

# DYNASTY TRUSTS

GIANT TAX LOOPHOLES THAT SUPERCHARGE  
WEALTH ACCUMULATION

AMERICANS FOR  
**TaxFairness**

# CREDITS

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[Americans for Tax Fairness](#) is a diverse coalition of hundreds of national and state endorsing organizations that collectively represent tens of millions of members. The organization was formed in 2012 on the belief that the country needs comprehensive, progressive tax reform that results in greater revenue to meet our growing needs. ATF is playing a central role in Washington and in the states on federal tax-reform issues.

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# EXECUTIVE SUMMARY

Dynastic wealth has been with us since before the American Revolution. But the accumulations of wealth by ultrarich families in recent decades now exceed even those from the Gilded Age of the late 19th century. And huge family fortunes continue to pile up day after day with no end in sight. This unceasing buildup of private wealth makes our society less equal, our economy less stable and our democracy less secure.

Taxes levied on the intergenerational transfer of wealth are supposed to curb this accumulation, but big loopholes in federal tax law allow it to mostly proceed unchecked. Payment of estate, gift and generation-skipping taxes (collectively known as wealth-transfer taxes) have become for all practical purposes optional for the ultrawealthy. Ultrarich families use dynasty trusts—the term for a variety of wealth-accumulating structures that remain in place for multiple generations—to ensure their fortunes cascade down to children, grandchildren and beyond undiminished by wealth-transfer taxes.

**The Build Back Better (BBB) legislation now before Congress—otherwise a vehicle for significant progressive tax reform—does nothing to directly reverse this toxic accumulation of dynastic wealth. Moreover, some dynasty trust reforms that were included in the bill passed by the House Ways and Means Committee in September 2021 were stripped out before the House voted on the measure in November. This is inexcusable. The BBB legislation now before the U.S. Senate should be amended to close loopholes in the three components of America’s wealth transfer tax system: the estate, gift and generation-skipping tax. Effective reforms have already been developed—all that’s needed is for Congress to recognize the urgency to act now.**



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This report surveys the accelerating accumulation of dynastic wealth in trusts aggressively promoted by the wealth defense industry; the tax loopholes that make dynasty trusts possible; legislative proposals that would close the loopholes; and the corrosive effect of dynastic wealth on our society. Here are the report’s key findings:

- Dynasty trusts, and the loopholes in federal tax law used to transfer great accumulations of wealth to them tax free where they grow even more, will if unreformed drive dynastic wealth to levels that dwarf today’s extreme levels.
- Dynastic wealth has been growing at an alarming rate. The top five dynastic families saw their inflation-adjusted wealth increase 34-fold between 1983 and 2020, from \$15.5 billion to \$528 billion.
- Newer fortunes—held by Elon Musk, Jeff Bezos, Mark Zuckerberg and others—destined to evolve into dynastic wealth in future generations, have been growing at a rate that dwarfs the dramatic expansion of existing dynastic wealth. In October 2021, the eight wealthiest Americans, all white men and all first generation wealth holders, each have a net worth in excess of \$100 billion.

The wealth of America's 745 billionaires grew by \$2.1 trillion, or over 70%, during the first 19 months of the pandemic—to a total of \$5 trillion in October, 2021. By comparison, the inflation-adjusted wealth of U.S. billionaires was \$240 billion in 1990 when there were 66 billionaires.

- With the passing of the Silent and Baby Boom generations—who together hold an estimated \$70 trillion of America's wealth, including many of its largest fortunes—the wealth held in the dynasty trusts of ultrarich families stands to reach \$21 trillion between now and 2045, based on wealth industry and Americans for Tax Fairness (ATF) estimates. Most of that will go untaxed because of gaping wealth-transfer tax loopholes, and it will accumulate tax-free for an unlimited number of future generations.

**The tax savings for the richest families could be about \$8.4 trillion over the next 24 years or so if the current 40% estate tax rate remains in place.** That's the equivalent of more than four Build Back Better plans costing \$1.75 trillion each over ten years. About half of the \$8.4 trillion is equivalent to the cost of the expanded Child Tax Credit, which was included in the House-passed BBB bill and is estimated to reduce childhood poverty by 40%, for 24 years at \$160 billion a year.

- The current and future taxes that will be avoided through these loopholes include the estate tax—currently 40% on estates worth more than \$12 million (\$24 million for married couples); gift taxes, which are tax-free up to the same exemption levels as the estate tax; and generation-skipping taxes, a 40% tax on wealth transfers that skip one or more generations, with the same exemption levels as the estate tax.

## Loopholes in America's wealth-transfer tax system and related income-tax law that allow dynasty trusts to exist and grow:

- **Generation-Skipping Tax (GST) Exemption:** This loophole makes trusts of virtually any size exempt from the generation-skipping tax, allowing the ultrarich to lodge massive amounts of wealth in dynasty trusts that indefinitely escapes taxation.
- **Valuation discounts for interests in family-controlled entities:** This loophole allows the rich to artificially reduce the value of assets that are being transferred into dynasty trusts.
- **Intentionally Defective Grantor Trusts (IDGTs):** These trusts are treated as owned by their creator for income-tax purposes and by their beneficiaries for wealth-transfer-tax purposes, allowing for massive tax avoidance.
- **Zeroed-out Grantor Retained Annuity Trusts (Zeroed-Out GRATs):** These trusts effectively allow a parent to dodge wealth-transfer taxes on the appreciation in asset values by selling assets to a child. They also allow the wealthy to reverse the sale of the assets if they do not appreciate substantially in value.
- **Irrevocable Life Insurance Trusts (ILITs):** These trusts purchase life insurance policies with huge payouts to heirs upon death, and typically are exempt from taxation for an unlimited number of generations.

- **Exclusive Gift-Tax Rate:** This loophole discounts the way the gift tax is calculated, reducing the effective tax rate from 40% to 28.57%, which allows for greater amounts of wealth to be lodged in dynasty trusts.
- **Stepped-Up Basis:** This major loophole allows a lifetime of unrealized investment gains to be wiped out for income tax purposes upon a wealthy person's death. This allows for the passage of larger amounts of wealth into dynasty trusts because income taxes on the appreciation of the assets is avoided.

