buybacks aren't an entirely an American phenomenon, but they are primarily an American phenomenon. In other countries, their corporations primarily return cash to shareholders via dividends, and most of those countries do impose withholding tax on dividends. So this is one way in which we are providing an almost unique advantage relative to other countries.

As for portfolio interest, there are other OECD countries that are already taxing portfolio interests. Even the U.K. taxes some. But there are only a small number of large and liquid capital markets in which the trillions of dollars of offshore wealth could be absorbed.

So we are really talking about 6 to 12 countries really needing to be on board for this to be an effective regime. Whereas if we are going off after offshore intermediaries, then there are dozens of countries that we would need to sign on board.

Chairman Pascrell. Mr. Kelly.

Mr. Kelly. Thank you, Mr. Chairman.

So, I want to start with the Federal Government's failure to address massive leaks of confidential information. I just want to be clear. Everything that you are all talking about today, this is voluntary submitted information data that has been breached. And so, when we look at what it is we are talking about today, you know, private taxpayer information of

thousands of Americans was leaked to a media outlet in June, and this committee has yet to hold a hearing on that. We have yet to receive answers on how this massive criminal leak happened. And just last week, Secretary Yellen testified before the Senate that the investigation was still ongoing, and that it was premature to have answers. Well, I will tell you what. I guess in the government, it is premature, but in the private sector, that is a lifetime. They don't give you that kind of time to collect information and get back to them from a government entity.

Now, meanwhile, taxpayer information continues to get published. Now, we need answers on this issue. We need to get them now. Mr. Chairman, I have a letter from Senate Finance Committee members to the IRS Commissioner Rettig asking key questions about ProPublica data leaks that I would like to introduce for the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Pascrell. Without objection.

Mr. Kelly. Also, a letter from the NFIB talking specifically to today and the potential burdens on small business owners of any new regulations reporting requirements that Congress may propose in response to the Pandora Papers.

I have got to tell you, because I am from the private sector, when you have to label -- when you have to lawyer up for all these things that happen, and then, you know, all of a sudden the meter starts running, so we think we are protecting people? We can put people out of business really quickly, and we have the ability to do that. And, quite honestly, I think we ought to take a look at the way we run our business before we start pointing fingers at private individuals.

Instead of focusing on the data leaks, we are having a hearing today on an issue that was only brought to light due to another data leak. In this case, it was the breach of a government database in another country that was supposed to be confidential. So much for the word "confidential." At the same time, our government is in the process of establishing a similar database from the leak of the IRS data this year to FinCEN linked thousands of suspicious activity reports in recent years to the massive data breach at the Office of Personnel Management back in 2015, Federal data securities use problem.

Mr. Burton, whether it is tax returns or details about a small business, in your view, what do these repeated leaks do to the American people's trust, confidence, and faith in the government's ability to keep their information secure? It is all voluntarily submitted. Is that not correct?

Mr. Burton. You and I may have a little different definition of voluntary. Generally, it has been submitted because it is required by the Federal Government that it be submitted. I mean, it has been submitted in compliance with law or regulations proposed by FinCEN and the IRS or whatever.



Mr. Kelly. Okay.

Mr. Burton. But the bottom line is, I think the American people are beginning to lose faith that the Federal Government can protect data because it has been, more or less, established that they cannot. I suppose we have heard a lot about international cooperation. Right now, before the Senate is a treaty called the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It sounds very boring. And then a follow-on competent authority agreement is likely to be before the Senate. That would require the U.S. Government to collect information from banks, insurance companies, and brokerage firms, investment banks, and share it with virtually every government on the planet, including the Chinese, the Russians, various corrupt developing countries, and developing countries that have much more lax data security requirements than the United States, and that has been supported by several administrations.

I can't imagine what would ever go wrong in such a context. It is likely that we would end up having data leaks, but we will also be sharing data with countries that are fundamentally hostile to the United States.

Mr. Kelly. So, we ask people to supply this data. That is when it becomes voluntarily, right? This wasn't the result of somebody at a government entity going out and doing an investigation and collecting data that they didn't have access to, and they were somehow able to uncover it?

Mr. Burton. No. It is a function of SARs that are mandatory under the Bank Secrecy Acts, and then a lot of it is also in tax data, 1099s, tax return data, things of that sort. And, of course, the OPM is typically employees that are working for the Federal Government. The SEC leak generally related to -- as I recall, it was information that was valuable to people that are doing insider trading based on likely SEC enforcement actions, that sort of thing. I mean, virtually every Federal agency has had some massive data leak.

Mr. Kelly. So, there are -- really. The things that taxpayers or people who are making these investments are being asked to comply with --

Mr. Burton. Yes.

Mr. Kelly. -- are never secure.

Mr. Burton. Pardon me?

Mr. Kelly. They are never secure.

Mr. Burton. It is proving not to be.

