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Perpetuities or Tax: Explaining the Rise of the Perpetual Trust

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I. INTRODUCTION

By year end 2005, 21 states had validated perpetual trusts by abolishing the Rule Against Perpetuities (the "Rule" or the "RAP") as applied to interests in trust.[1] On one view, these states responded to demand by donors for perpetual control independent of tax considerations. If so, the perpetual trust might be reckoned as the modern counterpart to the fee tail and strict settlement.[2] Each involves an effort by one generation to control the disposition of the family patrimony by subsequent generations. On the other hand, as is so often the case in the development of modern estate planning techniques, tax incentives may be the root cause of the rise of the perpetual trust. The 1986 enactment of the generation skipping transfer (GST) tax conferred a specific and salient tax advantage on long-term trusts, and nearly all of the states that have abolished the Rule did so after 1986. Proponents of both views have adduced supporting anecdotal evidence.

This paper assesses the foregoing competing explanations for the rise of the perpetual trust. Prior to the enactment of the GST, three states had abolished the RAP (Idaho, South Dakota, and Wisconsin). Hence, if settlors demanded perpetual trusts prior to the GST tax, these states should have had a disproportionate share of the nation's aggregate trust business prior to 1986. Using state-level panel data assembled from annual reports to federal banking authorities by institutional trustees, we compare reported trust asset levels across states. Unlike prior studies, which rely on anecdotal evidence, our approach thus has the advantage of analyzing revealed preferences. Inasmuch as donors had the option prior to the GST tax of settling a trust in a state that had abolished the Rule, evidence of whether they in fact did so is a good proxy for whether they wanted to do so.[3]

In short, we find no evidence that, prior to the GST tax, abolishing the Rule increased a state's trust business. Thus, although there are limitations in the pre-1985 data and only three states abolished the Rule before the GST tax, our results strongly imply that there was little demand for perpetual trusts prior to the enactment of the GST tax in 1986. By contrast, in a prior empirical study we found that

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[1] See Robert H. Sitkoff & Max Schanzenbach, Jurisdictional Competition for Trust Funds, 115 Yale L.J. ___, ___ Table 5 (forthcoming 2005) (collecting the states' perpetuities laws), available at http://ssrn.com/abstract=666481. We include in our count of abolishing states any modification of the Rule that would allow for a perpetual trust of intangible personal property or that so lengthened the perpetuities period that it no longer represents a practical constraint on trust duration. For a careful parsing of the variety of means by which the states have validated perpetual trusts, see Garrett Moritz, Note, Dynasty Trusts and the Rule Against Perpetuities, 116 Harv. L. Rev. 2588, 2590-95 (2003).

[2] See, e.g., J.H. Baker, An Introduction to English Legal History 293-94 (4th ed. 2002) (discussing the strict settlement); Joseph Biancala, The Fee Tail & The Common Recovery in Medieval England (2001) (examining the entail); Jesse Dukeminier & James E. Krier, Property 215-19 (5th ed. 2002) (discussing both entails and strict settlements); Jeffrey Evans Stake, Evolution of Rules in a Common Law System: Differential Litigation of the Fee Tail and Other Perpetuities, 32 Fl. St. U. L. Rev. 401, 410-19 (2005). See also A.W. Brian Simpson, A History of the Land Law 125-38 (2d ed. 1986) (discussing means of breaking entails).

[3] We discuss potential problems with using what donors did as a proxy for what donors wanted in the text accompanying infra notes __-__.

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from the enactment of the GST tax through 2003, a state's abolition of the Rule increased its reported trust assets by about $6 billion and its average trust account size by roughly $200,000.[4] Our prior study's findings imply that, from the time of the GST tax took effect through 2003, roughly $100 billion in trust assets moved as a result of the Rule's abolition.[5] Accordingly, we conclude that the 1986 enactment of the GST tax sparked the movement to abolish the Rule and the rise of the perpetual trust.

To be sure, we do not deny the possibility that some perpetual trust settlors want perpetual control independent of tax considerations. Moreover, because perpetual trust forms are now readily available (reducing the transaction costs of settling a perpetual trust) and the widespread use of perpetual trusts to achieve tax savings has brought into focus the non-tax benefits of perpetual trusts,[6] we suspect that if the transfer taxes were abolished,[7] some demand for perpetual trusts might persist. However, in such a scenario the continued popularity of perpetual trusts would owe to the fact that tax planning in the wake of the GST tax gave salience to the non-tax benefits of perpetual trusts.[8] Virtually all the current non-tax benefits of perpetual trusts were also available prior to the GST tax, yet we find no evidence that abolishing the RAP prior the GST tax increased a state's trust business.

In our prior study we concluded that transferors who desire a perpetual trust but live in a state that has retained the Rule have had little difficulty in creating perpetual trusts in spite of the additional transaction costs of settling a trust out of state.[9] Accordingly, to the extent that the policies that underpin the Rule continue

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[4] See Sitkoff & Schanzenbach, supra note __.

[5] We caution that the $100 billion figure is only a point estimate. For discussion of this estimate and its confidence interval, see id. at ___ & n.__.

[6] See, e.g., Richard W. Nenno, Delaware Dynasty Trusts, Total Return Trusts, and Asset Protection Trusts 163-73 (providing a sample generation-skipping-trust agreement), 26-27 (discussing reasons apart from the GST tax for a perpetual trust)..

[7] The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) repeals the GST tax and the estate tax (but not the gift tax) as to transfers in 2010. See Pub. L. No. 107-16, 2001 U.S.C.C.A.N. (115 Stat.) 38 (2001). EGTRRA also reduces somewhat the marginal tax rates while increasing the lifetime exemption in the years before 2010. See infra note __. But for transfers occurring in 2011 and beyond, it reinstates both the GST tax and the estate tax at their 2001 levels. One imagines that gift certificates for sky-diving and tickets for trips to dangerous parts of the world might be popular gifts from children to parents in 2010. On the political economy of EGTRRA and the estate tax repeal movement, see Michael J. Graetz & Ian Shapiro, Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth (2005). See also David G. Duff, The Abolition of Wealth Transfer Taxes: Lessons from Canada, Australia and New Zealand, available at http://ssrn.com/abstract=719744

[8] There is a loose analogy to the phenomenon of information cascades and herding. See, e.g., Timur Kuran & Cass R. Sunstein, Availability Cascades And Risk Regulation, 51 Stan. L. Rev. 683, 721 (1999); Abhijit V. Banerjee, A Simple Model of Herd Behavior, 107 Q. J. Econ. 797 (1992); Sushil Bikhchandani, David Hirshleifer, & Ivo Welch, A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades, 100 J. Pol. Econ. 992 (1992).

[9] See Sitkoff & Schanzenbach, supra note __, at __. We detail the relevant choice-of-law considerations in id. at __. Crucially, the primary mode of accumulating wealth today is in easily portable financial assets, not land. See John H. Langbein, The Twentieth-Century Revolution in Family Wealth Transmission, 86 Mich. L. Rev. 722 (1988). Cf. Lynn M. LoPucki, The Death of Liability, 106 Yale L.J.

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to have contemporary relevance, it is necessary to look elsewhere to service those policies.[10] Understanding the motivation for the movement to abolish the Rule illuminates the pros and cons of alternative means of servicing the Rule's underlying policies.

For example, because Jesse Dukeminier and James Krier assume that the primary rationale for using a perpetual trust is to minimize taxes, they have endorsed liberalizing the rules of trust modification and termination, and of trustee removal, to allow courts to adapt the trust in light of unanticipated changed circumstances.[11] If the settlor's primary purpose was to minimize taxes, allowing modification or termination when unanticipated changed circumstances warrant probably advances the settlor's intent. In a similar vein, the 2000 Uniform Trust Code, which has already been adopted in 14 states and the District of Columbia, liberalizes the common law of trust modification and termination on similar reasoning.[12] Here the analogy is to the doctrine of cy pres in charitable trusts,[13] which are privileged with an exemption from the Rule. By contrast, Joshua Tate believes that settlors create perpetual trusts to ensure perpetual control irrespective of tax considerations. Tate therefore cautions that liberalizing modification and termination rules would in many cases frustrate, not advance, the settlor's intent.[14]

Empirical analysis of the rise of the perpetual trust also speaks to the current policy debate over reforming the federal wealth transfer taxes. For example, the staff of the Joint Committee on Taxation (JCT) and various commentators have proposed amending the tax code to strip perpetual trusts of their tax advantage.[15] Our conclusion that the typical donor uses a perpetual trust primarily because of its tax advantage lends support to such proposals. Avoidance behavior that would not occur without the tax stimulus raises a prima facie case of deadweight loss.

1, 38 (1996) (observing that "the world recognizes the right of an owner of liquid wealth to move it to any nation that offers a better deal").

[10] See Ira Mark Bloom, The GST Tax Tail Is Killing the Rule Against Perpetuities, 87 Tax Notes 569, 570-71 (2000); Dukeminier & Krier, supra note __, at 1317-39; Moritz, supra note __, at 2595-08; Eric Rakowski, The Future Reach of the Disembodied Will, 4 Pol. Phil. & Econ. 91 (2005); Stewart E. Sterk, Jurisdictional Competition to Abolish the Rule Against Perpetuities: R.I.P. for the R.A.P., 24 Cardozo L. Rev. 2097, 2108-17 (2003); Angela M. Vallario, Death by a Thousand Cuts: The Rule Against Perpetuities, 25 J. Legis. 141, 154-62 (1999).

[11] See Dukeminier & Krier, supra note __, at 1339-42.

[12] See David English, The Uniform Trust Code (2000): Significant Provisions and Policy Issues, 67 Mo. L. Rev. 143, 169-77 (2002). See also Ronald Chester, Modification and Termination of Trusts in the 21st Century: The Uniform Trust Code Leads a Quite Revolution, 35 Real. Prop. Prob. & Tr. J. 697, 720 (2001); Alan Newman, The Intention of the Settlor Under the Uniform Trust Code: Whose Property Is It, Anyway?, 38 Akron L. Rev. 649, 654-69 (2005); Robert H. Sitkoff, An Agency Costs Theory of Trust Law, 89 Cornell L. Rev. 621, 658-63 (2004).

[13] See Jesse Dukeminier, Stanley M. Johanson, James Lindgren, & Robert H. Sitkoff, Wills, Trusts, and Estates 737-42 (7th ed. 2005).

[14] See Joshua C. Tate, Perpetual Trusts and the Settlor's Intent, 53 Kan. L. Rev. 595, 620-25 (2005).

[15] See Joint Comm. on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures 392-95 (Jan. 27, 2005) (hereinafter JCT Report), available at http://www.house.gov/jct/s-2-05.pdf; infra note __ and text accompanying.

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A further payoff from assessing the motivation to abolish the Rule lies in its potential contribution to the literature on the bequest motive. Scholars have long debated the relative importance of various motives for making donative transfers, both during life and at death, including altruism, tax planning, unanticipated early death and precautionary savings, the ability to extract services from one's kin, and dynastic impulses.[16] Although the rise of the perpetual trust might be viewed as evidence of a dynastic impulse, our findings suggest instead that the modern perpetual trust is primarily a creature of the federal transfer taxes.

The remainder of this paper is organized as follows. Part II reviews the Rule Against Perpetuities, including its policies, its reform in the latter part of the twentieth century, and its recent demise. Part III surveys the anecdotal evidence and prior literature on what sparked the movement to abolish the Rule and casts a glance abroad to England and Scotland. Part IV presents our empirical analysis. Part V concludes.

II. THE RULE AGAINST PERPETUITIES[17]

A. The Rule and its Policies

The Rule Against Perpetuities prohibits remote vesting of property interests. The classic formulation is that of John Chipman Gray: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest."[18] The period of the Rule reflects a common law policy that a transferor should be allowed to tie up property only for so long as the life of anyone possibly known to the transferor plus the period of the next generation's minority (hence lives in being plus twenty-one years).[19]

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[16] See, e.g., B. Douglas Bernheim et al., The Strategic Bequest Motive, 93 J. Pol. Econ. 1045 (1985); Lawrence M. Friedman, The Dynastic Trust, 73 Yale L.J. 547, 548-49 (1964); Franco Modigliani, The Role of Intergenerational Transfers and Life Cycle Saving in the Accumulation of Wealth, J. Econ. Persp., Spring 1988, at 15; Eric A. Posner, Altruism, Status, and Trust in the Law of Gifts and Gratuitous Promises, 1997 Wisc. L. Rev. 567; Richard A. Posner, Gratuitous Promises in Economics and Law, 6 J. Legal Stud. 411 (1977); James Poterba, Estate and Gift Taxes and Incentives for Inter Vivos Giving in the U.S., 79 J. Pub. Econ. 237 (2001); Steven Shavell, An Economic Analysis of Altruism and Deferred Gifts, 20 J. Legal Stud. 401 (1991). There is also a growing literature that draws on behavioral economics and sociobiology to examine this question. See, e.g., Donald Cox, Private Transfers Within the Family: Mothers, Fathers, Sons and Daughters, in Death and Dollars: The Role of Gifts and Bequests in America 168 (Alicia H. Munnell & Annika Sundén eds., 2003); Lee Anne Fennell, Death, Taxes, and Cognition, 81 N.C. L. Rev. 567 (2003).

[17] This section draws freely on Sitkoff & Schanzenbach, supra note __, at __.

[18] John C. Gray, The Rule Against Perpetuities §201, at 191 (4th ed. 1942).