- **Unfortunately, the tax reforms included in the House-passed Build Back Better Act (BBBA) do not touch these dynasty trust loopholes.** Legislation approved by the House Ways and Means Committee in September made modest changes that would have limited (but not fully eliminated) the use of valuation discounts, IDGTs and Zeroed-Out GRATs. These reforms would have raised \$28 billion over 10 years. For reasons not made clear to the public, these modest changes were omitted from the final House version of BBBA that passed in November and is awaiting Senate action.

Surprisingly, this policy reversal immediately followed the publication of blockbuster reports by [ProPublica](#) and [Bloomberg Businessweek](#) about the massive exploitation of dynasty trust loopholes by America's billionaires.<sup>1</sup> Those reports should have bolstered the case for including dynasty-trust reforms in the final House bill.

- No justification exists for the failure of policy makers to end this scandal. There is no constituency supporting these enormous tax loopholes except the ultrarich and the

wealth-protection industry they employ. They serve no societal purpose. For example, no public policy concern justifies a rule that has allowed Phil Knight to avoid estate and gift tax on the transfer of over \$6 billion in Nike stock to a trust for his descendants, as the Zeroed-out GRAT loophole has done.

- **In addition to closing the dynasty-trust tax loopholes described above, which apply more to future inter-generational passages of wealth, reforms are needed to curb the year-to-year accumulation of wealth in existing trusts. Congress should:**

- Add an additional income-tax bracket on undistributed trust income in excess of \$250,000 that is five percentage points higher than the maximum income-tax bracket for individuals. This would create a tax incentive for trustees of dynasty trusts to distribute excess trust income to beneficiaries, thereby reducing the accumulation of wealth inside the trust, while still allowing trustees to retain income for the reasonable future needs of trust beneficiaries, including young and disabled beneficiaries.
- Impose an annual 2% wealth tax on the portion of a dynasty trust's holdings that exceed \$50 million, and an additional 1% on dynasty trust accumulations in excess of \$1 billion, which is identical to Sen. Elizabeth Warren's proposed wealth tax. Because the purpose of this tax would be to gradually reduce extreme dynasty trust wealth accumulations, any trust subject to it would be allowed a dollar-for-dollar credit for contributions to qualified charitable organizations.

# BACKGROUND: RISE AND DECLINE OF THE ESTATE TAX

Great American family fortunes predate the nation. The Beekman Estate, a real-estate investment corporation based in New York, is over [370 years old](#).<sup>2</sup> It holds 24 commercial and residential buildings in Manhattan, along with 11 other commercial and residential properties in the surrounding area. The dynasty's founder was **William Beekman**, a Dutch immigrant to what was then New Netherlands in 1647. His descendants continue to own a majority of the family business.

Though there were other wealthy landowners and merchants in the 17th and 18th centuries, truly immense fortunes only arose with the Industrial Revolution of the 19th century. The ostentatious display of wealth and exercise of political power by these new “robber barons” during what became known as the Gilded Age contrasted sharply with the powerless poverty of the new masses of industrial workers.

Commentators noticed the significance of these new concentrations of economic and political power and proposed remedies for them.

“The really big fortune, the swollen fortune, by the mere fact of its size, acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means,” former [President Theodore Roosevelt declared](#) in 1910.<sup>3</sup> “Therefore, I believe in a... graduated inheritance tax on big fortunes, properly safeguarded against evasion, and increasing rapidly in amount with the size of the estate.”

**Roosevelt's** reform was realized in 1916 as the [estate tax](#), the federal government's first sustained attempt to restrain the accumulation of dynastic wealth.<sup>4</sup> Though it established an important principle of containing



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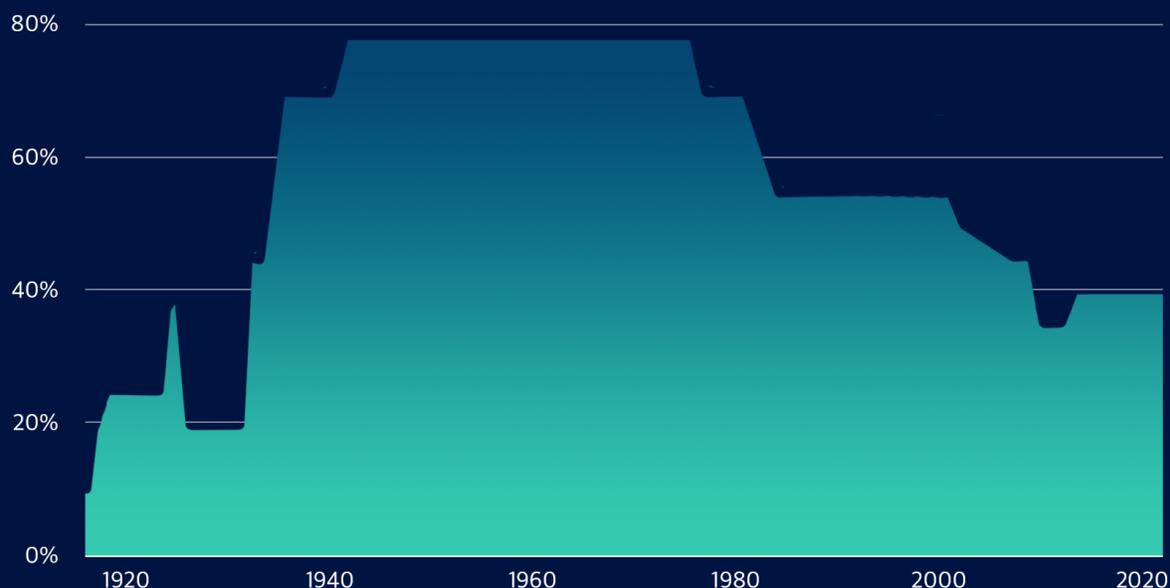
President Theodore Roosevelt

intergenerational transfers of great wealth, the estate tax for its first 15 years was somewhat of a paper tiger.

Between 1916 and 1931 (excluding a two-year period of tougher rules), the estate tax's top rate [never exceeded 25%](#).<sup>5</sup> More importantly, outside those two years, no federal tax was imposed on gifts. The estate tax could thus be easily avoided by older generations near the ends of their lives by making gifts of their fortunes to younger generations rather than leaving bequests in their wills.