Mr. Kelly. We take this information and say, don't want worry, this isn't going to be made public unless it gets made public by somebody leaking something, and sometime in the future, we will find out who they leaked it and why they leaked it and continue to erode people's faith. So, the old saying, I am from the government, and I am here to help you really stands true to the test. It sure does.

So, with that, first of all, thank you all for being here. Mr. Chairman, thank you so much. I yield back.

Chairman Pascrell. Thank you, Mr. Kelly. And now we are going to turn to Ms. Chu for 5 minutes.

Ms. Chu.

Ms. Chu. Ms. Hanichak, it is astounding to me that the United States is now ranked second globally for its lack of financial transparency, just behind the Cayman Islands. The Pandora Papers account for nearly 12 million documents, proving how famous and powerful people have established complex networks of companies set up across the world to evade taxation, and it sadly proves just how involved the U.S. is in this network. High wealth individuals, both domestic and foreign, can easily evade taxes by moving money into American shell companies with little or no oversight or accountability.

So looking forward to the impending implementation of the Corporate Transparency

Act, how could the information on beneficial ownership that FinCEN collects be used by the Internal Revenue Service to better enforce our tax laws? Will FinCEN proactively share that information, or would the IRS need to request that information on a case-by-case basis?

Ms. Hanichak. Thank you very much, Congresswoman, for the question. It is an important topic.

Let me start by mentioning just how critical this information is in tax enforcement and for tax administration purposes, which are two purposes under which the IRS is allowed to use this information according to the statute. They point to a case from 2016, I believe, in which an attorney from Boca Raton evaded \$1.5 million in taxes via anonymous shell companies. And, likewise, there is another instance in which a family with an interest in a lumber business, a majority interest, evaded nearly \$200 million via anonymous corporate structures and complex networks of anonymous shell companies.

So for these reasons, it is critical that the IRS has access to the database. The statute allows the IRS to have preferential access to this database, use it for tax enforcement and tax administrative purposes. And, likewise, it is really crucial that the information in the database is constructed such that it is useful for the IRS as it conducts its investigations.

One way that FinCEN could consider doing this as it enters the next step of the rulemaking, looking at access and database construction, would be to make sure that law enforcement officers, national security officials, and the IRS are able to identify connections between various corporate ownership structures, and be able to say if Erica Hanichak owns a company to be able to make those types of connections to other entities that I would own. So this would be really critical from a tax enforcement perspective.

Ms. Chu. But would it have to be done on a case-by-case basis, or tend to be proactive in the sharing of information.

Ms. Hanichak. I appreciate the follow-up. It would not have to be done on a

case-by-case basis. It would be -- since the IRS is a part of the Treasury Department, it would be able to have access to the database. Thanks.

Ms. Chu. So, Ms. Hanichak, the Build Back Better Act, which the House passed last month, invests \$80 billion in the IRS to rebuild the agency and increase enforcement and help the IRS better identify and catch tax evaders. Even with this historic investment, does Congress need to make additional changes to the Corporate Transparency Act to ensure that FinCEN is sharing this information with the IRS so that the IRS can better target those shell companies when they are being used to evade taxes?

Ms. Hanichak. Thank you for the question. First of all, let me just say that increased IRS resources as included -- as contemplated, rather, under Build Back Better, are critically important to make sure that the IRS is able to have the resources and technical training necessary to understand the complex webs of anonymous ownership structures and legal entities that are often relied on for tax evasion and fraud purposes.

Additionally, there are some considerations that need to be taken into account as the Financial Crimes Enforcement approaches the next rulemaking on the database construction and access. There are concerns that the Financial Crimes Enforcement Network may include specific procedures not required by law that would make IRS access less timely and more complicated. It would be really important for the administration to hear from this committee about why it is important for the Treasury Department, for the IRS specifically, to be able to have uncomplicated access to the information in the directory. Thanks.

Ms. Chu. So are there some changes that are needed?

Ms. Hanichak. There are no legislative fix required to make sure that Treasury gets access to this database. It really is just a matter of how it comes down to the implementation, so I really hope that Congress can partner with the administration to make

sure that this information is highly useful.

Ms. Chu. Thank you. I yield back.

Chairman Pascrell. Thank you, Ms. Chu.

I am going to call on, in a second, Mrs. Walorski for 5 minutes, but can I say one thing, please? Would you yield for me?

Mrs. Walorski. Absolutely.

Chairman Pascrell. I wrote a letter -- you brought the subject up of ProPublica. I wrote a letter -- when was this? It was in June, yeah -- in June, to the IRS asking them the very question you just asked, and I have not received an answer from my question. I want you to know that. And that is part of what we are talking about, in an age where we are trying to simply get transparency so that we know what the heck we are dealing with, so we don't make wild accusations. Yet, at the same time, in order for us to make judgments, we have got to know some facts without invading privacy, and I think we can do that. We have done it in other areas. We have even done it with personal income taxes, so we can do this.