[19] See 6 American Law of Property §24.16, at 51 (A. James Casner ed., 1952) (noting that the Rule permits "a man of property . . . [to] provide for all of those in his family whom he personally knew and the first generation after them upon attaining majority"). As Hobhouse put it:

> A clear, obvious, natural line is drawn for us between those persons and events which the Settlor knows and sees, and those which he cannot know and see. Within the former province we may push his natural affections and his capacity of judgment to make better dispositions

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The Rule is said to have two purposes: (1) to keep property marketable, and (2) to limit "dead hand" control. Preventing indefinite fracturing of property ownership implements the first purpose. The idea is that, from time to time, ownership of land will be reconstituted into fee simple because all contingent future interests in the property must vest or fail within the perpetuities period. However, if a contingent future interest is created in trust and if the trustee has the power to sell, which is typical,[20] the trust form overcomes the concern with marketability.[21]

The dead-hand rationale for the Rule is best understood as a response to the disagreeable consequences that can arise from unanticipated circumstances.[22] The Rule implements this anti-dead hand policy by curbing future interests that, after some period of time and change in circumstances, tie up the property in potentially disadvantageous arrangements. As Brian Simpson explains, "given that one can, to a limited extent only, foresee the future and the problems it will generate, landowners should not be allowed to tie up lands for periods outside the range of reasonable foresight."[23] Forever is a long time.

B. Twentieth Century Reform

Under the orthodox Rule's possibilities test, even the most implausible assumption about what might happen will render a contingent future interest invalid. Hence the casebooks are replete with absurdly improbable scenarios involving bizarre occurrences such as childbearing octogenarians and toddlers, unborn widows, inexhaustible gravel pits, wars that never end, slothful executors, and explosive birthday presents.[24] Eventually dissatisfaction the Rule's exasperating complexities,

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> than any external Law is likely to make for him. Within the latter, natural affection does not extend, and the wisest judgment is constantly baffled by the course of events.

Arthur Hobhouse, The Dead Hand 188, 183-185 (1880).

[20] The modern trustee's default powers are broad. See Uniform Trust Code §§815-16 (2000); Restatement (Third) of Trusts §85 (T.D. No. 4, 2005); Dukeminier et al., supra note __, at 777-78; John H. Langbein, The Contractarian Basis of the Law of Trusts, 105 Yale L.J. 625, 640-43 (1995).

[21] See Lewis M. Simes, Public Policy and the Dead Hand 40-42 (1955).

[22] Compare T.P. Gallanis, The Rule Against Perpetuities and the Law Commission's Flawed Philosophy, 59 Cambridge L.J. 284 (2000) (urging that the dead hand argument be conceived in terms of the economic consequences of perpetuities, with English Law Commission, The Rules Against Perpetuities and Excessive Accumulations, Report No. 251, at 5, 8, 20 (1998) (rooting the dead hand argument in terms of intergenerational fairness), and Simes, supra note __, at 58-59 (same).

[23] A.W.B. Simpson, Legal Theory and Legal History 159-60 (1987). Simpson continues: "The good patriarch looks into the future, but not too long. . . . The compromise which English law adopted was to allow property to be tied up for the lifetime of someone in existence at the time of the settlement and a reasonable period thereafter—for example, a minority." Id. But see Jonathan R. Macey, Private Trusts for the Provision of Private Goods, 37 Emory L.J. 295, 307 (1998) (arguing that settlors "will take the possibility of unforeseen contingencies into account when creating the trust").

[24] See Elias Clark et al., Gratuitous Transfers 753-69; Joel C. Dobris et al., Estates and Trusts 839-48 (2d ed. 2003); Dukeminier et al., supra note __, at 678-86; Jesse Dukeminier & James E. Krier, Property 306-11 (5th ed. 2002); William M. McGovern, Jr. & Sheldon F. Kurtz, Wills, Trusts and Estates 457 (3d ed. 2004); Eugene Scoles et al., Decedent's Estates and Trusts 1075-78 (6th ed. 2000); Joseph William Singer, Property Law 608-09 (3d ed. 2002); Valerie J. Vollmar et al., An Introduction to

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absurd assumptions, and booby traps led to reform to stay what Harvard's Barton Leach famously called "the slaughter of the innocents" in the Rule's "reign of terror."[25]

Some states enacted statutory fixes for specific fantasy scenarios, in particular the unborn widow and fertile octogenarian. Other states authorized the courts to reform instruments that otherwise would have been void *ab initio*. Still other states adopted the so-called wait-and-see principle whereby courts wait to see if, in light of actual instead of possible events, the interest will in fact vest or fail within a specified period.

The culmination of the twentieth century perpetuities reform movement was the 1986 Uniform Statutory Rule Against Perpetuities (USRAP). USRAP, some form of which is now in force in about half the states, provides a wait-and-see period of ninety years and authorizes reformation of instruments that would otherwise violate the Rule.[26] A related response to the Rule's booby traps was the prior emergence of the perpetuities saving clause, which ensures that an overlooked violation of the Rule will not render the trust invalid.[27]

The unifying theme of the perpetuities reform movement through 1995—except, of course, in Idaho, South Dakota, and Wisconsin, which for reasons that are not entirely clear abolished their Rules by 1957, 1983, and 1969 respectively[28]—is continuing respect for the long-standing policy against remote vesting. Even in its reformed versions and buffered by saving clauses, the Rule requires contingent interests to vest or fail within a specified period. For this reason, for most of the twentieth century the Rule continued to represent a practical limitation on the duration of trusts.[29]

Trusts and Estates 982-85 (2003); Lawrence W. Waggoner et al., Family Property Law 1206-18 (3d ed. 2002).

[25] W. Barton Leach, Perpetuities in Perspective: Ending the Rule's Reign of Terror, 65 Harv. L. Rev. 721 (1952) (hereinafter Leach, Terror); W. Barton Leach, Perpetuities: Staying the Slaughter of the Innocents, 68 L.Q. Rev. 35 (1952).

[26] Both wait-and-see in general and USRAP in particular sparked such heated debate in the law reviews that Susan French aptly dubbed the academic conflicts as the "Perpetuities Wars." Susan F. French, Perpetuities: Three Essays in Honor of My Father, 65 Wash. L. Rev. 323, 332-34 (1990). See also Sitkoff & Schanzenbach, supra note __, at __ (recounting the perpetuities wars and collecting citations).

[27] See Dukeminier et al., supra note __, at 695-96; Waggoner et al., supra note __7, at 1218-27; David M. Becker, Perpetuities and Estate Planning 133-184 (1993). Hence, contrary to a pernicious leading case, see Lucas v. Hamm, 364 P.2d 685 (Cal. 1961), it is almost certainly malpractice to draft an instrument that violates the Rule and lacks a saving clause. See Wright v. Williams, 121 Cal. Rptr. 194, 199 n.2 (Ct. App. 1975); Joseph William Singer, Introduction to Property §7.7.4, at 333 (2d ed. 2005).

[28] Wisconsin may have abolished its Rule even earlier (indeed, Wisconsin may never have had the Rule). See W. Barton Leach, Perpetuities: The Nutshell Revisited, 78 Harv. L. Rev. 973, 974-75 (1965); Friedman, supra note __, at 550. We need not resolve the status of the Rule in Wisconsin prior to 1969, however, because our data does not begin until that date.

[29] Because the rule prohibits vesting outside of the applicable perpetuities period, the identity of all persons with a claim to the underlying trust property will be ascertained within that period. Once all the beneficiaries are ascertained, they can terminate the trust when the perpetuities period ends. The settlor cannot prevent this. See Restatement (Second) of Property, Donative Transfers §2.1 (1983); 1A Austin W. Scott, Trusts §62.10 (William F. Fratcher 4th ed. 1987). See also Clark et al., supra note __,

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C. Toward the Twenty-First Century: Repeal

Unlike prior reform efforts, which preserved the Rule's core proscription of remote vesting, beginning in the mid-1990s a movement arose to repeal the Rule as applied to interests in trust. This movement appears to have originated in Delaware, which abolished its Rule in 1995.[30] The official synopsis of the Delaware legislation states its purpose plainly:

> Several states, including Idaho, Wisconsin and South Dakota, have abolished altogether their rules against perpetuities, which has given those jurisdictions a competitive advantage over Delaware in attracting assets held in trusts created for estate planning purposes. . . .
>
> The multi-million dollar capital commitments to these irrevocable trusts, and the ensuing compound growth over decades, will result in the formation of a substantial capital base in the innovative jurisdictions that have abolished the rule against perpetuities. Several financial institutions have now organized or acquired trust companies, particularly in South Dakota, at least in part to take advantage of their favorable trust law.
>
> Delaware's repeal of the rule against perpetuities for personal property held in trust will demonstrate Delaware's continued vigilance in maintaining its role as a leading jurisdiction for the formation of capital and the conduct of trust business.[31]

In response, Alaska, Arizona, Illinois, Maine, Maryland, New Jersey, Ohio, and Rhode Island authorized perpetual trusts by year end 2000.[32] By year end 2005, Colorado, Florida (360 years), Missouri, Nebraska, Nevada (360 years), New Hampshire, Utah (1,000 years), Virgina, and Wyoming (1,000 years) had followed suit.[33] The legislative history and contemporaneous local media coverage of these repeals indicate that their purpose was to preserve the states' competitiveness in the jurisdictional competition for so-called dynasty trust funds,[34] meaning perpetual trans-

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at 769. If the beneficiaries do not terminate the trust, the trust corpus will be distributed to the principal beneficiaries when the preceding life estates expire.

[30] See Act of July 7, 1995, 70 Del. Laws 428.

[31] H.R. 245, 138th Gen. Assemb. (Del. 1995) (bill synopsis).

[32] See Sitkoff & Schanzenbach, supra note __, at __.

[33] Id.

[34] See, e.g., Rachel Wolcott, New Jersey Poised to Allow Dynasty Trusts, Private Asset Management, May 17, 1999, at 1 (stating that the New Jersey legislation, which was "sponsored by the New Jersey Bankers Association, was drawn up so that New Jersey trust institutions could avoid losing potential dynasty trust business and other types of trust business to Delaware, South Dakota, and Alaska"); A. 2804, 208th Leg. (N.J. 1999) (stating that the purpose of repeal was "to permit banks and trust companies to offer 'dynasty trusts' to their customers, such as those that are being offered by banks and trust companies located in other states"); Fact Sheet for S.B. 1112., S. 112, 47th Leg., Reg. Session (Az. 1998) (stating that Arizona's perpetual trust legislation was "an effort to retain people who want to set up [perpetual trusts] in state"); Hearings on H.B. 101 Before the Subcommittee on Labor and Commerce, 20th Leg. (Alaska 1997) (statement of Rep. Vezey); Carrie Lehman, Legislation Changes Alaska Tax, Trust Laws, Attracts New Investors to State, Alaska J. Comm., Aug. 18, 1997, at 1; Deanna Thomas, Trust Bill Could Mean Boon, Alaska Star, Mar. 20, 1997, at 1; Katharine Fraser, With New Law, Alaska Aiming to Be Trust Capital, Am. Banker, Apr. 21, 1997, at 1.

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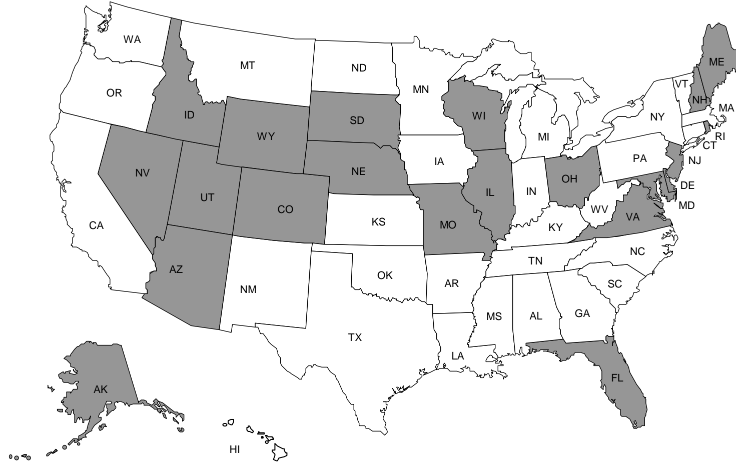
fer-tax-exempt trusts.[35] In a related vein, the governor of South Dakota—one of the three states that had abolished the Rule prior to Delaware—created a task force in 1997 to study the South Dakota trust laws and to recommend reforms "to allow South Dakota to continue its position as a highly desirable jurisdiction in which to locate trusts."[36]

Figure 1 illustrates the extent of the Rule's abolition at year end 2005.

Figure 1: Perpetual Trust States (2005)



Not surprisingly, legislation designed to abolish the Rule is under consideration in several of the states that have retained the Rule.[37]

III. CURRENT UNDERSTANDINGS

A. The Dominate View: The GST Tax

The dominate view among both scholars and policymakers is that the enactment of the generation skipping transfer (GST) tax in 1986[38] sparked the demand

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[35] See infra Part III.A.

[36] See Michael J. Myers & Rollyn H. Samp, South Dakota Trust Amendments and Economic Developments: The Tort of "Negligent Trust Situs at its Incipient Stage?," 44 S.D. L. Rev. 662, 664 (1999) (discussing the South Dakota task force).

[37] See Tate, supra note __, at 604 n.45 (collecting legislation pending as of 2005).