But with the Great Depression's accentuation of the division between rich and poor, and the New Deal's need for revenue to fund expanding public services, the estate tax was given punch. The top tax rate was initially nearly doubled to 45% by 1932, then rapidly increased to 77% in 1941 where it remained for 35 years. [See chart]

## Top Estate Tax Rate: 1916-2018



Source: IRS, 1916 to 2007; The Balance, 1997-2021<sup>6</sup>

The exemption amount was halved in 1932, from \$100,000 to \$50,000.<sup>7</sup> A gift tax was imposed with a steadily rising rate, starting at 33.5% in 1932 and rising to 70% in 1977.<sup>8</sup>

So estate tax rates remained high and unchanged and exemptions remained modest for 35 years in the mid-20th century. But the tide began to turn in the century's last quarter.

As shown in the chart below, since 1977, with only one recent exception, every amendment to the estate-tax rate has lowered it: today's rate of 40% is nearly half the 77% rate of roughly 40 years ago. Over those same 40 years, the amount of family fortune exempt from the tax has steadily grown, with that exemption growth [accelerating over the past decade](#).<sup>9</sup>

In 2017, President Trump and Republicans in Congress doubled the exemption amount from \$5.5 million to over \$11 million (about \$22

million per married couple). Earlier, Congress had indexed the exemption amount to inflation, so in 2022 it stands at about \$12 million and \$24 million. Under current rules, only [the largest one in a thousand](#) estates owes the estate tax.<sup>10</sup>

Revenue generated by the estate tax has generally and [predictably fallen this whole century](#) in line with the reduction in rates and rise in exemption amounts. Estate-tax-return filings show a drop in estate tax owed from \$24.4 billion in 2000<sup>11</sup> to [\\$9.3 billion in 2020](#),<sup>12</sup> a drop of over 60%. In just the two years between 2018 and 2020, estate tax revenues declined by half.<sup>13</sup>

The avoidance of wealth-transfer taxation—on estates, gifts, and generation-skipping transfers—by America's wealthy has played an outsized role in our return to Gilded Age levels of wealth concentration. Absent reform, the growth of dynastic family fortunes through the use of



**Under current rules, only the largest one in a thousand estates owes the estate tax.**

dynasty trusts (and tax avoidance strategies to create and enlarge them) threatens America's economic well-being and the stability of American democracy.

Although measures have been proposed over the years to close the loopholes that are fueling dynasty trust accumulations, none have been enacted. Unfortunately, the country's broken system of wealth-transfer and related income taxation has been largely excluded from the current tax-reform debate. After proposing substantial estate- and gift-tax reform during his presidential campaign, President Biden did not include any such reforms in his Build Back Better proposal to Congress. His proposal to eliminate stepped-up basis—an income-tax policy that allows the wealthy, including billionaires, to entirely escape income tax on a lifetime of investment gains—was abandoned after wealthy opponents went on the attack, using phony claims that the proposal threatened America's family farms and small businesses.

## **SUPER-CHARGED ESTATE TAX AVOIDANCE: THE RISE OF DYNASTY TRUSTS**

More important to the creation of unaccountable dynasties than the weakening of the estate tax has been the development of wealth-transfer tax avoidance strategies that have enabled the ultrawealthy to avoid tax altogether.

The explosive growth in recent decades of dynastic wealth—and the potential for even greater growth in the future—would not be possible if America's wealth-transfer tax system worked the way **Teddy Roosevelt** envisioned it in 1910. The system is instead hobbled by loopholes and special breaks. The avoidance has become so routine that **President Donald Trump's** economic advisor **Gary Cohn** declared in 2017 that "[only morons pay estate tax.](#)"<sup>14</sup>

Even after the bite of the estate tax increased beginning in 1932, estate-tax avoidance did

not rise to the obsession and art form it is today. Most rich families had diminishing wealth to protect. According to wealth researchers **Emmanuel Saez** and **Gabriel Zucman**, between 1929 and 1978, the share of the nation's wealth held by the wealthiest .01% plunged from 9.9% to 2.0%.<sup>15</sup> Even though the nation's per capita wealth, adjusted for inflation, nearly doubled during that period, the average inflation-adjusted wealth held by households in the wealthiest .01% declined sharply.

Progressive ideas ascendant in the middle of the last century—including steep taxes on the highest incomes, vigorous antitrust enforcement, and support for organized labor—all spread the nation's wealth more broadly and left smaller fortunes for the wealthy to shield.



## Only morons pay estate tax.

Trump economic advisor Gary Cohn

As New York Times economics correspondent **Peter Goodman** recently [explained in his new book](#) “Davos Man: How Billionaires Devoured the World”: the extreme inequality we face today is the direct result of the billionaire-engineered reversal of progressive tax, antitrust and labor policies.<sup>16</sup> The simple solution is to restore the progressive policy choices of the three decades following World War II.

Although the top estate-tax rate remained as high as 77% as late as 1976, those families that maintained extreme levels of wealth despite the progressive reforms of the mid-twentieth century had a simple technique for limiting the application of the tax to a single intergenerational transfer of wealth. Instead of leaving their wealth to their children, they would leave it to dynasty trusts benefiting those children and all the generations to follow. Because later generations of beneficiaries had no control over the disposition of the trust assets at their death, their taxable estates did not include the wealth held in the trust.

In 1976, Harvard University law professor **A. James Casner** testified before the House Ways and Means Committee that the estate tax was essentially voluntary: “In fact, we haven’t got an estate tax, what we have [is], [you pay an estate tax if you want to](#); if you don’t want to, you don’t have to.”<sup>17</sup> In his 1979 book, *A Voluntary Tax?*, Columbia University law professor **George Cooper** concurred: “Clearly, the estate and gift tax is not striking terror into the hearts of the

very wealthy, nor is it even seriously burdening most persons who devote effort to avoidance.”<sup>18</sup>

The widespread estate-tax avoidance highlighted by **Casner** and **Cooper** was made possible by the dynasty trust. This was hardly news to finance-focused members of Congress, who by 1976 were well aware of the tax avoidance potential of this wealth-shielding tool. In its report on the generation-skipping tax provisions of the 1976 Tax Act, the Joint Committee on Taxation noted:

Prior law imposed transfer taxes every generation in the case of families where property passed directly from parent to child and then from child to grandchild. However, where a generation-skipping trust was used, no tax was imposed upon the death of the child even where the child had an income interest in the trust, and substantial powers with respect to the use, management, and disposition of the trust assets. While the tax advantages of generation-skipping trust were theoretically available to all, in actual practice these devices were more valuable (in terms of tax savings) to wealthier families. Thus, generation skipping trusts were used more often by the wealthy. **Generation**