But here is an example: Five months later, I don't have an answer to the question, and that burns me. It doesn't matter who the majority is, by the way. We wind up with no answer. But I just wanted to bring that to your attention.

Mr. Kelly. Well, thank you, Mr. Chairman.

Chairman Pascrell. Mrs. Walorski, how are you?

RPTR WARREN

EDTR ROSEN

[11:04 a.m.]

Mrs. Walorski. Good to see you, Mr. Chairman.

Chairman Pascrell. Good to see you.

Mrs. Walorski. Thank you, Mr. Chairman.

We have been having, in the midst of these discussions about the tax gap, in the middle of what we are talking about this morning. I do want to address one issue related to an over-the-top estimate made by the Treasury Department.

First, I want to note that Republicans on this committee have introduced a bill, H.R. 5206, that would establish a more reliable and timely process for estimating the tax gap, which would provide Congress then with reliable information as we consider policy options.

In a purely political effort, Treasury put forth a very large tax gap estimate that goes far beyond the official IRS estimate. Treasury claimed in one example that \$160 billion is lost annually through taxes owed but not paid by the wealthiest 1 percent of taxpayers. This number was striking and received significant press attention when it came out.

We were concerned by this number, begin digging into the analysis to understand where exactly is the Treasury Department on this, and where are they getting these numbers from? Staff from the Joint Committee on Taxation also expressed skepticism at the time at the number and identified a potential methodological flaw in the analysis leading to the number.

Professor Hemel, do you agree with this Treasury estimate analysis and claim that 1 percent to fail to pay the \$160 billion each year? Or would you agree with the Joint Committee on Taxation that the methodology used to reach that number is potentially

flawed?

Mr. Hemel. Thanks for the question.

I think that there is certainly significant underreporting by the top 1 percent. I don't think the \$160 billion number is evidence of that. The statistical issue that folks are arguing about here is pretty technical, but much of the tax gap is really a statistical imputation. It is underreporting that we assume is there, but we don't see.

And the assumption is for every \$1 that we see, there are \$2 underreported that aren't seen. And there is a question how to allocate those dollars that we assume are there, but don't see in these random audits.

The \$160 billion figure comes from the decision to allocate all -- to allocate underreporting to the same returns on which the random audit showed up underreporting. And this has the effect of magnifying underreporting by a relatively small number of taxpayers and also increasing their income. So the top 1 percent ends up being stocked with people who are only in the top 1 percent as a result of this statistical imputation.

The particular source that Treasury cited for that estimate was a Tax Notes article by Jason DeBacker and coauthors that actually use that as an illustration of what not to do. So I think there are clearly tens of billions of dollars underreported by the top 1 percent, but I don't think the \$160 billion number is right.

Mrs. Walorski. Thank you.

You know, I think narrowing the tax gap has been something that we have all talked about. And, you know, we are still looking. We still don't have an unbiased, reliable, and timely tax gap estimate that Congress can rely on as we actually evaluate policy choices. So that is why I think H.R. 5206 is so important.

And then, if I may, when it comes to the use of trust for tax planning, it is interesting that many people seeking to move assets into a trust in the low-tax State come from very

high-State, Democratic-run States. In those high-tax States, residents have been able to vote for expensive government services while at the same time, being able to legally avoid paying Federal taxes. Thankfully, we changed that in the Tax Cuts and Jobs Act.

It is odd to me that Democrats on this committee would focus on alleged tax shelters or tax havens in low-tax States while simultaneously scheming to modify the SALT cap to bring back a legal tax shelter for the residents of high-tax States. Democrats are working hard right now to provide so-called SALT relief to blue-State millionaires that will allow the absolute highest-earning Americans to avoid paying Federal tax they otherwise would owe. And I think that irony is incredible.

Mr. Burton, isn't so-called SALT relief essentially an effort to reestablish a legal regime that allows wealthy Americans to avoid paying Federal taxes as they otherwise would?

Mr. Burton. It would certainly have the effect of allowing or subsidizing in a sense high-tax States. It will certainly help higher income taxpayers. The primary reason to repeal the State and local tax deduction is to eliminate the incentive for State and local governments to raise taxes.

Mrs. Walorski. Thank you.

I yield back, Mr. Chairman. Thank you.

Chairman Pascrell. I thank you, Mrs. Walorski.

I want to respond, if you let me, on your last comment.

I thought your presentation -- looked at your bill that you are talking, referred to. And there are some very good things in there. I notice you also used the \$400,000 figure, which is going to be immense soon, I guess. But I think your intentions are commendable.

However, I didn't know I was in the scheming business in dealing with the SALT. There are many high-income States that utilize this, we know, that people who are affluent



may gain the majority of the money that will be available.