[38] The GST tax provisions comprise Chapter 13 of the Internal Revenue Code. I.R.C. §§ 2601-2663. The Tax Reform Act of 1976 contained a GST tax, but the 1976 scheme was later repealed retroactively. See Jeffrey N. Pennell, Federal Wealth Transfer Taxation 981-88 (4th ed. 2003); Stephanie J. Willbanks, Federal Estate and Gift Taxation: An Analysis and Critique § 15.01, at 220 (3d ed. 2004).

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for perpetual trusts and hence provoked the movement to abolish the Rule.[39] Mass media outlets such as the *Wall Street Journal*, the *New York Times*, and *Forbes* magazine tell a similar story.[40]

Prior to 1986, the estate tax could be avoided by use of successive life interests, for example by leaving property to one's child for life, then to one's grandchild.[41] Because a life tenancy terminates at death and the estate tax is levied only on the decedent's transferable interests, in the foregoing example there would be no tax when, on the death of the transferor's child, the transferor's grandchild's interest became possessory. The 1986 GST tax closed the successive-life-estates loophole by levying a tax equal to the highest rate of the estate tax on any generation-skipping transfer.[42] In rough terms, a transfer to a grandchild, great-grandchild, or any other person who is two or more generations below the transferor is a generation-skipping transfer.[43]

However, under the 1986 code (as amended through 2006) a transferor can pass $1 million during life, or $2 million at death, free from federal wealth transfer taxes, including the GST tax.[44] By funding a trust with the amount of the transferor's exemption, successive generations can benefit from the trust fund and any appreciation therein, free from federal wealth transfer taxes, for as long as state perpetuities law will allow the trust to endure. Thus, as Raymond Young testified to Congress prior to the enactment of the 1986 GST tax, the transfer-tax exemption

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[39] See, e.g., Bloom, supra note __, at 569; Joel C. Dobris, Changes in the Role and the Form fo the Trust at the New Milenium, or, We Don't Have to Think of England Anymore, 62 Albany L. Rev. 543, 572 n.135 (1998); Dukeminier & Krier, supra note __, at 1312 (Dukeminier & Krier's view) & 1317 n.59 (reporting John Langbein's view); Michael A. Heller, The Boundaries of Private Property, 108 Yale L.J. 1163, 1180 n.90 (1999); Sterk, supra note __, at 2100; Vallario, supra note __, at 156-58; JCT Report, supra note __, at 393; Dennis L. Belcher & Mary Louise Fellows, Report on Reform of Federal Wealth Transfer Taxes, 58 Tax L. 93, 269 (2004) (hereinafter Report on Reform). See also Boris I. Bittker et al., Federal Estate and Gift Taxation 573 (9th ed. 2005); Regis W. Campfield et al., Taxation of Estates, Gifts, and Trusts 730 (22d ed. 2002); Dobris et al., supra note __, at 900-02; Dukeminier & Krier supra note __[casebook], at 335-38; Dukeminier et al., supra note __, at 558; Waggoner et al., supra note __, at 1251-53; Lawrence W. Waggoner & Thomas P. Gallanis, Estates and Future Interests in a Nutshell §5.16 (2005). Cf. Macey, supra note __, at 308.

[40] See, e.g., See Carole Gould, Shifting Rules Add Luster to Trusts, N.Y. Times, Oct. 29, 2000, § 3 at 11; Rachel Emma Silverman, States Toss Out Restrictions on Creating Perpetual Trusts, Wall St. J., Sept. 15, 2004, at D1; John Turrettini, Providing for the Year 3000, Forbes, June 11, 2001, at 220. See also Rachel Emma Silverman, Looser Trust Laws Lure $100 Billion, Wall St. J., Feb. 16, 2005, at D1 (summarizing the findings of our prior study); Bruce W. Fraser, The Rush to Dynasty Trusts, Fin. Adv. 111 (June 2005) (same).

[41] See Dukeminier et al., supra note __, at 919; Pennell, supra note __, at 981-83; Campfield et al., supra note __, at 722-24.

[42] The maximum rates are as follows: 49% in 2003; 48% in 2004; 47% in 2005; 46% in 2006; and 45% in 2007-09. I.R.C. §§ 2641, 2001.

[43] See I.R.C. § 2651 (defining generational assignments); id. § 2613 (defining skip and non-skip persons); id. § 2611 (defining generation-skipping transfer); id. § 2612 (defining taxable events). See also Paul R. McDaniel et al., Federal Wealth Transfer Taxation 713-16 (5th ed. 2003).

[44] Federal wealth transfer taxes comprise estate, gift, and generation skipping transfer (GST) taxes. The exemption schedule is as follows: through 2003, $1,000,000; in 2004 and 2005, $1,500,000; in 2006 through 2008, $2,000,000; and in 2009, $3,500,000. I.R.C. §§ 2631(c), 2010(c).

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would invite increased use of generation-skipping trusts.[45] Crucially, Congress put no limit on the duration of such a trust, leaving that question to state perpetuities law.[46]

Accordingly, enactment of the GST tax gave state perpetuities law renewed salience among estate planners. The longer a transfer-tax-exempt trust could be extended, the more generations could benefit from the trust fund free from transfer taxes. In a state that has abolished the Rule, successive generations can benefit from the trust fund, free from subsequent federal wealth transfer taxation, forever. On this view, the movement to abolish the Rule is perhaps more precisely described as a race between the states to allow donors to exploit a loophole in the federal transfer taxes.[47]

Considerable anecdotal evidence supports the view that the GST tax sparked demand for perpetual trusts by giving them an obvious tax advantage. First, not long after the enactment of the GST tax, trust companies in South Dakota began advertising for out-of-state trust business in the practitioner journals by touting South Dakota as a place where a "generation skipping trust" was "possible" because "there is no rule against perpetuities."[48] South Dakota, along with Idaho and Wisconsin, were the only states in which perpetual trusts were possible prior to the 1986 enactment of the GST tax. Since 1986, however, eighteen other states have abolished the RAP and repeal legislation is pending in several more.[49]

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[45] Young testified:

> However, we are obliged to point out to you that if [the 1986 GST tax] is adopted . . ., it will be an inducement to generation-skipping. You will have more generation-skipping than you ever had under pre-1976 law, and there will be a greater erosion of the tax base, because you will have the banks, lawyers, financial planners, and all others saying, here you are, this is a specially created opportunity for you. Congress has said you can take $1 million, put it aside, no generation-skipping tax.

Young then observed that such a trust could "last within the period of the rule against perpetuities." Generation-Skipping Transfer Tax: Hearings Before the House Comm. On Ways and Means, 98th Cong. 335, 338 (1984) (testimony of Raymond Young).

[46] "When Congress originally enacted a tax on generation-skipping transfers, it noted that '[m]ost States have a rule against perpetuities which limits the duration of a trust.'" JCT Report, supra note __, at 394.

[47] For the sake of expositional simplicity, we employ the common metaphor for jurisdictional competition of a race between the states. In our prior study, however, we embraced a public-choice model, extending the Macey and Miller lawyer-focused model to include transactional lawyers in addition to litigators. See Sitkoff & Schanzenbach, supra note __, at ___; Jonathan R. Macey & Geoffrey P. Miller, Toward an Interest-Group Theory of Delaware Corporate Law, 65 Tex. L. Rev. 469 (1987). See also Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. 299 (2004) (arguing that lawyer licensing "encourages lawyers to participate in lawmaking by capitalizing the benefits of their law-improvement efforts in the value of the law license"). The primary interest groups that agitate for state trust law reform are local bankers and lawyers. See Sitkoff & Schanzenbach, supra note __, at ___; Stewart E. Sterk, Asset Protection Trusts: Trust Law's Race to the Bottom?, 85 Cornell L. Rev. 1035, 1060 & n.126 (2000).

[48] See Dukeminier et al, supra note __, at 714 (reproducing a Wells Fargo ad). See also Dukeminier & Krier, supra note __, at 1315 (discussing marketing of perpetual trusts).

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[49] See supra Part II.C.

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Second, prior to the 1986 tax reform there was little discussion in the practitioner literature of the theoretical advantages to, or the use in practice of, perpetual trusts. Not until the 1990s (after Delaware's abolition of the RAP) did lawyers begin publishing articles and continuing legal education materials analyzing the tax and other advantages of creating a perpetual trust.[50] In a similar vein, lawyers and bankers in New York and other states that have retained the Rule only began agitating for its repeal after the 1986 tax reform, once they began to perceive a loss of business to other states.[51]

Third, the Delaware legislature did not conclude that the abolition of the Rule in Idaho, Wisconsin, and South Dakota gave "those jurisdictions a competitive advantage over Delaware in attracting assets held in trusts created for estate planning purposes" until 1995,[52] some time after the enactment of the GST tax. The hegemon of corporate regulatory competition, Delaware has also long been a trust-friendly jurisdiction. In 1986 Delaware had a disproportionate share of the nation's trust funds,[53] and on several occasions prior to 1986 Delaware tweaked—but did not abolish—its perpetuities law to create tax and other advantages to settling a trust in Delaware.[54] Hence, that Delaware did not abolish the Rule as applied to interests in

[50] See, e.g., Douglas J. Blattmachr & Richard W. Hompesch II, Alaska vs. Delaware: Heavyweight Competition in New Trust Laws, 12 Prob. & Prop. 32 (1998); Douglas J. Blattmachr, & Jonathan G. Blattmachr, A New Direction in Estate Planning: North to Alaska, Tr. & Est., Sept. 1997, at 48; Thomas H. Foye, Using South Dakota Law for Perpetual Trusts, 12 Prob. & Prop. 17 (1998); Al W. King, A Generation-Skipping Trust: Unlimited Duration? Why Note?, Tr. & Est., June 1999, at 8; Pierce H. McDowell, III, The Dynasty Trust: Protective Armor for Generations to Come, Tr. & Est., Oct. 1993, at 47; Richard W. Nenno, Planning with Perpetual Dynasty Trusts, ALI-ABA Course of Study (April 18-22, 2005), available on Westlaw at SK069 ALI-ABA 121; Daniel G. Worthington, The Problems and Promise of Perpetual Trust Laws, Tr. & Est., Dec. 2004, at 15; Andrew J. Willms & Dean T. Stange, Wisconsin: An Estate Planning Paradise, 72-FEB. Wis. Law. 20 (1999), See also John A. Warnick & Sergio Pareja, Selecting a Trust Situs in the 21st Century, 16 Prob. & Prop. 53 (2002) (discussing perpetuities repeal and the GST tax as crucial considerations in choosing a trust situs).

[51] See, e.g., Charles F. Gibbs & Colleen Carew, Trusts Leaving New York, Situs in Cyberspace: Time for Legislation?, N.Y.L.J., Dec. 20, 2002, at 3 ("Our New York state trust banker friends have been proclaiming for some years now a substantial loss of trust business to Delaware, South Dakota, and other more-hospitable venues."); Thomas Scheffey, Is Immortality Just Around The Corner? "Dead Hand" Trust Law Relaxes Its Grip, Conn. L. Trib., Mar. 4, 2002, at 10 (noting that the Connecticut legislature was considering a revision of the Rule "in an effort to keep legal and banking work for ultra-rich clients from migrating to states with friendlier trust laws"); Charles F. Gibbs & Marilyn Ordover, An Open Letter to Assemblywoman Ann Carrozza, N.Y.L.J., Feb. 5, 2001, at 3 (arguing that "to remain competitive with the other states," New York must repeal the RAP).

[52] See text accompanying supra note __.

[53] In 1986 Delaware's share of all trust funds held by federally-reporting trustees was eight times larger than its share of the population (2% versus 0.25%). To make these figures less abstract, consider that in 1986, when New York institutional trustees held $3,500 in trust assets per state resident, Delaware institutional trustees held $12,600 in trust assets per state resident. For a visual representation of Delaware's dominant position, see Sitkoff & Schanzenbach, supra note __, at __ Figure __. Delaware's success in the jurisdictional competition for trust funds prior to 1986 is confirmed by the regression analysis presented below. See infra Part IV.D.1.

[54] In 1986 Delaware reconfigured the Rule as applied to interests in trust into a 110-year limitation on trust duration. Act of July 3, 1986, ch. 422, 65 Del. Laws 831. Further, prior to 1986, Delaware enacted legislation providing that a new perpetuities period would begin on the exercise of a power of appointment, which remains good law in Delaware today. See Del. Code Ann. tit. 25, § 501 (1989). Hence Delaware made possible a perpetual trust long before 1995. However, Congress effectively fore-

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trust until 1995,[55] but that in the 10 years since 1995 seventeen other states have done so, supports the view that there was little demand for perpetual trusts prior to the GST tax.

B. The Alternative View: Perpetual Control

In spite of the intuitive appeal of the foregoing anecdotal evidence, there are good reasons to suppose that perpetual trusts had (and continue to have) appeal independent of the influence of the GST tax. First, the legislative record of South Dakota's 1983 repeal, although scanty, implies that the purpose of repeal was to attract trust business to the state[56]—and South Dakota's repeal occurred 3 years prior to the enactment of the GST tax. Hence it appears that, prior to the GST tax, lawyers and bankers in South Dakota concluded that offering perpetual trusts would attract trust business to the state.