## Clearly, the estate and gift tax is not striking terror into the hearts of the very wealthy.

Columbia University law professor  
George Cooper

**skipping resulted in inequities in the case of transfer taxes by enabling some families to pay these taxes only once every several generations, whereas most families must pay these taxes every generation. Generation skipping also reduced the progressive effect of the transfer taxes, since families with moderate levels of accumulated wealth might pay as much or more in cumulative transfer taxes as wealthier families who utilized generation-skipping devices.<sup>19</sup>**

Consequently, in 1976, Congress enacted legislation to close the dynasty trust loophole with the generation-skipping transfer tax (GST), which after some post-enactment delays was modified and finally implemented in 1986. The intended effect of the GST was to equalize the overall tax treatment of intergenerational wealth transfers, whether they happen in two steps (grandparents to parents, then later parents to children) or one (grandparents directly to grandchildren).

But Congress allowed an exemption from the GST, the amount of which has grown over the years, from an initial level of \$1 million in 1986 to \$12 million today. Advisors to wealthy families soon found ways to use the exemption to shield large fortunes held in dynasty trusts from the GST. They did this by using strategies that artificially reduced the value of assets transferred to dynasty trusts, thus allowing the GST exemption to shield huge amounts of wealth from tax. Those strategies include the intentionally defective grantor trust (IDGT); valuation discounts; the zeroed-out grantor retained annuity trust (GRAT); and the irrevocable life insurance trust (ILIT).

Two additional tax breaks most valuable to the wealthy—the “exclusive” method of calculating gift tax and the stepped-up basis loophole—contribute further to the growth of dynastic wealth, which in turn increases the size of

dynasty trusts.

All of these tax loopholes are described in detail in the next section.

Dynasty trusts have become ever more attractive to the rich. Beginning with the conservative “Reagan Revolution” of 1980 and continuing over the past four decades, the reversal of the progressive initiatives that caused the wealth of the ultrarich to diminish has led to a resurgence of dynastic wealth. Other factors have contributed to the concentration of more and more money in fewer and fewer hands: automation and globalization, which have weakened the bargaining position of labor and thus left more profits for wealthy managers and investors to divide between them; smaller families, which results in fortunes split among fewer children; and the growing isolation of the ultrarich class that [leads to more intra-class marriages](#) that solidify dynastic wealth rather than disperse it.<sup>20</sup>

Further fueling dynasty trust use have been changes in state laws. Trusts must conform to the laws of the states in which they are established. States benefit from the establishment and maintenance of family trusts



**We haven't got an estate tax... you pay an estate tax if you want to; if you don't want to, you don't have to.**

Harvard University law professor  
A. James Casner



**Most of the necessary legislative changes have already been crafted. Many have been around for a long time, only to be ignored by those in power.**

within their borders because they create an estate-tending industry of high-paying jobs. So, beginning with [South Dakota in the 1980s](#), states have competed with one another to attract trusts by weakening the rules governing them.<sup>21</sup>

Among the changes made to state laws to accommodate the trust industry have been the relaxation or elimination of the “rule against perpetuities” (trusts no longer need a termination date but can instead go on forever); the allowance of “self-settled asset protection trusts” (traditionally banned as a way to duck creditors); and the adoption of various other rules that made it easier to modify, divide, and merge trusts and shift assets from one trust to another. These changes in state law solidified the role of the trust as the vehicle of choice for holding dynastic wealth.

Throughout the four decades over which the wealth of the ultrarich has exploded, the strategies used to shield massive amounts of that wealth from transfer tax have been left unaddressed. Used systematically with the guidance of sophisticated tax advisers, those strategies allow even billionaires to pay a minimal effective rate of wealth-transfer taxes or avoid such taxes entirely.

The loopholes fueling the extreme accumulation of dynastic wealth in America are not a mystery. Nor is the legislation needed to close the loopholes an insurmountable challenge to structure and draft. In fact, most of the necessary legislative changes have already been crafted. Many have been around for a long time, only to be ignored by those in power.

Following are the tax-avoidance strategies most commonly used to establish and enlarge dynasty trusts—and what’s needed to stop them. The technical aspects of these structures, which only the most sophisticated (and expensive) estate tax attorneys can implement, reveal how this system of loopholes have been designed to exclusively benefit the wealthiest among us.

## **GENERATION-SKIPPING TAX EXEMPTION CREATES AND INFLATES DYNASTY TRUSTS**

### **The Tax Loophole**

Since 1986 there has been a generation-skipping tax (GST) that is separate from the estate tax and gift tax. It has its own lifetime exemption, which is identical to the estate tax and gift tax exemptions—currently \$12 million per individual and indexed to inflation. The GST is a second layer of tax that applies to transfers that skip one or more generations; for example, from grandparent to grandchild.<sup>22</sup>

The intended effect of the GST is to equalize the overall tax treatment of intergenerational wealth transfers, whether they happen in two steps (grandparents to parents, then later parents to children) or one (grandparents directly to grandchildren). But especially now that the GST exemption has grown so large, it can be used as the seed money for a dynasty trust that is sheltered from wealth transfer taxation for a century or more.

**That's because the GST exemption can be used to fund trusts for the benefit of grandchildren and future generations rather than make gifts or bequests directly to them. If a trust is GST exempt, its assets can grow, free from gift, estate and generation-skipping tax, generation after generation.**

Northern Trust shows how this can be done with a Nevada Dynasty Trust. By dodging wealth-transfer taxes every generation and employing the power of compounding, a dynasty trust established in 2021 in Nevada (which allows trusts to endure for 365 years) with the full \$11.7 million GST exemption allowed that year would after 75 years (roughly three generations) [grow to over \\$454 million](#).<sup>23</sup> And that's even if it experienced only a modest 5% annual return on investments. After 120 years, at slightly higher rates of return, \$5 million held in a GST-exempt dynasty trust could grow to several hundred billion dollars.