You folks on the other side saw the low-hanging fruit. You used it to pay for your taxes. I will not say scheme. This is what your presentation was. It was a legitimate presentation in 2017. But you used it to pay for some of it.

But my objection to the SALT, which is for 156 years, Lincoln knew what he was doing to help the counties and the cities pay for other things that were necessary besides the war. And that is why we had this deduction up until 2017, full deduction. What we do with it is -- remains to be seen.

But we have very serious problem here of double taxation, and I don't care whether you are a zillionaire or we folks. It is double-taxation regardless of how you look at it. And that was my approach to the SALT, and many other people have other reasons for it.

In my district it was devastating because it was a tax increase, but people didn't look at it that way. And, of course, you didn't sell it that way. And if I were you, I wouldn't have sold it that way either. But that is what it came down to.

And I am trying to discuss for the last several years, since 2017, to folks what actually did happen, because they are complaining to me because I am their Congressman. Regardless of whether I agreed with it or not is immaterial. You know that. We have been through this with a million issues.

So, I am willing to take a look at that legislation. And I think it has merit, what you are talking about. And I would ask you to take down the road another look at SALT.

Thank you.

Mrs. Walorski. Thank you, Mr. Chairman. Thank you for being willing to look at that legislation. I appreciate it.

And all I can say at this moment is, I am so glad and grateful I am from the great State of Indiana, a red State, one of the most balanced, measured, great tax -- great

stewards of our taxpayer money. And for that reason, I stand by the comments I made. Very grateful you are willing to look at it. But, you know, it does matter what States we live in. I am glad I am from the State of Indiana.

Chairman Pascrell. Yeah, but every State is different, Mrs. Walorski.

Mrs. Walorski. That is right. And that's why I chose to live in the great State of Indiana.

Chairman Pascrell. I mean, it is different than if you live in Indiana or Wyoming -- you know, let's take the other extreme -- and you are in a high-tax State, which does not mean that the State is being run improperly. It doesn't mean that at all. If you have got to provide the goods and services for that State, whether it be schools, roads, depending upon the density of the population, we can't -- the idea is do not double-tax our citizens. Period. I am trying to stand by that.

Thank you.

Mrs. Walorski. Looking forward to working with you on that bill.

Chairman Pascrell. You never know.

The chair now recognizes Ms. Plaskett for 5 minutes.

Thank you for being here. Time for questions.

Ms. Plaskett. Thank you. Thank you very much, Mr. Chairman. And thank you to our witnesses that are here.

Professor Hemel, I was -- really took note of some of the information that you had given to the committee and in particular in your appendix. You have discussions about the victimization of jurisdictions that are, in fact, tax havens, and the detriment that occurs to economies in those areas in which tax havens occur.

I recognize part of this, being a Representative of the Virgin Islands and living in the Caribbean. And while the Virgin Islands is not a tax haven, although some members may try

and say it is, because we try and have tax incentives for individuals to come and live there in the same way that my colleague sitting to my right, Mr. Doggett, living in Texas, his great State has tax incentives and we try to do the same, when you are a certain type of place, it is considered a tax haven.

But one of the things I was hoping you could address is the detriment that occurs and may occur to places like South Dakota and others when they are, in fact, tax havens. And why do you believe it is in truth that most of the attention come to places like the Cayman Islands and others, and not to the States that are operating under these type of regimes as well?

Mr. Hemel. Yeah, I think you raise an important issue.

We pay a lot of attention to offshore intermediaries, particularly offshore intermediaries in Latin America, the Caribbean, Africa, places where the average skin tone is darker than in New York or Chicago. But most of this offshore wealth that comes to the United States is sloshing around in the large capital markets of New York and Chicago.

I will say, in defense of South Dakota, that the focus on South Dakota in the Pandora Papers also distracts us from the fact that most of this money is ending up on the New York Stock Exchange or NASDAQ, or other U.S. markets.

So it is convenient for the United States as the world's leading ultimate investment designation for offshore wealth to try to focus attention on and scapegoat intermediary countries. But the intermediary countries are largely replaceable in this equation, and were truly the essential part.

Ms. Plaskett. Thank you.

Mr. Burton, I share your concern, as a moderate probably by many of my colleagues on my side of the aisle, to be considered a conservative Democrat, to be concerned with the use of capitalism and free society and privacy rights as being really important. I can recall

just last month speaking in Portugal, talking with the European Commission about data privacy and the concerns that America has with data privacy.

Although you are expressing your concern about leaks and I find it disturbing when personal information is leaked, putting that aside, I would have to think that the Heritage Foundation does not agree with plutocrats and drug dealers and oligarchs from Russia utilizing American loopholes to be able to hide ill-gotten gains, and for us to have the fruit of poisonous activities in our country.

What do you think would be the appropriate mechanism for us to keep that funds and that use of those funds out of our country?