Second, in a recent empirical study of donor preferences based on the online promotion of perpetual trusts, Joshua Tate found that "while tax concerns are very important," perpetual trust settlors also "want to make sure that their money is put to good use" and is protected "from beneficiaries' bad judgment or misfortune."[57] Tate explained:

> While most settlors certainly want to pass tax savings down to their descendants, that is not the only apparent goal: settlors also wish to protect their wealth from being wasted and to encourage their descendants to be productive members of society. Moreover, although it may be true that most settlors do not care about their unborn descendants, some of them might, and those who do probably want their spendthrift provisions and restrictions on the use of funds to continue indefinitely.[58]

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closed this option with I.R.C. § 2041(a)(3), which makes the extension of the perpetuities period under section 501 a taxable event for all trusts created in or after 1942. See Dukeminier et al., supra note __, at 694-95; Jonathan G. Blattmachr & Jeffrey N. Pennell, Adventures in Generation-Skipping, or How We Learned To Love the "Delaware Tax Trap," 24 Real Prop. Prob. & Tr. J. 75 (1989).

[55] See 70 Del. Laws 164 (1995).

[56] The South Dakota's Legislative Research Council (LRC) maintains the legislative history for bills introduced prior to 1997. See http://legis.state.sd.us/general/leghist.htm. In response to a request by the law library of Northwestern University for copies of the records pertaining to South Dakota's repeal of the RAP, the LRC sent the following: (1) a one-page chronology of the steps leading up to the bill's passage copied from the 1983 House Bills Index; (2) the bill's language; and (3) the voting records of the House and Senate Judiciary Committees copied from the House and Senate Journals. None of these materials contains a reference to the reason for repealing the RAP. However, a voting record sheet of the House Judiciary Committee indicates that Tom Shelby, a Vice President at the Sioux Falls branch of the First Bank of South Dakota, and Dick Bogue, an attorney from Canton, testified in favor of repeal on February 23, 1983. Further, according to Stewart Sterk, South Dakota's repeal of the RAP was part of a larger set of tax and interest rate policy reforms designed to attract trust and banking business. See Sterk, supra note __, at 2101-2102. See also Samuel Issacharoff & Erin F. Delaney, Credit Card Accountability, ___ U. Chi. L. Rev. ___, ___ (forthcoming 200_).

[57] Tate, supra note __, at 613, 617.

[58] Id. at 620.

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Accordingly, Tate concluded that "some settlors may have truly dynastic intentions."[59]

Third, history is replete with efforts by one generation to control subsequent generations' disposition of the family patrimony.[60] On this view, the perpetual trust might be reckoned the modern counterpart to the fee tail and strict settlement.[61] Indeed, consistent with this idea and Tate's findings, in our prior study we noted that "trust lawyers have told us anecdotes about settlors who" employ perpetual trusts "because they seek . . . perpetual control," not merely tax advantages.[62]

C. Prior Empirical Studies

In general, the existing literature tends to assume that the GST tax prompted the movement to abolish the Rule, often relying on one or more aspects of the anecdotal evidence recited above without any further empirical investigation.[63] Three exceptions, however, are worth noting here.[64]

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[59] Id. at 619.

[60] Perhaps the most notorious is that of Peter Thellusson, who died in 1797. See Leach, Terror, supra note __, at 726 (stating that the "family-dynasty mentality flourished in the eighteenth century and reached a fine fruition in the will of Peter Thellusson"). Thellusson's will provided that the bulk of his considerable estate, plus all the income it would earn during the lives of the nine male descendants who survived him, should be accumulated for the ultimate benefit of his oldest male descendant at the end of that period. See Patrick Patrick Polden, Peter Thelluson's Will of 1797 and Its Consequences on Chancery Law (2002); Robert H. Sitkoff, The Lurking Rule Against Accumulations of Income, 100 Nw. U. L. Rev. __ (forthcoming 2006). See also Mary Louise Fellows, [in this symposium], 27 Cardozo L. Rev. ___, ___ (2006) (discussing other examples).

[61] See supra note __ and text accompanying.

[62] Sitkoff & Schanzenbach, supra note __, at __. See also Sitkoff, supra note __, at 661 n. 208. Such efforts occasionally wind up in the case reports. For example, in the amusing case of Marsh v. The Frost Natl. Bank, 129 S.W.3d 174 (Tex. App. 2004), the court held invalid a bequest "to provide a million dollar trust fund for every American 18 years or older" by accumulating income for 346 years on the proceeds from the sale of certain property because this purpose was not charitable and hence violated the Rule Against Perpetuities. The testator had wanted the trust "to be called the James Madison Fund to honor our fourth president, James Madison, the Father of the Constitution" and for the president, vice president, and the speaker of the House of Representatives to be the "permanent Trustees of the Fund." Another recent example, with a different result on the perpetuities question, is White v. Fleet Bank of Maine, 739 A.2d 373 (Me. 1999). In White the testator left a holographic will providing for a trust from which three-fourths of the income would be paid to the testator's lineal descendants and the other one-fourth would be "reinvested annually for the increase of funds in the trust." The court held that the quoted language was a saving clause such that, under the then-applicable Maine wait-and-see statute, the bequest did not offend the Rule Against Perpetuities. The court nonetheless held the bequest invalid for violating the rule against accumulations of income. See 739 A.2d at __. See also Sitkoff, supra note __ (discussing White).

[63] See, e.g., sources cited in supra note __.

[64] From time to time scholars have noted that recent perpetuities cases typically involve not failed dynastic efforts but technical violations of the Rule that, with better drafting, could have been avoided without having compromised the transferor's objectives. See, e.g., Leach, Terror, supra note __, at 723. However, because the instruments at issue in such cases were drafted in the shadow of the Rule (albeit by a lawyer who did not catch the technical violation), they shed little light on the empirical question whether transferors have a taste for perpetual control. Cf. George L. Priest & Benjamin Klein, The Selection of Disputes for Litigation, 13 J. Legal Stud. 1 (1984).

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First, Dukeminier and Krier buttress their claim that the GST tax sparked the movement to abolish the Rule with the results of informal interviews with practitioners. Based on those interviews, Dukeminier and Krier report that South Dakota "enjoyed a substantial increase in trust business since 1986"; that Idaho and Wisconsin "have not fared nearly as well" because "they have a state income tax"; that since Alaska's repeal of the RAP Alaska has gotten at least 700 new perpetual trusts; and that "South Dakota and Delaware institutions probably have more."[65]

Second, as indicated above Joshua Tate reviewed the websites of estate planners promoting the use of perpetual trusts. In Tate's view, such websites "provide some empirical evidence, albeit derivative, as to what a settlor might expect to gain by a perpetual trust."[66] According to Tate, although the online promotion of perpetual trusts "gives prominent attention to the tax benefits that they offer, . . . this is far from the only advantage to dynasty trusts mentioned by the estate planners."[67] In addition to tax benefits, the websites also trumpet the virtues of maintaining perpetual control such as protecting the fund from the beneficiaries' creditors; ensuring that the fund will pass down the settlor's family line (including unborn descendants); providing for permanent professional asset management; and regulating disbursements so that beneficiaries opt for "productive and hardworking" lifestyles.[68] "None of these concerns are related to the GST tax exemption, but instead reflect broader fears about what will happen to one's money."[69] Hence, Tate concluded that even though the "tax concerns are very important, there are many other reasons why a settlor might want to set up a dynasty trust."[70]

Third, in our prior empirical perpetuities study we examined state-level panel data from 1985 through 2003 assembled from annual reports by institutional trustees to federal banking authorities. In 1985 and 1986, the two years prior to the GST tax that were included in our sample period, average account sizes in Wisconsin, Idaho, and South Dakota closely matched those of their neighboring states and substantially trailed the national average.[71] By contrast, after the GST tax, average account size in abolishing states increased on average by $200,000.[72] We therefore concluded that, "without the GST tax incentive to act as a wedge, few individuals would establish perpetual trusts."[73]

Although helpful, each of these prior studies—including ours—is open to criticism. At bottom, Dukeminier and Krier's findings amount to anecdotal evidence little different from the anecdotes adduced in the prior section. As Tate candidly ac-

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[65] Dukeminier & Krier, supra note __, at 1315-16.

[66] Tate, supra note __, at 612.

[67] Id. at 613.

[68] Id. at 613-19

[69] Id. at 616.

[70] Id. at 616-17. To a similar effect, see Moritz, supra note __, at 2604-05.

[71] See Sitkoff & Schanzenbach, supra note __, at __.

[72] Id. at __.

[73] Id. at __.

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knowledges, his findings depend on the reliability of advertisements by practitioners as a proxy for settlor's preferences and are also biased by selecting for practitioners who maintain promotional websites.[74] Further, Tate's evidence is amenable to an alternative interpretation, namely, that lawyers find it necessary to highlight the non-tax benefits of perpetual trusts to assuage the settlor's natural antipathy to them.[75]

Unlike Dukeminier and Krier's interviews, and Tate's review of the online promotion of perpetual trusts, our prior study has the virtue of being informed by revealed preferences in the sense that we examined direct evidence of where donors in fact located their trust funds. But we looked only at data from 1985 through 2003, focusing on whether abolition of the Rule increased a state's trust business subsequent to the GST tax. With only two years of data prior to the GST tax, we could employ no tests of statistical inference to examine whether abolition of the Rule increased a state's trust business prior to the GST tax. On that question our analysis was entirely impressionistic.

D. A Look Abroad: England and Scotland

In England, the birthplace of the Rule Against Perpetuities,[76] the Rule continues in force today, albeit modified by wait-and-see legislation enacted in 1964.[77] By contrast, there is no Rule Against Perpetuities in Scotland, and "Scots law has never set its face against perpetuities in the same way as has happened in England and Wales."[78] Hence, a comparison of trust practice in England with that of Scotland may offer another window on whether donors desire perpetual control independent of U.S. federal transfer-tax incentives.[79]

[74] Tate, supra note __, at 612-13 & n.104.

[75] Cf. Moritz, supra note __, at 2606 n. 81 (reporting an interview with a South Dakota trust company officer in which the author was told that "[o]nce clients hear the full explanation, including the non-tax reasons, they often become much more interested in" perpetual dynasty trusts).

[76] The Rule as it is known today originated in the Duke of Norfolk's Case, 22 Eng. Rep. 931 (Ch. 1682). See Dukeminier et al., supra note __, at 672; Waggoner et al., supra note __, at 1172-74; George L. Haskins, Extending the Grasp of the Dead Hand: Reflections on the Origins of the Rule Against Perpetuities, 126 U. Pa. L. Rev. 19 (1977).

[77] See D.J. Hayton, The Law of Trusts 105-07 (4th ed. 2003). The 1964 legislation also addresses the problems arising from fertility presumptions, age contingencies, and the unborn spouse. See Paul Todd & Sarah Wilson, Textbook on Trusts 183-86 (7th ed. 2003).

[78] Eng. Law Comm'n, Report No. 251, supra note __, at 21. See also Simpson, supra note __, at 160-62 (comparing Scots and English law).

[79] Still another possible source of information on desire for perpetual control independent of domestic transfer-tax advantages comes from the Canadian province of Manitoba, which abolished its Rule Against Perpetuities in 1983. See 1982-1983 Man. Rev. Stat. chs. 38,43. See also Dukeminier et al., supra note __, at 721 (discussing Manitoba); Dukeminier & Krier, supra note __, at 1340-41. We are not aware of any study comparing Manitoba with the rest of Canada.

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The English Law Commission recently attempted such a comparison by surveying "the views of a number of Scottish conveyancing lawyers,"[80] publishing its findings in a 1998 report on perpetuities reform in England:

> What we discovered from our enquiries is that although perpetual trusts are created, they tend to be confined to public purposes, some of which are charitable and some of which are not. We were given a tiny handful of examples of perpetual private trusts, including one created in the 18th century which eventually became impossible to administer because of uncertainty as to the identity of the beneficiaries. In practice, the maximum duration of trusts in Scotland was, we were informed, about 100 years. Most were of much shorter duration, and there was little pressure from clients to create long-term trusts.
>
> The conclusions that we have drawn from our study of Scottish law and practice are as follows. The mere fact that the law allows the creation of perpetual trusts does not lead settlors to create them. In Scotland few do. Other factors, such as taxation, or the risk of the disposition eventually failing for uncertainty, tend to encourage trusts to be set up for a comparatively short duration.[81]

To be sure, the Law Commission's survey of Scotland's experience is limited. Moreover, inferences about domestic perpetual trust practice drawn from experience in the English Commonwealth are inherently suspect because the English law of trust modification and termination is far more liberal than the American law.[82] Nonetheless, the Law Commission's findings are consistent with the prevailing (but not exclusive) view among domestic scholars that tax incentives, not desires for dynastic control, sparked the domestic movement to abolish the Rule.

IV. EMPIRICAL ANALYSIS

A. The Data

As in our prior study, the trust data (state-level panel data) come from annual reports collected by the four federal agencies charged with banking regulation: (1) the Federal Deposit Insurance Corporation; (2) the Federal Reserve System; (3) the Office of Thrift Supervision (which superseded the Federal Home Loan Bank Board); and (4) the Office of the Comptroller of the Currency. Federal law requires all banks and other financial institutions that are regulated by these agencies to file an annual report detailing their trust holdings, including total assets and number of accounts.[83] Based on this data, from 1969 until 2001 the Federal Financial Institu-

[80] See Engl. Law. Comm'n Report, supra note __, at 20. Although the Law Commission "considered the possibility of commissioning a full study of the economic implications of abolishing the rule," in the end it did not "because it proved impossible to obtain sufficient data." Id.