As discussed below, the potential for wealth accumulation inside dynasty trusts is far greater when a trust exempt from generation-skipping tax is established in combination with other tax-avoidance strategies. In extreme cases, over \$10 billion could be lodged into an intentionally defective grantor trust (discussed below), which could become a dynasty trust upon the death of the grantors. After three generations of growth free from estate, gift and generation-skipping tax, that dynasty trust could hold wealth approaching \$400 billion.<sup>24</sup>

### The Solution

Americans for Tax Fairness supports the following proposal to amend the GST, which we believe would stem the rise of dynasty trusts while still allowing more than 99% of families to pass wealth across multiple generations transfer-tax-free.

First, the GST exemption should be reduced from its current level of \$12 million per person to the 2009 level of \$3.5 million per person. That still would be substantially more than the amount of the GST exemption of \$1 million per person, adjusted for inflation, that applied in 1986, when the GST was introduced.

Second, the manner in which the GST exemption applies to trusts should be modified. A trust could continue to be eligible for exemption from the GST, but the trust's GST exemption would apply only to distributions to beneficiaries who are within two generations of the transferor (essentially, the transferor's grandchildren) and to more remote beneficiaries, such as great-grandchildren, who were alive at the time of the trust's inception. A trust's GST exemption would not apply to distributions to beneficiaries who are three or more generations from the transferor unless those beneficiaries were alive when the trust was created. A trust's GST exemption would expire, and the GST would apply, upon the passing of the last beneficiary of the trust to whom an exempt distribution could be made.

Third, for any trust created prior to adoption of this reform, the proposal would apply as if assets had been transferred to the trust on the date the proposal becomes effective. This would mean that all descendants of the creator of a pre-existing dynasty trust who are alive before adoption of the proposal would not face the GST, but all descendants born after that date would. That arrangement seems to strike the appropriate balance.

## VALUATION DISCOUNTS FOR INTERESTS IN FAMILY-CONTROLLED ENTITIES

### The Tax Loophole

Tax avoidance planners manipulate the manner in which wealthy people hold their assets to artificially depress the value of those assets for estate and gift tax purposes. The most common strategy is the transfer of assets to a family-controlled entity, usually a family limited partnership (FLP) or family limited liability company (FLLC).

In the typical FLP, wealthy parents contribute assets to a limited partnership in exchange for both general and limited partnership interests. They then give some portion of their limited partnership interests to their children. Because the limited partnership interests do not allow their holder to control the partnership and are not easily marketed, they are valued for tax purposes at a discount from the value of their pro-rata share of the partnership assets.

**Example:** Parents H and W, who already have exhausted their estate- and gift-tax exclusion amounts, own an office building valued at \$49 million. They transfer the building to a limited partnership in exchange for a 1% general partnership interest and a 97% limited partnership interest. Their children, S and D, each contribute \$500,000 to the partnership in exchange for 1% limited partnership interests. H and W then make a gift of a 30% limited partnership interest to each child. The limited partnership interests each represent about \$15 million of underlying value, but H and W claim a value of \$10 million for federal gift-tax purposes. Gift tax avoided on \$5 million at a 40% gift tax rate: \$2 million for each child.

Another variation of this strategy involves dividing real property into undivided percentage

interests. Because the owner of an undivided interest in real property does not have the ability to transfer the entire property to a buyer, the interest is valued at a discount from its pro rata share of the value of the entire property.

Valuation discounts can be used to increase the amount held in a GST-exempt dynasty trust by allowing the transfer of a larger underlying value of assets within the limits of the GST exemption. In the foregoing example, H and W are able to claim a reduced value of \$10 million for each 30% limited partnership interest. If they each transferred a 30% limited partnership interest to a dynasty trust, they each could apply \$10 million of GST exemption to the trust, thereby making it fully exempt from the GST. Each trust, however, would hold, indirectly, \$15 million of underlying value. Thus, the growth of the trust would start from a \$15 million base, rather than a \$10 million base.

### The Solution

Americans for Tax Fairness supports the valuation discount reform included in the For the 99.5 Percent Act ([S. 994](#) and [H.R. 2576](#)), introduced by Sen. Bernie Sanders and Rep. Jimmy Gomez.<sup>25</sup> It is a well-designed, two-pronged approach to ending abusive valuation discounts.

The Sanders-Gomez legislation addresses undervaluation of investments held by a non-publicly-traded business entity—such as a limited partnership—that is not directly related to the conduct of that business, such as a stock portfolio. Under the bill, the value of the partners' shares of any such non-business assets would be determined as if they collectively owned the assets directly.

**Example:** A is a 25% limited partner in the ABCD limited partnership. The other partners, B, C, and D, are all unrelated to A. The ABCD

limited partnership owns a stock portfolio with a value of \$10 million. Under current law, A could claim his limited partnership interest is worth less than 25% of the value of ABCD's stock portfolio, based on his lack of control over ABCD's affairs and the lack of marketability of his limited partnership interest. Under the For the 99.5 Percent Act, A's limited partnership interest would be valued at a full \$2.5 million. No discounts for lack of marketability or lack of control would be permitted.

Also, under the Sanders-Gomez legislation, valuation discounts based on "lack-of-control" and "lack of marketability" would be disallowed entirely for transfers of interests in entities controlled or majority-owned by the family of either the one transferring the shares or the one receiving them.

**Example:** E is a 25% member in a limited liability company controlled by her family, the E Family LLC, which owns and operates a restaurant valued at \$10 million. E's interest in the E Family LLC is valued at a full \$2.5 million. No discounts are allowed.

## INTENTIONALLY DEFECTIVE GRANTOR TRUSTS (IDGTs)

### The Tax Loophole

The intentionally defective grantor trust (IDGT) exploits the different treatment of certain trusts for income-tax purposes, as opposed to their treatment for estate and gift tax purposes. IDGTs are treated as owned by the creator (the grantor) for income tax purposes, but by the named beneficiaries of the trust (typically descendants of the grantor) for estate and gift tax purposes. ("Intentionally defective" refers to the terms of the trust, which turn what would normally

be viewed as a defect in drafting—making the grantor responsible for paying the trust's income taxes—into a vehicle for estate- and gift-tax avoidance.)

Under current law, a grantor can engineer an IDGT by (among other methods) establishing an irrevocable trust but retaining the power to substitute assets in the trust for other property of equivalent value.

In the typical IDGT, the grantor creates a trust for the benefit of his descendants and funds it with cash. The trust then uses the cash as a 10% down payment on the purchase of additional assets from the grantor, with the remainder of the purchase price in the form of a promissory note to the grantor. The interest rate charged by the grantor is the lowest required under the tax law to avoid the imputation of additional gifts by the grantor to the trust—currently under 1.5% per year.