Mr. Burton. First off, thank you for the question.

There is no doubt that the Heritage Foundation wants to use appropriate law enforcement methods to pursue predicate crimes. But the bottom line is, as it is structured right now, FinCEN, in particular, but also the Department of Justice and the IRS are giving you as policymakers almost no information with which to decide what is effective and what is not. And in my written testimony, I provide sort of a roadmap of how to get at that data.

For -- I have been unfortunately doing this for a while and for literally --

Ms. Plaskett. You couldn't tell by your youthful looks there.

Mr. Burton. Thank you.

For 35 years, they have come up and told stories and anecdotes and said, trust us, this time it will work. And it hasn't.

Ms. Plaskett. Can you in verbal give us two or three points or suggestions that you think we should be taking up to try and deal with this?

Mr. Burton. Yeah. We should identify when there are millions of SARs and CTRs and so on down the line -- last I looked it was 13 million. But bottom line: We need to identify which aspects of suspicious activity, of course, because there is lots of different reasons why

it could be deemed suspicious, are giving rise to actual AML successful investigations and prosecutions, independent of them discovering predicate crimes along the way.

My guess is that a very high percentage, perhaps as high as 90 percent of AML prosecutions are really add-on counts where they got the guy for dealing drugs or being a terrorist for utterly unrelated reasons.

The other thing they haven't done anything is to determine which of these requirements imposed on smaller firms have done any good. And we heard a lot about FinCEN sharing information with the IRS today under the CTR. The IRS already has much better beneficial ownership information than you are ever going to get from the CTR in a report under K-1s and in 1099-DIVs. The only gap in the IRS database is with respect to C corporations that don't pay dividends.

Ms. Plaskett. Thank you.

Mr. Burton. I would be glad to sit down with you and walk you through this.

Ms. Plaskett. I would love to do that. I am not sure if that keeps away individuals' personal trust information.

Mr. Burton. No, it not doesn't. But they are required to file tax returns and report income flows and assets.

Ms. Plaskett. Thank you very much for your indulgence, Mr. Chair.

Ms. Hanichak. Chairman, if you will allow me, may I be able to respond? Would I be able to respond? Thank you.

I would like to just note to Mr. Burton's point that FinCEN's ability to analyze this information is really predicate on the amount of funding it has. And despite the fact that the United States is the largest economy and the world's reserve currency, the current funding for the Financial Intelligence Unit of the United States currently has less than that of Australia.

So I think it is really important to reiterate how important it is for Congress to fulfill its role about passing a budget that is appropriate for FinCEN to be able to analyze the data and provide useful information for law enforcement.

But I do want to make one additional point on the utility of this information. There was a related pilot program that the Financial Crimes Enforcement Network stood up for the real estate industry which collected beneficial ownership information. In that pilot program's first year, it connected beneficial -- the specific cases in which beneficial ownership information was reported to 30 percent of transactions that were also reported under SARs filings. So this is information that is useful to law enforcement.

And I will finally just note that FinCEN, it has a really good track record of keeping this information safe. This is the Nation's foremost body in being able to counter counterterrorism and to provide information for law enforcement, and there are aspects in the bill that will make sure this information is safe, including being able to require this information to be accessed via physical portal. There is training and certification, and misuse of this information is a criminal act.

Chairman Pascrell. Thank you. Reclaiming and appreciate that.

I now would ask Mr. Smucker. You have 5 minutes, sir.

Mr. Smucker. Thank you, Mr. Chairman.

You know, this is sort of amazing to me. You have a leak of taxpayer data, taxpayer information.

Now, Mr. Burton said in his written testimony financial and personal privacy is a key component of life in a free society. Now I don't know. Maybe that is an overstatement, but I can tell you that my constituents are very concerned about the privacy of their financial information.

This is the Oversight Committee over the IRS, and there hasn't been one hearing on

this. In fact, I have not heard objections from the Democrat members or from the chairman. You said today that you wrote a letter. But a hearing, why should Congress not be looking into this data? Instead -- the leak, the leak of information, why aren't we looking into the leak?

Instead, and I will make another quote, "There is ample evidence that the true progressive agenda is the functional abolition of financial privacy so that political pressure may be brought to bear on businesses and individuals." And that is Mr. Burton's quote.

Well, instead of a hearing --

Chairman Pascrell. Will you --

Mr. Smucker. This is my time. This is my time. Can I finish? And then --

Chairman Pascrell. Sure.

Mr. Smucker. -- we will be happy to discuss it.

Instead of a hearing about the leak, the information is being used for political purposes. Now, we don't know who did it. And I would not accuse any member of this committee, the chairman, the chairman of the Ways and Means Committee from being part of the leak. But it sure is being used for political purposes. And that is getting damn close to complicit in releasing this information.