[81] Id. at 22. See also Dukeminier & Krier, supra note __ [casebook], at 338 (stating that "perpetual settlements are rarely, if ever, created" in Scotland, but citing no authority for this proposition).

[82] See Sitkoff, supra note __, at 658-63 (comparing English and American law); Dukeminier et al., supra note __, at 572-73 (same).

[83] 12 U.S.C. § 1817 (FDIC); id. §§ 248(a), 1844(a) (Federal Reserve System); id. § 1464 (Office of Thrift Supervision); id §§ 1725, 1730 (Federal Home Loan Bank Board) (repealed 1989); id. §§ 161, 1817 (Office of Comptroller of the Currency).

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tions Research Council published annual reports of trust holdings by regulated entities, summarizing the results by state.[84] Since 2001, the FDIC has published these reports (now available online) organized by individual institution and by state.[85] Our previous study includes an exhaustive treatment of the nature and potential problems with the data.[86]

The trust holdings of regulated entities are reported in categories entitled "Employee Benefit," "Personal Trusts," and "Estates." We examine here only "Personal Trusts," a category that includes both private and charitable trusts (both testamentary and inter vivos), but excludes commercial trusts and employee benefit plans. Prior to 1985, federal authorities only collected information on actively managed personal trusts (meaning trusts for which the regulated entity had discretionary investment authority), and neither savings-and-loan institutions nor savings banks with trust powers were required to report.[87] Because the data are not consistent from 1969 through 2003, we split the sample into two time periods: 1969 through 1984, and 1985 through 2003.

Another potential problem with the data stems from the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.[88] Effective in 1997, the Riegle-Neal Act made it much easier for banks and bank holding companies to convert independently chartered banks in other states into branch offices of a single interstate bank.[89] Interstate bank mergers or branch consolidations have the potential to bias our results because the data are collected by institution, not by state. For example, if a bank consolidated after 1997 by converting its independently chartered offices in state *A* into a branch of its headquarters bank chartered in state *B*, then trust assets formerly reported as held in state *A* would be reported as held by the headquarters bank in state *B*. Mergers could have the same effect. If a bank chartered in state *A* acquired a bank chartered in state *B* and then converted the acquired bank into a branch, the accounts formerly reported as held in state *B* would from that point forward be reported as held in state *A*.

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[84] Federal Financial Institutions Examination Council, Trust Assets of Financial Institutions, 1985-2000.

[85] An interactive website allows one to obtain new data, state by state at FDIC: Statistics on Depository Institutions, http://www2.fdic.gov/sdi/main.asp. Older reports, from 1996 through 2000, may be obtained at FFIEC: Trust Institutions Information, http://www2.fdic.gov/structur/trust/index.asp.

[86] See Sitkoff & Schanzenbach, supra note at __[main text], __[appendix].

[87] See Federal Financial Institutions Examination Council, Trust Assets of Financial Institutions-1987, at 2 for a discussion.

[88] Pub. L. No. 103-328, 1994 U.S.C.C.A.N (108 Stat.) 2338 (1994) (codified at 12 U.S.C. § 1811 (2000)). See Patrick Mulloy & Cynthia Lasker, The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994: Responding to Global Competition, 21 J. Legis. 255, 270-72 (1995).

[89] Prior to 1997, banks could maintain interstate branches under narrow circumstances, but a study conducted by the Federal Reserve found that few banks did so. See Susan McLaughlin, The Impact of Interstate Banking and Branching Reform: Evidence from the States, Current Issues in Economics and Finance, May 1995.

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Although important to consider, bank mergers and consolidations do not pose a serious impendent to the current study. First, in the present study we focus primarily on the data from 1969 through 1984, well before the Riegle-Neal Act.

Second, to the extent we examine the data from 1985 through 2003, only substantial mergers between banks in RAP and abolition states have the potential to bias our results. But as we noted in our prior perpetuities study, few such mergers have occurred.[90] Instead, almost every substantial merger since the Riegle-Neal Act has involved only banks located in abolition states, which merely shifts funds from one control state to another. In addition, as a further check when using the data from 1985 through 2003 we examine not only total trust assets but also average trust account size, which should be less susceptible to bias from mergers than total trust assets.[91]

B. Identification Strategies

Ideally, to assess the popularity of perpetual trusts prior to the GST tax, we would examine the change in a state's trust assets after it abolished the Rule relative to states that did not abolish the rule. However, prior to the 1986 enactment of the GST tax, only three states abolished the rule: Wisconsin, Idaho, and South Dakota. Moreover, Wisconsin and Idaho abolished their Rules prior to the start of our data,[92] so we are unable to make before-and-after comparisons for those states, and South Dakota abolished the Rule in 1983, only a few years before the enactment of the GST tax in 1986 and the change in data collection methods in 1985. The data are thus insufficient to accommodate a before-and-after identification strategy such as differences-in-differences.

Because we cannot undertake a before-and-after comparison, we instead examine existing differences across states. Although not ideal, such comparisons, especially when made with similar states, are highly suggestive. In the period under study, there was little variation in the basic law of trusts across the states,[93] except that Idaho and Wisconsin previously permitted perpetual trusts and South Dakota

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[90] Sitkoff & Schanzenbach, supra note __, at __.

[91] Average account size is computed by dividing the total reported assets in a state by the number of reported accounts. A swing up or down in reported assets caused by a merger also causes a corresponding swing up or down in the number of accounts reported in that state. Thus, average account size should be less sensitive to distortion from mergers or branching than total assets. See Sitkoff & Schanzenbach, supra note __, at __.

[92] Indeed, Wisconsin may never have had the Rule. See supra note __.

[93] State courts regularly cite the same leading authorities: the 1959 Restatement (Second) of Trusts and the current versions of the Scott and Bogert treatises. Cf. John H. Langbein, The Uniform Trust Code: Codification of the Law of Trusts in the United States, 15 Tr. L. Int'l 66, 67 & n.3 (2001) (noting the pervasive influence of the Restatement (Second) of Trusts, "which has long been the most authoritative source for American trust law"). In recent years the states' trust laws have become increasingly differentiated on the issue of creditor's rights in self-settled asset protection trusts, but these changes occurred after the period under study here. See Sitkoff & Schanzenbach, supra note __, at __. Other important differences across states involve their fiduciary income, estate, and inheritance taxes. In our prior study, however, we found that these considerations, by themselves, did not have a significant impact on the state's reported trust funds. See Sitkoff & Schanzenbach, supra note __, at __.

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did so beginning in 1983. Further, the law of trusts consists largely of default rules that may be varied by the settlor.[94] Accordingly, apart from state perpetuities law, in the typical case there would have been little reason to settle a trust out of state given the increased transaction costs of doing so.[95]

If the movement to abolish the RAP was driven by the demand of donors who wanted control across generations rather than to exploit the perpetuities loophole in the GST tax, then the states that permitted perpetual trusts prior to the enactment of the GST tax ought to have had more trust assets, ceteris paribus, than other states. Further, because Idaho, Wisconsin, and South Dakota are relatively small states that at the time were not major banking centers, there is little other reason for them to have had a disproportionate share of the reported trust assets; if these states' abolition of the RAP attracted significant trust assets, it should be obvious. On the other hand, if the movement to abolish the RAP was sparked by the GST tax, then we would expect to observe differences between RAP states and abolition states only after 1986.

Using the post-1985 data, in our prior study we examined the effect of abolishing the RAP on a state's reported trust business, finding that from the enactment of the 1986 GST tax through 2003 a state's abolition of the Rule increased its reported trust assets by about $6 billion and its average trust account size by roughly $200,000.[96] These findings imply that, from around the time the GST tax took effect through 2003, roughly $100 billion in trust funds have poured into the abolishing states.[97] Thus, in our prior study we concluded that transferors who desire a perpetual trust but live in a state that has retained the Rule have had little difficulty in creating an out-of-state perpetual trust.

We also examined the effect of state income taxation of trust funds attracted from out of state, finding that, by itself, whether a state levied an income tax on trust funds attracted from out of state had little observable effect on a state's reported trust business. However, in tests of the interactive effect of such taxes with the abolition of the Rule, we found that states that abolished the RAP but levied such a tax experienced no observable increase in reported trust assets.[98] In other

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[94] See Restatement (Third) of Trusts §4 cmt. a(1) (2003); John H. Langbein, Mandatory Rules in the Law of Trusts, 98 Nw. U. L. Rev. 1105 (2004); Sitkoff, supra note __, at 642-43.

[95] We detail the relevant choice-of-law considerations in our prior study. In short, a donor who resides in state *A* but wants the law of state *B* to govern the validity and administration of the trust will typically be advised not only to provide in the trust instrument that the law of state *B* is to govern, but also to give state *B* a nexus by naming a trustee located in state *B* and giving that trustee custody of the trust fund. See Sitkoff & Schanzenbach, supra note __, at __. See also Sterk, supra note __, at 2103-04; Jeffrey A. Schoenblum, Reaching for the Sky or Pie in the Sky: Is U.S. Onshore Trust Reform an Illusion?, in Extending the Boundaries of Trusts and Other Ring-Fenced Funds in the Twenty-First Century (David Hayton ed., 2002).

[96] See Sitkoff & Schanzenbach, supra note __.

[97] To repeat, we caution that the $100 billion figure is only a point estimate. For discussion of this estimate and its confidence interval, see id. at ___ & n.__.

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[98] See id. at __.

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words, abolishing the RAP attracted trust funds, but only if those funds would not be subject to a state fiduciary income tax.

In view of the tax findings in our prior study, it is important to note that South Dakota does not levy an income tax on trust funds attracted from out of state, but Idaho does and Wisconsin did until 1999. Inasmuch as our identification strategies in the present study depend primarily on observations from Idaho and Wisconsin, we must acknowledge the possibility that the income tax in those states confounds our perpetuities analysis. Specifically, a finding that those states did not have a disproportionate share of trust business after abolishing the RAP could owe not to a lack of demand for perpetual trusts but alternatively to donors' aversion to the income tax. On the other hand, we may rely in part on our finding that South Dakota did not experience an increase in trust business between its 1983 abolition of the RAP and the 1986 enactment of the GST tax. Indeed, South Dakota did not attract significant business until the 1990s, when the tax benefits of perpetual trusts became widely known and Delaware repealed its Rule.

To assess whether abolishing the RAP had an effect on a state's trust business prior to 1985, we undertake both graphical and regression analysis. We begin by making simple graphical comparisons between Idaho, Wisconsin, South Dakota and similar neighboring states.[99] To adjust for inflation, all of the graphs report values in constant dollars as of 2000. We also normalize trust assets to account for differences in population and local economies across states by examining trust assets per person and average account size. In the regression analysis, which allows us more formally to control for population, income, and year effects, we examine three variables: (1) trust assets per person, (2) average account size, and (3) total trust assets.

C. Graphical Analysis

Figures 2 and 3 compare Idaho and Wisconsin respectively to some of their neighbors between 1969 and 1984, the same years included the regression analysis. We examine these years because they are prior to the GST tax (1986) and the changes in data collection (1985).

[99] All states, not just those that are geographically proximate to abolishing states, are included in the regression analysis.

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Figure 2: Trust Assets per Person in
Idaho and Comparison States (1969-1984)

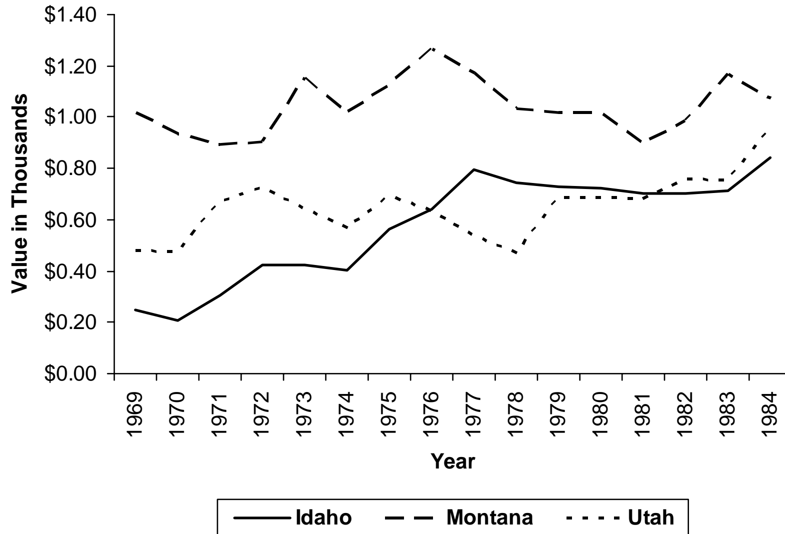
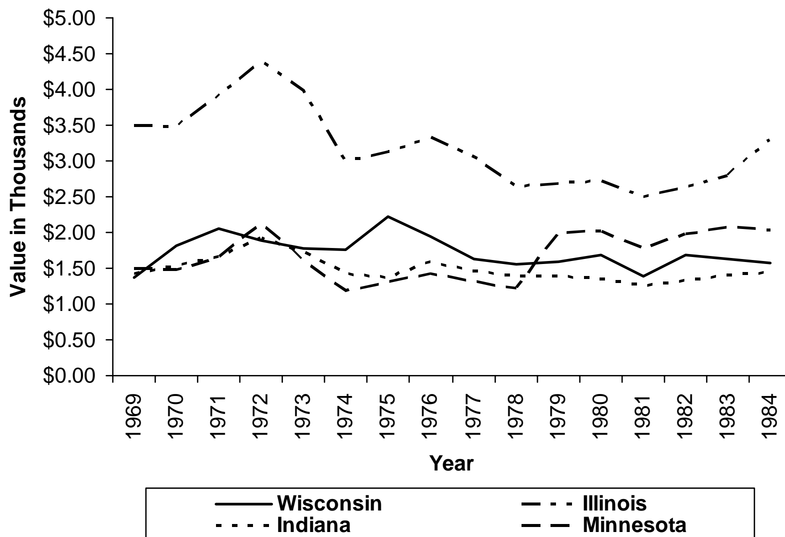


Figure 3: Trust Assets per Person in
Wisconsin and Comparison States (1969-1984)



Based on these graphs, it does not appear that either Wisconsin or Idaho outperformed its neighbors over the sample period, which implies that their prior abolition of the Rule did not give them an advantage in the jurisdictional competition for trust funds.