Because the trust assets are treated as still owned by the grantor for income tax purposes, the sale is considered a non-event by the IRS. It has no tax consequences, the logic goes, because the grantor has effectively sold something to himself. Each year, the income from the IDGT is taxable to the grantor, even though it goes to the IDGT and its beneficiaries. The annual income tax payment by the grantor effectively is a tax-free gift to the IDGT. Any rise in the value of the assets similarly belongs to the IDGT and its beneficiaries.

Upon the grantor's death, the remaining balance of the promissory note will be included in the grantor's taxable estate, but the appreciation in value of the assets, and the value of the income tax payments the grantor has made on the income flowing to the IDGT, will entirely escape estate taxation.

The wealthy use other loopholes to make IDGTs even more effective estate tax dodges:

- **The FLP-IDGT Combo:** Commonly, the FLP and IDGT are employed together. Because of the artificially depressed value of the shares in the FLP, more in real value can be transferred to the IDGT.
- **Seizing on Interest Rate Fluctuations to Benefit an IDGT:** When an IDGT purchases assets from its grantor and issues a promissory note for the deferred portion of the purchase price, the interest rate typically is set at the applicable federal rate, which is the lowest rate that may be charged without resulting in an imputed gift under the tax code. But the applicable rate changes over time. And whichever direction it moves, the grantor of an IDGT may use that fluctuation to pass additional wealth free of transfer tax.

If the applicable federal rate decreases, the IDGT can refinance its promissory note to the grantor at a new, lower, rate, thereby reducing the required payments to the grantor and increasing the amount retained in the IDGT, at no additional transfer-tax cost.

If the applicable federal rate increases, the increase causes a reduction in the value of the IDGT's promissory note below its face amount (when interest rates rise, the value of existing loans decline). The grantor and the IDGT then can swap assets of the IDGT for the promissory note. The difference between the face amount of the promissory note and its value effectively becomes a tax-free gift to the IDGT.

- **Subsequent Asset Sales to IDGTs:** An enormous potential for estate, gift, and generation-skipping tax avoidance exists in subsequent sales of assets to a previously formed IDGT, after the assets initially sold to the IDGT have appreciated substantially in value. [Covid 19, A Perfect Storm for Estate Tax Avoidance](#), an Institute for Policy Studies briefing paper, shows how even billionaires with average stock market gains could use an IDGT to save billions in wealth-transfer tax.<sup>26</sup>

The Elon Musk example on the next page uses information publicly available regarding Musk's ownership of Tesla stock to show how, in barely a decade, over \$21 billion of wealth could be passed free of estate, gift and generation-skipping tax using two sales to an IDGT.

- **How the IDGT Strategy Enlarges Dynasty Trust Holdings:** An IDGT can be used to increase the amount held in a GST-exempt dynasty trust by serving as one itself. If the initial contribution to an IDGT is within the GST exemption amount of \$12 million for a single person, the grantor of the trust can elect to have the entire trust be GST exempt. As long as no further contributions are made, the IDGT will remain GST-exempt. Asset sales to the IDGT will not cause it to lose its GST exemption, nor will the grantor's payment of income tax on the IDGT's income.

The IDGT is the most powerful vehicle available to leverage the GST exemption and enlarge the holdings of dynasty trusts. As discussed above, it is possible to grow an IDGT from an initial contribution within the GST exemption limit to \$1 billion or even \$10 billion within a few decades.<sup>27</sup> Once that has taken place, the GST-exempt dynasty trust will escape wealth transfer tax in perpetuity.



## How Elon Musk Could Have Created a \$21.7 Billion Dynasty Trust, Free of Estate and Gift Tax in Perpetuity

Based on the actual value of Tesla shares

### September 2011

Musk establishes an IDGT under South Dakota law by contributing \$3 million to it and allocating his generation skipping tax exemption to it. Then, he sells 2,100,000 shares of Tesla stock to the trust for its \$5 per share trading price at the time, for a total price of \$10.5 million. The trust pays Musk \$1.1 million in cash and gives Musk a promissory note for \$9.4 million. This note carries very favorable terms: interest of only 1.63% a year payable over nine years. Only interest is due for the first eight years, and full payment of principal and accrued interest is due at the end of the nine-year term. The IDGT pays the annual interest payment for eight years with its remaining cash.

### April 3, 2020

When Tesla stock is trading at \$96 per share, Musk sells an additional 17.9 million shares to the IDGT. In consideration for those shares and in payment of the remaining balance on its nine-year promissory note, the IDGT issues a new promissory note in the amount of \$1.728 billion, again on great terms: interest of only 1.0% per year for eight years, with the entire principal balance plus interest due at the end of nine years.

### April 1, 2021

When Tesla stock is trading at \$690 per share, the IDGT transfers 25,043 shares to Musk in satisfaction of the annual interest payment due April 3, 2021.

### November 3, 2021

When Tesla stock is trading at \$1,177 per share, the IDGT transfers 1,476,635 shares to Musk, a total value of \$1.738 billion, in full satisfaction of the promissory note, including accrued interest. After the payment, the IDGT is left with 18,498,322 shares of Tesla stock, at a total value of \$21.772 billion that day.

## The Solution

The most straightforward way to close the IDGT loophole is to deny grantor trust status to any domestic trust that would be outside the grantor's gross estate at death.<sup>28</sup> Under this proposal, any income taxes paid by the grantor on income generated by a former IDGT would constitute an additional taxable gift. Installment sales to former IDGTs, deathbed swaps with former IDGTs, and all other transactions between an IDGT and its grantor would be taxable events.

## ZEROED OUT GRANTOR RETAINED ANNUITY TRUSTS (GRATs)

### The Tax Loophole

The zeroed-out grantor retained annuity trust (zeroed-out GRAT) works by using a tax code provision enacted in 1990 that allows a wealthy person effectively to repeatedly sell assets to trusts for the benefit of her descendants, with 100% of the purchase price deferred. The zeroed-out GRAT doesn't even require the grantor to consume her gift tax exemption. As with the IDGT, the assets continue to be owned by the grantor for income tax purposes. If the assets appreciate, the GRAT pays for what it's bought from the grantor, which allows the appreciation to pass, free of estate and gift tax, to the GRAT. If the assets fail to appreciate, the sale is unwound, at no tax cost.