I don't understand why the chairman thinks that a letter is sufficient and getting no answer. You are the chairman of the committee, and we are not willing to hold a hearing on an illegal leak of private taxpayer data. The fact of the matter is, it plays into the Democrat narrative, which is absolutely false, that wealthy taxpayers cheat, and that they don't pay enough in taxes, which is amazing, because the second biggest item in this Build Back Better is to benefit Mr. Pascrell's wealthy taxpayers and wealthy taxpayers on both coasts. It is unbelievable the hypocrisy that we see here, that we talk about Build Back Better being for the poor taxpayers but the second biggest item benefits millionaires. It is just unbelievable.

And now it is a war on trust apparently.

Well, I got to tell you, that I don't need to tell whether the farmers and the small business owners in my district are legitimate because they are. And they are using legal -- a legal trust mechanism in the part of the farmers to ensure that they are making good decisions about allowing a taxpayer -- a family farm to be passed from one generation to another and ensure that it is done well.

So, this is unbelievable what we are seeing happen today in this committee. Instead of doing a hearing on ProPublica and why that data was leaked, we are using another set of data that was achieved illegally as well. It is unbelievable that this is what is happening right here in the committee that I am part of, and that, Mr. Pascrell, you are allowing that to happen.

Chairman Pascrell. May I respond?

The problem is, when we deal with unreality, I don't know what you are talking about. I have been very clear and public about what our motivations are here. And I have accused no one of doing wrong, except to say we need more transparency in this area, just as we said 15 years ago, we needed more transparency on issues like the Cayman Islands, where people were dumping money, so they had to pay taxes in this country. If that is involving privacy, I plead guilty. But that has nothing to do with privacy. It has if you are possibly breaking the law.

And I would look at the history of your party. You want to make this partisan? Fine. Your party, when they gave twelve names out 12 years ago, when they were investigating the Director of the IRS at that time when you succeeded in pushing her out, twelve people who did nothing wrong. And they were never apologized to. Your party did that.

I am telling you what we are looking for. We are seeing if there is transparency in this issue about States taking up the gauntlet for those people who don't want to be named



as being owners of this money. That is what I am doing.

Mr. Smucker. Can I respond, Mr. Chairman?

Chairman Pascrell. Sure.

Mr. Smucker. I don't know about that. That was before my time.

Chairman Pascrell. Well, you might review your history.

Mr. Smucker. I don't know about that. To me this isn't a party issue. And maybe I will just ask the question.

Chairman Pascrell. It is not a party issue.

Mr. Smucker. Why are we not investigating the data that was leaked? Why are we not calling it out for what it is? It is an illegal dump of taxpayer data. There are only a few people outside of the IRS who have access to that data. Why do we not care that this was done illegally? Why haven't we held a hearing, and are you willing to hold a hearing on this?

Chairman Pascrell. If I feel it is necessary and when you become the chairman, you can make that decision.

Mr. Smucker. Oh, I know that.

Chairman Pascrell. Good.

Mr. Smucker. I know that. I just think it is absolutely critical that we hold a hearing to investigate this rather than using leaked data for political purposes. It is unbelievable.

Chairman Pascrell. We haven't established that yet.

Mr. Smucker. We haven't established what?

Chairman Pascrell. That it is leaked.

Mr. Smucker. Oh, it is leaked.

Chairman Pascrell. We haven't established that.

Mr. Smucker. Okay. It is certainly not a legal use of taxpayer data.

Chairman Pascrell. Okay. Thank you for your comments.

Mr. Smucker. Thank you, Mr. Chairman.

Chairman Pascrell. And now I would like to ask Mr. Doggett for 5 minutes.

Mr. Doggett. Thank you, Mr. Chairman, and thank you for focusing our attention on these very disturbing revelations from the Pandora Papers.

You know, I think what is unbelievable is that after the Panama Papers, this committee did nothing. After the Paradise Papers, the Congress as a whole did not act forcefully. And had it not been for the very long and detailed and laborious work by international investigative reporters, we would not even have the information that we have here today.

Finally, this year, our Ways and Means Committee, working with the Biden administration, has made some limited progress in seeking to have large corporations and the wealthy few in our country pay a little more of their share, their fair share of our taxes. And Secretary Yellen has taken bold action in achieving global agreement on a corporate minimum tax. As a result, the incentives are reduced for multinationals to race to the bottom and find a tax haven in which they pay not some taxes, but no taxes on their income.

And in Build Back Better, overall, our proposed reforms to the international tax system will be constructive, particularly the requirement that I have sought for years through my No Tax Breaks for Outsourcing bill. And that is the country-by-country reporting. This will reduce the shifting of tax -- of profits into no-tax and low-tax tax havens.

The Pandora Papers, as Professor Hemel has noted, have apparently made us the ultimate tax haven for foreigners to come here and hide their wealth and avoid coverage in South Dakota and other places. This has been linked not so much to privacy, but to fraud, bribery, and human right abuses.