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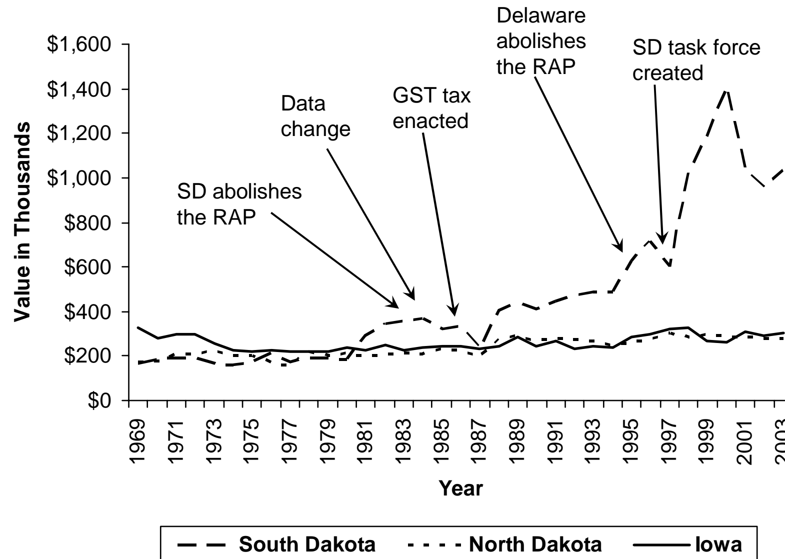
We now turn to South Dakota, which abolished the RAP in 1983. Here we include all years between 1969 and 2003, noting the 1985 change in data collection methods and smoothing the data by examining average account size, which in our prior study we found to be quite responsive to the RAP's abolition.[100] Figure 4 compares South Dakota to North Dakota and Iowa.

Figure 4: Average Account Size in South Dakota and Comparison States (1969-2003)



Prior to the early 1980s, average account sizes in South Dakota, Iowa, and North Dakota were quite similar, with Iowa faring a bit better over the 1970s. South Dakota overtakes both Iowa and North Dakota beginning in 1980, three years before South Dakota abolished the RAP in 1983. There is no obvious increase in South Dakota's average account size immediately after 1983. There is also no immediate rise in assets after the 1986 enactment of the GST, but rather a gradual trend upward that accelerates in the mid-1990s, around the same time that Delaware entered the fray by abolishing its RAP (1995) and that the Governor of South Dakota formed a task force to assess South Dakota's competitiveness in the market for trust business (1997).[101] By contrast, average account size in Iowa and North Dakota remain virtually unchanged throughout the sample period. (The changes in data collection methods introduced in 1985 apparently did not have much of an effect for these states.)

Figure 5 compares South Dakota to Wisconsin and Idaho for the entire timeframe of the data so as to allow for a pre- and post-GST tax comparison. Wisconsin and South Dakota clearly overtake Idaho by the early 1990s. Further, South Dakota outpaces Wisconsin in the late 1990s, after Delaware's repeal of its RAP and the

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[100] See Sitkoff & Schanzenbach, supra note __, at ___-__ & Table 3.

[101] See supra note __ and text accompanying.

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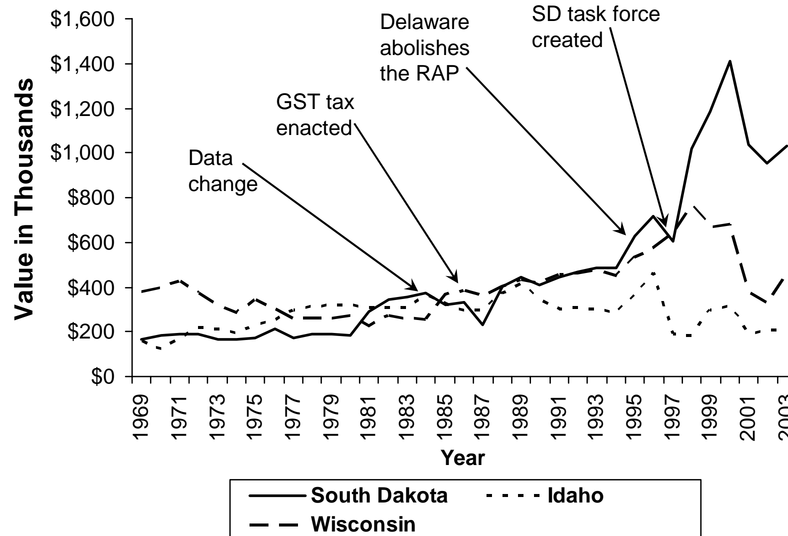
formation of the governor's task force. (Average trust account size in all three states appears to be sensitive to the stock market decline beginning in 2001.[102])

Figure 5: Average Account Size in South Dakota, Wisconsin, and Idaho (1969-2003)



We posit that South Dakota broke away from Idaho and Wisconsin in the mid-1990s because South Dakota does not levy an income tax on trust funds attracted from out of state but Idaho does and Wisconsin did until it repealed the tax in 1999. This hypothesis is strongly supported by the results of our prior study's tests of the interactive effect of a state's tax and perpetuities laws. Those results indicate that only the abolishing states that also did not tax trust funds attracted from out of state experienced an observable increase in their reported trust assets.[103] Although it is too soon to assess whether Wisconsin's 1999 repeal of its tax on trust funds attracted from out of state made it competitive with the other abolishing states, Figure 5 suggests visually that Wisconsin stopped losing ground to South Dakota after 1999.

In our view, the foregoing graphs support the hypothesis that abolishing the RAP prior to the enactment of the GST tax had little effect on a state's trust business. The regression analysis reported below supports this interpretation of the graphs.

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[102] Sensitivity to stock prices is consistent with our findings in a separate empirical study of the effect of changes in trust investment law on asset allocation in institutionally-managed trust funds. In that study we find a steady increase in the percentage of trust funds invested in stock and a steady decrease in the percentage invested in bonds and mortgages. See Max Schanzenbach & Robert H. Sitkoff, Did Reform of Prudent Investor Laws Change Trust Investment Practices? (unpublished manuscript on file with authors).

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[103] See Sitkoff & Schanzenbach, supra note __, at __.

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Before turning to the regression analysis, however, we wish to make three further observations about Figures 4 and 5, which show that South Dakota experienced an increase in trust business after the GST tax, but not (visually) a substantial increase until the mid to late 1990s, after Delaware abolished its Rule. First, we suspect that the delay before South Dakota's substantial increase in business may reflect the time necessary for the bar to digest the change in the tax law and to sell clients on the advantages of perpetual transfer-tax exempt trusts. The GST tax and the Rule Against Perpetuities are complex, and the interaction of the two was not immediately obvious.[104]

Second, we suspect that Delaware's repeal of its RAP may have validated the use of transfer-tax-exempt perpetual trusts. Delaware, after all, is the leading state in corporate law,[105] and large firms in New York, California, and elsewhere pay attention to developments in Delaware law. Further, at around the same time an increasing number of states began recognizing estate planner's malpractice liability to intended beneficiaries.[106] Inasmuch as many clients simply instruct that their estate plan should be designed to minimize all possible taxes, together these factors may have helped overcome lawyers' resistance to settling trusts out of state. In a related vein, the increased salience of the Rule after the GST tax may have overcome lawyers' lack of awareness that perpetual trusts were even possible.[107]

Third, because existing trusts in non-abolition states are drafted to comply with the Rule, and because moving a trust often requires judicial approval, the perpetual trust phenomenon may well be driven by new trust funds rather than the movement of existing trusts.[108] If so, the effect of abolition will be gradual as new trusts are created and accumulate.

The foregoing observations about Figures 4 and 5 are consistent with the results of our prior study's regression analysis, which strongly suggest an increasing effect of abolition over time, not an immediate result.[109]

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[104] To put the learning difficulties into perspective, consider that USRAP was amended in 1990—four years after its promulgation and the enactment of the GST tax, both in 1986—because of a potential tax problem (irrelevant for this study) arising from the interaction of the two. See USRAP §1(e); Jesse Dukeminier, The Uniform Statutory Rule Against Perpetuities and the GST Tax: New Perils for Practitioners and New Opportunities, 30 Real. Prop. Prob. & Tr. J. 185, 206-09 (1995).

[105] See, e.g., Robert H. Sitkoff, Corporate Political Speech, Political Extortion, and the Competition for Corporate charters, 69 U. Chi. L. Rev. 1103, 1140 (2002).

[106] See Martin D. Begleiter, The Gambler Breaks Even: Legal Malpractice in Complicated Estate Planning Cases, 20 Ga. St. U.L. Rev. 277, 281-82 (2003); Sterk, supra note __, at 2100-01. In a related vein, two South Dakota lawyers suggested in 1999 the possibility of a tort of "negligent trust situs." See Myers & Samp, supra note __. In 1979 Jesse Dukeminier presciently predicted that expanding malpractice liability would prompt lawyers to lobby for reform of technical rules. See Jesse Dukeminier, Cleansing the Stables of Property: A River Found at Last, 65 Iowa L. Rev. 151 (1979).

[107] See infra note __ and text accompanying.

[108] Cf. Sterk, supra note __, at 2117 n.81.

[109] See Sitkoff & Schanzenbach, supra note __, at __ & __ (Table 1). The quadratic specifications, which we believe to be the proper functional form, indicate that trust funds grew at an increasing rate after a state abolished the RAP, peaking at about 10 years after abolition.

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D. Regression Analysis

While the graphical analysis is suggestive, a proper comparison must also account for state- and time-specific factors that have the potential to affect trust asset levels. To undertake such a comparison, we employ a more formal analysis using standard Ordinary Least Squares regressions. In these regressions, we control for a variety of other factors that may explain differences between the states such as population, income, and variation over time stemming from the vagaries of financial markets and interest rates. Further, we control for a state's per capita income in regressions using trust assets per person or average account size, and aggregate state income in the total trust assets regressions. We also include dummy variables for each state, excluding either Idaho or Wisconsin. To avoid problems with data inconsistencies and the introduction of the GST tax, we examine only the years 1969 through 1984 (we examined 1985 through 2003 in our prior study). Examining 1969 through 1984 gives us 797 state-year observations (data for Hawaii are missing for 1969-1971).

Tables 1A and 1B report state differences in per capita assets; Tables 2A and 2B report state differences in average account size; and Tables 3A and 3B report state differences in aggregate assets. The reported coefficients measure each state's difference relative to the excluded state (either Idaho or Wisconsin) controlling for year, population, and income. In other words, each coefficient measures how much worse (or better) the state performed in the jurisdictional competition for trust funds relative the excluded state, controlling for population and income.

If we observe that many states underperformed Idaho or Wisconsin, then we may infer that Idaho's and Wisconsin's repeal of the RAP gave those states an advantage in the jurisdictional competition for trust funds prior to the 1986 enactment of the GST tax. Coefficients indicating that a state significantly underperformed Idaho or Wisconsin are reported in **bold**. Coefficients indicating that a state significantly outperformed Idaho or Wisconsin are reported in *italics*. Significance is indicated by the p-value. Following convention, we use the standard 5% level (p-value of .05 or less) as the threshold for significance.[110]

Before discussing the results, we pause to explain the mechanics of interpreting the regression coefficients. In Table 1A, for example, Alaska has a coefficient of -0.97 and a standard error of 0.42.[111] This implies a p-value of 0.02, which means that, controlling for per capita income and year effects, there is only a 2% chance that Alaska is different from Idaho purely by chance. The coefficient itself is interpreted as follows: Controlling for year effects and per capita income, Alaska had $970 less in trust assets per person than Idaho. Therefore, Alaska "underperformed" Idaho, meaning that Alaska did worse relative to Idaho than Alaska's population and income would predict. Because we cannot undertake a before-and-after approach, all states must be measured relative to an excluded state. Hence, when

[110] Other common significance thresholds are 10% (indicated by a p-value of .1 or less) and 1% (indicated by a p-value of .01 or less).

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[111] We report Huber-White standard errors, which are robust to arbitrary heteroskedasticity.

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we wish to compare states to Wisconsin, we run the same regression again, only we exclude Wisconsin and now include Idaho.