Here are the mechanics: When a grantor makes a transfer to an irrevocable trust, she's allowed to reduce the taxable gift amount by the value of any "qualified interest." Under Section 2702(b)(1) of the tax code, "qualified interest" includes a "term annuity" retained by the grantor. (A term annuity is an investment that pays a fixed amount to the investor each year.) The value of the retained annuity is imputed using the Section 7520 interest rate (i.e., 120% of the federal midterm rate). These provisions have given rise to a highly effective transfer tax minimization strategy, known as a zeroed-out GRAT or "Walton GRAT." (The latter name comes from the case in which the Tax Court rejected an IRS challenge to the Walton family's use of the strategy.<sup>29</sup>)

To see how a zeroed-out GRAT can achieve significant transfer tax savings under current law, consider the following scenario: A taxpayer transfers \$100 million to an irrevocable trust and retains a two-year term annuity entitling

her to annual payments of \$51.2 million. Based on the Section 7520 rate (1.6%) in effect as of January 2022, the value of the annuity would be calculated as \$100 million.<sup>30</sup>

The taxpayer's taxable gift would thus be zero, because she would receive back the same amount in the value of the annuity. If assets in the trust grow faster than 1.6% per year over the next two years, the GRAT will have assets left over at the end of the two-year period, and those assets will pass to the grantor's beneficiaries free of any transfer tax. If assets in the trust grow slower than 1.6% per year, the GRAT will be unable to make its final payment and will "fail," with no estate or gift tax consequences. Zeroed-out GRATs thus allow taxpayers to make a "heads I win, tails we tie" bet with the IRS.<sup>31</sup>

There is no limit to the number of zeroed-out GRATs a taxpayer may establish. Thus, in economic terms, the zeroed-out GRAT strategy allows a taxpayer to sell assets to her descendants repeatedly with the purchase price paid exclusively from the assets themselves. When the assets substantially appreciate, the appreciation flows to the descendants. When they don't, the taxpayer takes the loss. Eventually, the bulk of the taxpayer's wealth can be shifted to her descendants, with no gift tax paid.

**How the Zeroed-Out GRAT Enlarges Dynasty Trust Holdings:** A zeroed-out GRAT typically will not qualify to be fully GST-exempt. The GST exemption may be applied to a GRAT only after the annuity to the grantor has been paid in full. By that time, the assets held in the GRAT may far exceed the available GST exemption. Thus, GRATs are not ideal for use as dynasty trusts. However, through a variety of strategies, tax avoidance planners often are able to shift assets held in a non-exempt GRAT to a GST-exempt dynasty trust.

One strategy used is for the GRAT to sell its remaining interest in the GRAT assets (after payment of the annuity) to an IDGT shortly after the formation of the GRAT. Because the GRAT and the IDGT both are grantor trusts the assets of which are deemed to be owned by the grantor, the sale transaction is not a taxable transaction for income-tax purposes. An alternative strategy is simply to distribute the GRAT assets to the GRAT beneficiaries, ordinarily the children of the grantor, after payment of the annuity. The GRAT beneficiaries then can implement their own strategies to lodge the assets in dynasty trusts.

### The Solution

Americans for Tax Fairness supports the most straightforward approach to ending the zeroed-out GRAT strategy: Repeal section 2702(b)(1) of the Internal Revenue Code, which allows wealthy people to use retained annuities, the values of which are impossible to determine with any accuracy, to zero out the amount of their gifts.

Another alternative would be the approach taken in the For the 99.5 Percent Act: add two requirements to Section 2702(b) of the Internal Revenue Code: (1) that retained annuities have a minimum 10-year term, and (2) that the value of the gifted interest in a GRAT be at least equal to the greater of \$500,000 or 25% of the value of the assets contributed to the GRAT.

## IRREVOCABLE LIFE INSURANCE TRUSTS (ILITS) AND USE OF “CRUMMEY POWERS”

### The Tax Loophole

Life insurance policies are used by the wealthy to lodge enormous sums in dynasty trusts free of estate, gift, and generation-skipping tax.

An irrevocable life insurance trust (ILIT) is simply an IDGT that is formed for the purpose of holding a life insurance policy on the grantor. Life insurance policies are afforded highly favorable income-tax treatment. As long as a policy is not transferred for value, the death benefit will not be subject to income tax. For permanent life insurance products (which, unlike term life insurance, have no expiration date and combine a savings and investment plan with the traditional death benefit), the income generated by investment of the premium payments, which increases the policy value, is not subject to income tax.

This makes life insurance policies ideal assets for transferring large sums of wealth free of estate-, gift- and generation-skipping tax to dynasty trusts. Wealthy grantors, especially those who are relatively young and healthy, can fund ILITs with relatively modest contributions, which are used to fully pay the premiums on life insurance policies paying large death benefits. If the grantor dies early on, the return on the ILIT's investment, all income-tax free, is enormous. Because the death benefit is paid to the ILIT, it is not included in the grantor's taxable estate. If the grantor lives a long life, the strategy works equally well, because of the favorable after-tax investment return on the policy.

Wealthy people have two options for funding the premiums ILITs must pay on the life insurance policies they purchase. The first is to use all or a portion of the grantor's lifetime exclusion from

estate and gift taxes, which in 2022 as noted is \$12 million per individual and \$24 million per married couple. If a married couple both 50 years old and in good health used \$20 million of their combined \$24 million exclusion amount to fund a fully paid, “second-to-die” life insurance policy, the death benefit payable on the second of their deaths could be \$100 million or more.<sup>32</sup>

For wealthy people who already have consumed their lifetime exclusion amounts or want to reserve them for other purposes, there’s a second option: the annual gift-tax exclusion. Everyone is allowed to exclude from gift tax gifts of up to \$16,000 per recipient per year. For a married couple with two children, that’s \$64,000 per year (\$32,000 per parent) in tax-free gifts. If grandchildren or spouses of children are included, the total exclusion can be significantly higher.

Instead of giving each of those people \$16,000 in cash or other property, that money can instead be given to the ILIT to pay the life insurance premiums. Ordinarily, gifts are only tax-free if they convey to the recipient a “present interest” in the gift—that is, he or she has immediate access to its value, like a check in an envelope or a motorcycle on the driveway. But the benefit of the life insurance for which the gift is paying the premiums is, by contrast, a “future interest”: the gift recipients will only benefit when the creator of the ILIT dies and the insurance pays off at some indefinite future point.