Let me ask you, Ms. Hanichak, as called for by another piece of legislation that I have

advocated for about a decade, the Stop Tax Haven Abuse Act, which I have worked, in fact, on, we proposed in that bill that any money laundering provisions be extended to cover the formation agents of these trust companies who help foreigners. And there appears to be no interest today from our Republican colleagues even for foreigners that cheat through these trusts.

But how would inclusion of the type of provision that I have had, in fact, supported for a decade in the Stop Tax Haven Abuse Act for trust, how would that change? And what impact would it have concerning those who launder their ill-gotten gains right here in America?

Ms. Hanichak. Thank you very much, Congressman, for the questions and for your years of commitment to financial transparency.

I would say this just to provide evidence for why this issue matters. There was a study conducted by Brigham Young University a few years back in which the researchers posed as various entities that would normally cause red flags for normal, you know, financial institutions with customer due diligence requirements, terrorist organizations and the like. And they approached corporate formation agents.

One researcher posing as a terrorist organization encountered a corporate formation agent that said I couldn't possibly represent you for less than \$5,000 a month.

And, so, it is critically important the work you are doing here in Congress, and that the Pandora Papers reveal, you know, that really underscore the mandate to tackle.

Additionally, that is why it is important that the Biden administration has reiterated or announced its interest in tackling corporate formation agents, corporate service providers, and trust providers as part of its anti-money laundering framework moving forward.

So with the bill that you have -- that you have written, Congressman, as well as

efforts like the ENABLERS Act from your colleagues, we are really excited to see Congress work with the administration to get this across the finish line.

Mr. Doggett. Thank you very much.

And let me ask Professor Hemel. I appreciate your testimony and that of Professor Moran.

But, Professor Hemel, you have talked about the desirability of us doing this in a cooperative way with other leading OECD countries. And certainly, the success that we had with the minimum tax, global minimum tax, indicates that global cooperation is important.

The only concern I have about that is the same concern that was -- or the same objection that some of these multinationals said, Well, global minimum tax might be acceptable, but we can't go first. And I think you addressed this in one of your earlier comments. Would you describe the advantages of global cooperation, but, again, make clear that lack of global cooperation is no reason why we shouldn't act to prevent the United States from being the leading place that these foreign elites like to launder their money?

Mr. Hemel. Yeah, I think we wouldn't be first. Other countries do tax portfolio interests. Other countries do tax the equity income of foreigners.

And I will also add that U.S. capital markets are attractive for reasons other than our tax provisions. It is because we have the most dynamic corporations in the world. And I think foreigners would continue to have an incentive to invest in U.S. corporations, even if they were going to pay some withholding tax along the way.

Mr. Doggett. Thank you very much.

Thank you, Mr. Chairman.

Chairman Pascrell. Thank you, Mr. Doggett.

And now we are going to turn to Mr. Horsford for 5 minutes.

Mr. Horsford. Thank you, Mr. Chairman. I appreciate you holding this critically

important hearing on the ICIJ's Pandora Papers. I also want to thank our witnesses for participating.

Like many of my colleagues, I am appalled by the Pandora Papers' findings that the United States was actually one of the global hubs of international tax evasion. It is ridiculous that the Tax Code allows these individuals to legally negate any tax obligations through convoluted financial instruments and increasingly obscure beneficiaries. My constituents in Nevada's Fourth District deserve better.

And with all due respect to my colleagues on the other side of the aisle, we are not red States and blue States. We are the United States of America, as former President Barack Obama once noted. And I really get tired of that framing by the other side. Why don't we focus on Federal tax policy that is fair and equitable, and ensures that those who are not paying their fair share do so?

The first issue I would like to highlight is how these secretive financial tools make tax avoidance much easier. At a time where the wealthiest corporations and individuals have seen record profits and the richest 1 percent hold more wealth than the middle 60 percent of American households, we must level the playing field.

My constituents are hardworking men and women who don't have the resources to hire a team of lawyers or establish obscure shell corporations. As such, many of them end up paying a higher effective tax rate than the mega rich highlighted in these papers. These hidden assets cost the United States Government tens of billions of dollars a year in tax revenue, and it is unacceptable that those who have benefited the most from our society refuse to reinvest in their fellow citizens.

Professor Moran, you discuss a race to the bottom amongst tax havens to attract investment through ever greater concessions, and you note dire consequences for localities that become tax havens. In light of this, what actions can we take, as the Federal

Government, to limit U.S. States' participations in this race?

Ms. Moran. It is very important that whatever rule is applied, that they apply in such a way that there is not -- that it doesn't encourage competition between the States.

So, you can see this, for example, in tax incentives where States give one incentive and then another State gives another incentive and then another State gives another incentive. And it spirals and it spirals and it spirals. We have already seen that in the tax incentive part of this problem, and we are going to see it in the tax haven part as well.