1. Trust Assets Per Capita (Tables 1A and 1B).

In our regressions using trust assets per capita as the dependent variable, which are reported in Tables 1A and 1B, we find that Idaho outperformed only three states and underperformed relative to sixteen. In other words, Idaho was solidly in the lower-middle tier. Wisconsin did slightly better, having outperformed twenty-three states and underperforming only six. However, the states Wisconsin outperformed are concentrated in the South and Great Plains. Wisconsin underperformed many states in the Northeast and outperformed none. Further, Wisconsin was little different from its neighbors, Illinois and Minnesota, though it did fare slightly better ($800 more per capita) than Michigan. Neither Idaho nor Wisconsin outperformed larger states such as Ohio, Pennsylvania, Massachusetts, and New York. On the contrary, Idaho and Wisconsin underperformed all four.

Two other results in these Tables are noteworthy: (1) Delaware vastly outperformed its prediction based on its income and population, and (2) California underperformed its prediction based on its income and population. The Delaware result confirms that Delaware was a strong player in the jurisdictional competition for trust funds prior to 1985. Indeed, we conjecture that the combination of Delaware's longstanding friendliness toward trust funds attracted from out of state and its proximity to New York may explain the relatively weaker showing by New York.

The California result is probably an artifact of its income being significantly higher than that in other states. On average, California's trust assets per person were comparable to Wisconsin's, but controlling for income and population levels puts California's numbers in a poor light. These results are repeated in the regressions for average account size, reported in Tables 2A and 2B.

2. Average Account Size (Tables 2A and 2B).

The results for trusts assets per capita are largely replicated in our regressions taking average account size as the dependent variable, which are reported in Tables 2A and 2B. Idaho is in the lower-middle tier, having outperformed seven states and underperforming thirteen. Wisconsin outperformed only three states and underperformed thirty.

3. Aggregate Trust Assets (Tables 3A and 3B).

The results for aggregate trust assets, which are reported in Tables 3A and 3B, tell a similar story. On this metric Idaho was in the middle tier, having outperformed only four states and underperforming nine. In addition, Idaho was not statistically different from its neighbors Utah and Montana. Wisconsin outperformed seventeen states and underperformed eight states. However, as in trust assets per capita, the states Wisconsin outperformed are concentrated in the South. Further,

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Wisconsin substantially underperformed relative to its neighbor Illinois and is not statistically different than nearby Minnesota or Michigan.

E. Summary of Results

We find no evidence that, in the years prior to the GST tax, states that abolished the Rule Against Perpetuities garnered more trust business relative to states that retained the Rule. On the contrary, prior to the GST tax the abolishing states had the same or lower trust assets than similar neighboring states, and were no match for leading trust jurisdictions that retained the Rule such as Delaware.

V. CONCLUSIONS AND IMPLICATIONS

Twenty-one states have validated perpetual trusts by abolishing the Rule Against Perpetuities as applied to interests in trust. The prevailing view among scholars is that by conferring a highly salient tax advantage on long-term trusts, the 1986 generation-skipping transfer (GST) tax sparked the movement to abolish the Rule. However, an alternate view holds that demand for perpetual trusts stems from donors' preference for control independent of tax considerations. Proponents of both views have adduced supporting anecdotal evidence.

This paper assessed the foregoing competing explanations for the rise of the perpetual trust by testing whether a state's abolition of the Rule gave the state an advantage in the jurisdictional competition for trust funds. As such, our approach has the virtue of looking at revealed preferences; we use direct evidence of what donors actually did as a proxy for what donors wanted. Specifically, using state-level panel data on trust assets prior to the adoption of the GST tax, we find that, prior to the GST tax, a state's abolition of the Rule did not increase the state's trust business. By contrast, in a prior study we found that between the time the GST tax took effect and 2003, roughly $100 billion in trust assets have moved as a result of the Rule's abolition.[112] Accordingly, we conclude that the spark for the modern perpetual trust phenomenon was the GST tax.

To be sure, evidence of what donors did is an imperfect proxy for what donors wanted. For example, it is possible that donors desired perpetual trusts but prior to the GST tax few lawyers may have been aware that such trusts were possible.[113] In a related vein, it is possible that donors desired perpetual trusts but could not overcome the transaction costs of settling a trust out of state in an era before cheap long

[112] Again, we caution that the $100 billion figure is only a point estimate. For discussion of this estimate and its confidence interval, see id. at ___ & n.__.

[113] Cf. Friedman, supra note __, at 550 & n. 7. In a related vein, several recent empirical studies have found that choice of lawyer has a significant impact on corporate transactional structure. See John C. Coates IV, Explaining Variation in Takeover Defenses: Blame the Lawyers, 89 Cal. L. Rev. 1301 (2001); Robert Daines, The Incorporation Choices of IPO Firms, 77 N.Y.U. L. Rev. 1559 (2002); Guhan Subramanian, Post-Siliconix Freeze-Outs: Theory, Evidence and Policy (Harvard Law & Econ. Discussion Paper No. 472, 2004), available at http://ssrn.com/abstract=530284.

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distance calls, fax machines, and electronic mail.[114] (Our results demonstrate, however, that Delaware was clearly attracting trust funds from out of state in the early 1970s, which casts a pall over the transaction costs story.) But at most these weaknesses in our proxy merely allow for alternative explanations for the empirical reality that, prior to the GST tax, states that abolished the Rule did not garner more trust business than those that retained the Rule. Taken together, our findings in this and our prior study show that the rise of the modern perpetual trust dates back to the 1986 GST tax and grew at an increasingly rapid pace thereafter.

Accordingly, our findings throw light on unresolved issues in federal tax and state property law.[115] For example, without getting embroiled in the debate over the merits of taxing wealth transfers, on which there is already a thick academic literature,[116] our findings lend support to recent proposals to decouple the duration of the GST tax exemption from state perpetuities law.[117] First, our findings suggest that the transfer taxes are indeed being avoided in a manner that Congress did not intend.[118] Second, our findings suggest that the rise of the perpetual trust reflects avoidance behavior that would not occur without the tax stimulus, implying deadweight loss in the form of the attendant transaction costs.

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[114] This possibility is consistent with our finding in our prior study that not all trust assets that have moved into abolishing states since 1986 are exempt from federal transfer taxes. See Sitkoff & Schanzenbach, supra note __, at __. On the other hand, because there are efficiencies to locating all of one's trust assets in a single trust account, see id. at __, we cannot discern whether these non-exempt assets were moved because the donor sought to exploit those efficiencies versus a desire to exert perpetual control beyond the amount of the transfer tax exemption.

[115] This discussion augments the fuller policy discussion of our prior study. See id. at ___.

[116] See, e.g., Mark L. Ascher, Curtailing Inherited Wealth, 89 Mich. L. Rev. 69 (1990); Karen C. Burke & Grayson M.P. McCouch, A Consumption Tax on Gifts and Bequests?, 17 Va. Tax Rev. 657 (1998); Joseph M. Dodge, Comparing a Reformed Estate Tax with an Accessions Tax and an Income-Inclusion System, and Abandoning the Generation-Skipping Tax, 56 S.M.U. L. Rev. 551 (2003); Michael J. Graetz, To Praise the Estate Tax, Not to Bury It, 93 Yale L.J. 259 (1983); Wojciech Kopczuk & Joel Slemrod, Tax Consequences on Wealth Accumulation and Transfers of the Rich, in Death and Dollars: The Role of Gifts and Bequests in America 213 (Alicia H. Munnell & Annika Sundén eds., 2003); Edward J. McCaffery, The Uneasy Case for Wealth Transfer Taxation, 104 Yale L.J. 283 (1994); Colloquium, Wealth Transfer Taxation, 51 Tax L. Rev. 357 (1996) (discussing McCaffery's proposal to abolish the federal estate and gift tax); James R. Repetti, Democracy, Taxes, and Wealth, 76 N.Y.U. L. Rev. 825 (2001). See also Rethinking Estate and Gift Taxation (William G. Gale et al., eds., 2001) (collecting eleven essays on the debate over estate taxation).

[117] For example, in 2005 the staff of the Joint Committee on Taxation (JCT) proposed doing so by prohibiting the allocation of the transfer-tax exemption to a trust for the benefit of a generation more remote than the transferor's grandchildren. See JCT Report, supra note __, at 392-95. The Task Force on Federal Wealth Transfer Taxes proposed several alternative means including the imposition of a periodic tax on trusts and resetting the inclusion ration after a period of years. See Report on Reform, supra note __, at 268-74. See also John G. Shively, Note, The Death of the Life in Being—The Required Federal Response to State Abolition of the Rule Against Perpetuities, 78 Wash. U. L.Q. 371, 392-93 (2000) (contending that the "best solution to the problems created by abolition of the Rule is to eliminate the generation-skipping exemption"). As detailed in our prior study, however, some of the JCT Report's empirical assumptions are erroneous. See Sitkoff & Schanzenbach, supra note __, at __.

[118] As Jeffrey Pennell explains, Congress sought to prevent to prevent the "enjoyment of property followed by its movement down the generations without being subjected to estate or gift tax." Jeffrey N. Pennell, Wealth Transfer Planning and Drafting ch. 18, at 27 (2005). See H.R. Rep. No. 99-426, at 824-25 (1985); JCT Report, supra note __, at 394; Willbanks, supra note __, §15.07.

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Our findings also tend to support recent proposals to liberalize the law of trust modification and termination to allow the court to adapt long-term trusts to reflect what the settlor would have wanted had the settlor anticipated subsequent changes in circumstances.[119] Because the movement to abolish the Rule and the corresponding rise of the perpetual trust reflect strategies to minimize taxes, not a burgeoning desire among donors for perpetual control, such proposals are likely to facilitate rather than frustrate the settlor's intent.[120] As such, our findings obviate the need to examine the more difficult policy question of whether to respect a donor's desire for perpetual dead-hand control.[121]

Finally, although the rise of the perpetual trust might appear to supply evidence of a dynastic impulse,[122] our findings cast doubt on the validity of that inference. Instead, our findings underscore the importance of tax considerations in driving the structure of donative transfers.

[119] See supra notes __ and text accompanying.

[120] On this view, allowing courts to adapt perpetual trusts to account for changed circumstances would align the default rule with the flexibility provided for in professionally-drafted perpetual transfer-tax-exempt trust forms. Such forms typically give each generation a special power to appoint the property to the next generation either outright or in further trust. See, e.g., Nenno, supra note __, at 164 (supplying a model clause). See also Pierce H. McDowell, III, The Dynasty Trust: Protective Armor for Generations To Come, Tr. & Est., Oct. 1993, at 47, 53 (noting that it "is often desirable to give at least some of the beneficiaries special testamentary powers of appointment that will enable them to change the dispositive terms of the trust" in light of unanticipated changes in circumstances). With such a power each generation can decide whether to continue the trust (and its tax exemption) or to bring the trust to an end. For further discussion, see Sitkoff & Schanzenbach, supra note __, at __. See also Pennell, supra note __, at ch. 4, pp. 2-6 (discussing flexibility and dead hand control).

[121] See supra note __.

[122] See text accompanying supra note __.

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TABLE 1A:
Trust Assets Per Capita 1969-1984
All States Relative to Idaho

	Coefficient (in Thousands)	Robust Standard Error	p-value
Alabama	0.08	0.18	0.67
Alaska	**-0.97**	**0.42**	**0.02**
Arizona	*0.39*	*0.16*	*0.01*
Arkansas	-0.19	0.15	0.19
California	**-2.49**	**1.22**	**0.04**
Colorado	*0.45*	*0.22*	*0.04*
Connecticut	*2.38*	*0.36*	*0.00*
Delaware	*16.44*	*1.38*	*0.00*
Florida	-0.32	0.47	0.50
Georgia	0.02	0.25	0.93
Hawaii	0.45	0.44	0.31
Illinois	0.97	0.66	0.14
Indiana	0.24	0.29	0.41
Iowa	0.06	0.21	0.79
Kansas	0.03	0.20	0.90
Kentucky	*0.43*	*0.17*	*0.01*
Louisiana	**-0.66**	**0.19**	**0.00**
Maine	*0.73*	*0.11*	*0.00*
Maryland	0.16	0.33	0.63
Massachusetts	*1.58*	*0.37*	*0.00*
Michigan	-0.28	0.50	0.58
Minnesota	*0.52*	*0.27*	*0.05*
Mississippi	-0.23	0.16	0.16
Missouri	*1.09*	*0.30*	*0.00*
Montana	0.05	0.13	0.72
Nebraska	*0.62*	*0.16*	*0.00*
Nevada	*0.73*	*0.23*	*0.00*
New Hampshire	0.22	0.14	0.12
New Jersey	-0.37	0.49	0.45
New Mexico	0.11	0.12	0.35
New York	0.55	1.00	0.59
North Carolina	-0.11	0.26	0.68
North Dakota	0.07	0.15	0.66
Ohio	0.55	0.57	0.34
Oklahoma	0.22	0.17	0.20
Oregon	0.00	0.18	0.98
Pennsylvania	*1.28*	*0.63*	*0.04*
Rhode Island	*2.79*	*0.16*	*0.00*
South Carolina	-0.19	0.15	0.21
South Dakota	0.15	0.18	0.41
Tennessee	0.15	0.20	0.44
Texas	-0.99	0.68	0.15
Utah	*0.43*	*0.13*	*0.00*
Vermont	*0.52*	*0.14*	*0.00*
Virginia	-0.29	0.29	0.33

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	Coefficient (in Thousands)	Robust Standard Error	p-value
Washington	0.13	0.26	0.63
West Virginia	*0.58*	*0.15*	*0.00*
Wisconsin	0.52	0.27	0.06
Wyoming	0.06	0.18	0.74

N=797. Three states have statistically significant lower trust assets per person; sixteen have significantly greater trust assets per capita. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and per capita income are not reported.

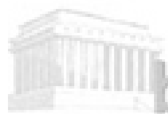

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TABLE 1B:
Trust Assets Per Capita 1969-1984
All States Relative to Wisconsin

	Coefficient (in Thousands)	Robust Standard Error	p-value
Alabama	**-0.45**	**0.20**	**0.02**
Alaska	**-1.49**	**0.30**	**0.00**
Arizona	-0.13	0.16	0.41
Arkansas	**-0.71**	**0.26**	**0.01**
California	**-3.01**	**0.97**	**0.00**
Colorado	-0.07	0.12	0.56
Connecticut	*1.86*	*0.20*	*0.00*
Delaware	*15.92*	*1.47*	*0.00*
Florida	**-0.84**	**0.23**	**0.00**
Georgia	**-0.50**	**0.11**	**0.00**
Hawaii	-0.07	0.42	0.87
Idaho	-0.52	0.27	0.06
Illinois	0.45	0.41	0.28
Indiana	**-0.29**	**0.08**	**0.00**
Iowa	**-0.47**	**0.15**	**0.00**
Kansas	**-0.50**	**0.16**	**0.00**
Kentucky	-0.09	0.18	0.60
Louisiana	**-1.19**	**0.15**	**0.00**
Maine	0.21	0.26	0.42
Maryland	**-0.36**	**0.14**	**0.01**
Massachusetts	*1.06*	*0.14*	*0.00*
Michigan	**-0.80**	**0.26**	**0.00**
Minnesota	0.00	0.11	0.98
Mississippi	**-0.75**	**0.29**	**0.01**
Missouri	*0.57*	*0.16*	*0.00*
Montana	-0.48	0.25	0.06
Nebraska	0.10	0.20	0.62
Nevada	0.20	0.20	0.31
New Hampshire	-0.30	0.22	0.16
New Jersey	**-0.90**	**0.24**	**0.00**
New Mexico	-0.41	0.26	0.12
New York	0.02	0.76	0.98
North Carolina	**-0.63**	**0.12**	**0.00**
North Dakota	-0.45	0.26	0.08
Ohio	0.03	0.33	0.94
Oklahoma	**-0.30**	**0.15**	**0.05**
Oregon	**-0.52**	**0.13**	**0.00**
Pennsylvania	*0.76*	*0.39*	*0.05*
Rhode Island	*2.27*	*0.22*	*0.00*
South Carolina	**-0.71**	**0.22**	**0.00**
South Dakota	-0.38	0.30	0.20
Tennessee	**-0.37**	**0.14**	**0.01**
Texas	**-1.51**	**0.44**	**0.00**
Utah	-0.09	0.25	0.73

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	Coefficient (in Thousands)	Robust Standard Error	p-value
Vermont	-0.01	0.29	0.98
Virginia	**-0.81**	**0.08**	**0.00**
Washington	**-0.40**	**0.08**	**0.00**
West Virginia	0.06	0.26	0.83
Wyoming	**-0.46**	**0.21**	**0.03**

N=797. Twenty-three states have statistically significant lower trust assets per person; six have significantly greater trust assets per capita. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and per capita income are not reported.

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TABLE 2A:
Average Account Size 1965-1984
All States Relative to Idaho

	Coefficient (in Thousands)	Robust Standard Error	p-value
Alabama	157	24	0.16
Alaska	-34	76	0.65
Arizona	*90*	*38*	*0.02*
Arkansas	-32	37	0.40
California	**-446**	**151**	**0.00**
Colorado	27	41	0.51
Connecticut	*118*	*56*	*0.03*
Delaware	*1,190*	*107*	*0.00*
Florida	-98	66	0.14
Georgia	*107*	*48*	*0.03*
Hawaii	*373*	*135*	*0.01*
Illinois	-72	85	0.40
Indiana	**-111**	**47**	**0.02**
Iowa	**-96**	**40**	**0.02**
Kansas	-1	40	0.99
Kentucky	40	39	0.31
Louisiana	**-154**	**42**	**0.00**
Maine	-5	35	0.88
Maryland	*122*	*54*	*0.03*
Massachusetts	88	55	0.11
Michigan	-57	72	0.43
Minnesota	*169*	*45*	*0.00*
Mississippi	-50	42	0.23
Missouri	*198*	*45*	*0.00*
Montana	-49	42	0.25
Nebraska	37	40	0.35
Nevada	*282*	*47*	*0.00*
New Hampshire	10	36	0.78
New Jersey	-14	68	0.84
New Mexico	7	37	0.85
New York	34	128	0.79
North Carolina	-7	47	0.88
North Dakota	-59	39	0.13
Ohio	-48	80	0.55
Oklahoma	*311*	*39*	*0.00*
Oregon	*82*	*38*	*0.03*
Pennsylvania	**-283**	**84**	**0.00**
Rhode Island	*249*	*36*	*0.00*
South Carolina	5	41	0.91
South Dakota	-28	45	0.54
Tennessee	*83*	*43*	*0.05*
Texas	-165	90	0.07
Utah	-15	42	0.73
Vermont	-70	39	0.07

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Virginia	**-91**	**47**	**0.05**
Washington	69	45	0.13
West Virginia	*108*	*38*	*0.00*
Wisconsin	**-101**	**45**	**0.03**
Wyoming	16	41	0.70

N=797. Seven states have statistically significant lower average account size; fourteen have significantly greater average account size. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and per capita income are not reported.

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TABLE 2B:
Average Account Size 1965-1984
All States Relative to Wisconsin

	Coefficient (in Thousands)	Robust Standard Error	p-value
Alabama	57	40	0.16
Alaska	66	63	0.30
Arizona	*190*	*21*	*0.00*
Arkansas	*69*	*31*	*0.03*
California	**-346**	**119**	**0.00**
Colorado	*128*	*18*	*0.00*
Connecticut	*219*	*34*	*0.00*
Delaware	*1,290*	*110*	*0.00*
Florida	3	31	0.93
Georgia	*207*	*23*	*0.00*
Hawaii	*474*	*128*	*0.00*
Idaho	*101*	*45*	*0.03*
Illinois	29	51	0.57
Indiana	-10	14	0.44
Iowa	5	18	0.80
Kansas	*100*	*22*	*0.00*
Kentucky	*141*	*22*	*0.00*
Louisiana	**-54**	**22**	**0.02**
Maine	*95*	*32*	*0.00*
Maryland	*223*	*30*	*0.00*
Massachusetts	*189*	*23*	*0.00*
Michigan	44	40	0.28
Minnesota	*269*	*17*	*0.00*
Mississippi	50	38	0.19
Missouri	*298*	*13*	*0.00*
Montana	52	39	0.18
Nebraska	*138*	*29*	*0.00*
Nevada	*383*	*35*	*0.00*
New Hampshire	*111*	*27*	*0.00*
New Jersey	*87*	*36*	*0.02*
New Mexico	*108*	*34*	*0.00*
New York	135	98	0.17
North Carolina	*94*	*20*	*0.00*
North Dakota	42	35	0.24
Ohio	52	49	0.28
Oklahoma	*412*	*22*	*0.00*
Oregon	*182*	*18*	*0.00*
Pennsylvania	**-182**	**52**	**0.00**
Rhode Island	*350*	*27*	*0.00*
South Carolina	*105*	*30*	*0.00*
South Dakota	73	43	0.09
Tennessee	*184*	*23*	*0.00*
Texas	-64	57	0.27
Utah	*86*	*38*	*0.02*

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	Coefficient (in Thousands)	Robust Standard Error	p-value
Vermont	31	38	0.42
Virginia	10	11	0.39
Washington	*169*	*15*	*0.00*
West Virginia	*209*	*32*	*0.00*
Wyoming	*116*	*33*	*0.00*

N=797. Three states have statistically significant lower average account size; thirty have significantly greater average account size. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and per capita income are not reported.

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TABLE 3A:
Total Assets 1965-1984
All States Relative to Idaho

	Coefficient (in billions)	Robust Standard Error	p-value
Alabama	-1.56	1.31	0.24
Alaska	-0.36	1.11	0.75
Arizona	-0.06	0.76	0.94
Arkansas	**-1.53**	**0.71**	**0.03**
California	-7.93	9.22	0.39
Colorado	0.21	0.88	0.81
Connecticut	*6.74*	*1.17*	*0.00*
Delaware	*9.68*	*0.71*	*0.00*
Florida	-0.82	3.47	0.81
Georgia	-1.52	1.89	0.42
Hawaii	0.52	0.74	0.49
Illinois	*18.57*	*4.69*	*0.00*
Indiana	0.15	1.97	0.94
Iowa	-0.95	0.99	0.34
Kansas	-0.82	0.78	0.30
Kentucky	-0.18	1.22	0.88
Louisiana	**-4.39**	**1.41**	**0.00**
Maine	0.57	0.37	0.12
Maryland	-0.05	1.53	0.98
Massachusetts	*8.85*	*2.18*	*0.00*
Michigan	0.31	3.57	0.93
Minnesota	0.98	1.45	0.50
Mississippi	**-1.97**	**0.84**	**0.02**
Missouri	*4.06*	*1.90*	*0.03*
Montana	0.10	0.40	0.80
Nebraska	0.44	0.52	0.40
Nevada	0.51	0.60	0.39
New Hampshire	0.16	0.42	0.70
New Jersey	-1.04	2.85	0.72
New Mexico	-0.20	0.40	0.62
New York	*37.43*	*8.00*	*0.00*
North Carolina	-2.25	2.08	0.28
North Dakota	0.21	0.42	0.63
Ohio	*11.04*	*4.33*	*0.01*
Oklahoma	-0.57	0.96	0.55
Oregon	-0.94	0.76	0.22
Pennsylvania	*22.53*	*4.88*	*0.00*
Rhode Island	*2.56*	*0.37*	*0.00*
South Carolina	**-2.12**	**0.99**	**0.03**
South Dakota	0.25	0.42	0.55
Tennessee	-1.15	1.54	0.45
Texas	-3.07	5.35	0.57
Utah	0.16	0.43	0.71
Vermont	0.60	0.42	0.16

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	Coefficient (in billions)	Robust Standard Error	p-value
Virginia	-2.48	1.88	0.19
Washington	-0.57	1.33	0.67
West Virginia	0.21	0.62	0.73
Wisconsin	1.27	1.66	0.44
Wyoming	0.31	0.55	0.57

N=797. Four states have statistically significant lower trust assets; nine have significantly greater trust assets. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and total state capita income are not reported.

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TABLE 3B:
Total Assets 1965-1984
All States Relative to Wisconsin

	Coefficient (in billions)	Robust Standard Error	p-value
Alabama	**-2.83**	**0.62**	**0.00**
Alaska	-1.63	2.07	0.43
Arizona	-1.33	1.00	0.19
Arkansas	**-2.80**	**1.16**	**0.02**
California	-9.20	7.63	0.23
Colorado	-1.06	0.89	0.23
Connecticut	*5.47*	*0.87*	*0.00*
Delaware	*8.40*	*1.85*	*0.00*
Florida	-2.09	1.88	0.27
Georgia	**-2.79**	**0.46**	**0.00**
Hawaii	-0.76	1.75	0.67
Idaho	-1.27	1.66	0.44
Illinois	*17.29*	*3.17*	*0.00*
Indiana	**-1.13**	**0.45**	**0.01**
Iowa	**-2.22**	**0.86**	**0.01**
Kansas	**-2.09**	**1.07**	**0.05**
Kentucky	**-1.46**	**0.66**	**0.03**
Louisiana	**-5.66**	**0.49**	**0.00**
Maine	-0.70	1.56	0.66
Maryland	**-1.32**	**0.54**	**0.02**
Massachusetts	*7.57*	*0.76*	*0.00*
Michigan	-0.96	1.97	0.63
Minnesota	-0.29	0.57	0.61
Mississippi	**-3.24**	**1.09**	**0.00**
Missouri	*2.79*	*0.81*	*0.00*
Montana	-1.17	1.70	0.49
Nebraska	-0.83	1.38	0.54
Nevada	-0.76	1.76	0.67
New Hampshire	-1.11	1.65	0.50
New Jersey	-2.31	1.28	0.07
New Mexico	-1.47	1.51	0.33
New York	*36.16*	*6.55*	*0.00*
North Carolina	**-3.52**	**0.60**	**0.00**
North Dakota	-1.07	1.75	0.54
Ohio	*9.77*	*2.77*	*0.00*
Oklahoma	**-1.84**	**0.84**	**0.03**
Oregon	**-2.21**	**1.00**	**0.03**
Pennsylvania	*21.26*	*3.40*	*0.00*
Rhode Island	1.29	1.60	0.42
South Carolina	**-3.39**	**0.84**	**0.00**
South Dakota	-1.02	1.74	0.56
Tennessee	**-2.43**	**0.41**	**0.00**
Texas	-4.34	3.76	0.25
Utah	-1.11	1.47	0.45
Vermont	-0.67	1.81	0.71

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	Coefficient (in billions)	Robust Standard Error	p-value
Virginia	**-3.75**	**0.39**	**0.00**
Washington	**-1.84**	**0.46**	**0.00**
West Virginia	-1.06	1.27	0.40
Wyoming	-0.96	1.85	0.60

N=797. Seventeen states have statistically significant lower trust assets; eight have significantly greater trust assets. Dollar values adjusted for inflation (Year 2000=100). Year dummies and controls for state population and total state capita income are not reported.

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