And, of course, you in Nevada are right at the forefront of this. So, it is -- whatever you do, it is important to always consider will this stop competition between the States, or will it encourage competition between the States?

Mr. Horsford. Thank you.

Additionally, I want to discuss how the findings by the ICIJ give us a glimpse into how deeply secretive financial instruments have become.

It is ludicrous that we have allowed vast fortunes to grow untaxed, and, oftentimes, unclaimed by any actual beneficiaries. The wealthy and well-connected have managed to not only hide the true value of their riches from the public, a shameful act on its own, but through shell corporations and trust, they have been able to dodge financial regulators and the IRS as well.

I agree with Ms. Hanichak's testimony that the current anonymity with which most legal entities may form or invest in the United States facilitates complex tax evasion schemes. And I appreciate your recommendations on gatekeeper industries. However, I worry that the adaptability of the financial system will provide another workaround similar to individuals using trust instead of shell corporations.

So, Ms. Hanichak, why do you believe that regulating these in-between entities will actually increase transparency as opposed to simply necessitate the creation of even more

convoluted financial instruments?

Ms. Hanichak. Thank you very much for the question, Congressman.

It is essential that the United States, via its law enforcement and tax authorities, has an understanding of who is behind anonymous illegal entities, whether that is anonymous shell corporations, trusts, or others. And you rightly point out that the trust industry has contorted itself 100 different ways to try to evade the scrutiny of new regulations that come online.

I would say that one of the most important things that can be done to address this, the Financial Crimes Enforcement Network has already taken the first step toward in terms of how the database collecting beneficial ownership information will be -- will be not just constructed, but the type of information it will collect. The flexibility of the definition as the -- as FinCEN has defined it for a reporting company is critical to make sure that we are not just regulating one entity today that will contort into the next entity the next.

So working with the administration to make sure that it is robustly carried out would be critical for Congress to follow through with.

Mr. Horsford. Thank you, Mr. Chairman. I appreciate your leadership. We are the United States of America. We need a tax policy that reflects that in a more fair and just way.

I yield back.

Chairman Pascrell. I thank you for your questions in-depth, Mr. Horsford. It was a fitting conclusion to our hearing today.

I want to thank the witnesses for doing a spectacular job. That is everybody. And thank you for being here, for your time. I think that you have assisted in building a groundswell for oversight as well as transparency. I can assure you, I don't take lightly when I send letters to agencies and I don't get an answer. I don't care whether the administration is Democrat or whatever. And that is my stand. That has been my history.

I ask unanimous consent to enter into the record a letter I sent to Governor Noem with questions to be answered for the record.

Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



Chairman Pascrell. Before closing, I would like to highlight the excellent pamphlet prepared by the Joint Committee on Taxation, analyzing the tax treatment of trusts and recommending additional reporting requirements to aid in the enforcement of our tax laws.

In addition, I would like to commend the administration for its report entitled, "U.S. Strategy on Countering Corruption," which was released earlier this week. And we should all read it, Democrats and Republicans. Many of the targets and tactics are reflected in the themes of this hearing. I look forward to working with President Biden, implementing this strategy.

And with that, let me say this: If there is nothing -- if there are things that we could have touched on today and we didn't have the time to do it, would you please write to me about this? I think it is very -- regardless of where your stance is, we should take everybody's viewpoints into consideration.

We want to protect privacy. There is no two ways about it. But, you know, that is a two-way street. And the point of the matter is to have oversight, we need to understand. We need information. That doesn't mean just go get it, but it means that you have to have a solid foundation.

I want to thank the committee, both Democrats and Republicans. It is a big issue. And I said to the ranking member, my good friend, Mr. Kelly, a few moments ago, this is like a volcano. This is out of Cayman Islands this got started, a discussion we never completed. And I hope this is not the case with those domestic things that are cropping up in the States, now only five or six. But that is going to grow also. No question about it.

Thank you for everybody being here today. Have a great holiday, and keep your families close.

I would like to thank the witnesses who joined us today. Please be advised that members have 2 weeks to submit written questions to be answered later in writing. Those

questions and your answers will be made part of the formal hearing record.

With that, this committee stands adjourned. Thank you.

[Whereupon, at 11:43 p.m., the subcommittee was adjourned.]

#### Submissions for the Record

Chair Pascrell – [Letter to Governor Kristi Noem](#)

Representative Kelly – [Letter to IRS](#), [Letter from NFIB](#), [\*Pandora Papers: Rich and powerful deny wrongdoing after dump of purported secrets, Reuters\*](#)

[Center for Fiscal Equity Submission](#)

#### Questions for the Record

[Chair Pascrell](#)

#### Answers

[Professor Daniel Hemel](#)

[Erica Hanichak](#)