Ever since a court case in 1968, gifts to ILITs for the purpose of paying premiums have qualified as tax free through a gimmick.<sup>33</sup> The gifts need only be accompanied by a grant of the aptly labeled “Crummey power” (named after the plaintiff in the case) to the ultimate beneficiaries, allowing them for a limited time to withdraw the gift from the trust in cash. But the beneficiaries routinely conclude it’s better to keep the money in the trust to pay the insurance premiums, so few withdraw it. The beneficiary’s failure to

exercise the withdrawal right does not alter the treatment of the transfer as a completed gift of a present interest. Once the Crummey powers granted to the trust beneficiaries have lapsed, the trustee may use the trust contributions to pay the life insurance policy premiums.

Where ILITs are established through the non-exercise of Crummey powers, the grantor’s GST exemption can be allocated to the trust, allowing it to function as a dynasty trust. Upon the death of the grantor and payment of the death benefit, the ILIT will hold substantial wealth, fully exempt from the GST.

### The Solution

The preferential income-tax treatment of life insurance is not limited to dynasty trusts, and the damage done extends beyond the perpetuation of dynastic wealth. Consequently, it must be addressed in a more comprehensive manner, which is beyond the scope of this report.

Americans for Tax Fairness proposes that the annual gift tax exclusion be disallowed for transfers in trust with Crummey powers to make insurance-premium payments, as well as for other transfers in trust, transfers of interest in passthrough entities, and transfers of property subject to prohibitions on sale and restrictions on liquidation. The annual exclusion was not intended to facilitate these sorts of transfers, which have been leveraged by tax avoidance planners to cause enormous amounts of wealth to escape transfer tax. Taxpayers still could apply their lifetime gift tax exemption to those transfers.

## EFFECTIVE GIFT TAX RATE

### The Tax Loophole

Although the statutory gift tax rate is 40%, current law allows taxpayers to pay gift taxes with pre-transfer-tax dollars. That leaves the tax payments out of the tax base, effectively reducing the rate to approximately 28.6%, as explained below.

Consider a wealthy person who has exhausted her lifetime estate and gift tax exclusion but still has \$14 million she'll never need and wants to pass to her children. If she holds the \$14 million till death, 40% of it, or \$5.6 million, will go to estate tax with the remaining 60%, or \$8.4 million, passing on to her children.

If instead while alive she uses that same \$14 million to first make gifts and then separately pay the gift tax due, her children will get more and the IRS less. Instead of the \$8.4 million they'd get as a post-estate-tax bequest, her children could receive \$10 million; while their mother would owe \$4 million (40% of \$10 million) in gift tax, compared to the \$5.6 million that would be paid in estate taxes.

She and her children would pay \$1.6 million less in tax (\$4 million, rather than \$5.6 million). Her effective gift-tax rate would be 28.57%.

The tax advantage of gifts over bequests grows with the rate of tax. If, say, the official estate tax and gift tax rates were raised to 70% on bequests and gifts greater than \$1 billion, a tycoon making such a gift would instead of the stated rate pay an effective gift tax of only 41.1%.

The exclusive gift tax rate enlarges dynasty trust holdings in several indirect ways. In some situations, a wealthy person's gift tax exemption and GST exemption are not in sync. For example, a person might make substantial gifts to his children that fully consume his gift

tax exemption but do not reduce his available GST exemption. The exclusive gift tax rate then would allow the person to make an additional gift equal to his GST exemption to a dynasty trust and pay the gift tax with funds held outside the trust, thereby lowering the cost of fully funding the trust. Moreover, in most cases, one generation of a dynasty ordinarily is not able to lodge its entire wealth in a dynasty trust. The exclusive gift tax rate allows for the passage of a greater amount of wealth to the succeeding generation outside the dynasty trust, wealth that succeeding generations may then transfer to dynasty trusts using the strategies discussed above.

### The Solution

The effective gift-tax rate should be made equal to the estate-tax rate by including in the amount of any gift the gift tax obligation associated with that gift, instead of allowing payment of the tax from a separate pool of money.

## IMPACT OF STEPPED-UP BASIS ON DYNASTIC WEALTH ACCUMULATION

### The Tax Loophole

Increases in the value of assets like stocks and real estate—what are known as “capital gains”—are a kind of income, just like wages, rent, and bank interest. Capital gains are the difference between the amount paid for the asset and the amount for which it is sold. A share of stock purchased for \$10 and five years later sold for \$30, would result in capital gains of \$20.

But if the purchaser died after five years without selling the stock and her descendants immediately sold it at the \$30 price, they would

owe zero capital gains tax. That is because this giant tax loophole allows a person's heirs to revalue the stock's cost at its \$30 price on the date of death. That is, the stock's cost (also known as "basis") is raised—stepped up—from the original purchase price to its value on the date of death.

For gifted assets, however, there is no elimination of unrecognized gain. Instead, the donee of a gifted asset takes the donor's basis in the asset—the original purchase price, which is likely to be much lower and result in a much bigger tax bill. This is known as "carryover basis."

In general, the three most prominent tools for wealth-transfer-tax dodging—IDGTs, zeroed-out GRATs, and valuation discounts—all actually impair the ability of a wealthy person to take full advantage of the stepped-up basis loophole.

In the case of IDGTs and GRATs, because the strategies involve the gifting of assets, the IDGT or GRAT generally takes a carryover basis in the assets it receives, making it difficult to achieve a step-up in basis on the grantor's death. In the case of valuation discounts, the basis step-up is not entirely forfeited for interests that are retained in a person's estate. But the discount in the value, beneficial for estate tax purposes, reduces the amount by which the person's basis is stepped-up at death. Ultimately, the discount in value for estate tax purposes returns as increased taxable gain when the asset is sold.

**Strategies to Use Stepped-Up Basis to Enlarge Dynasty Trust Holdings:** There are strategies to achieve a stepped-up basis for assets held in a dynasty trust at the time of the grantor's death. Ultimately, those strategies allow for the greater retention of wealth in the dynasty trust when the assets are sold.

- **The Backdoor Step-up:** This strategy benefitting a dynasty trust, which typically is an IDGT during the grantor's lifetime,

involves selling highly appreciated trust assets before the grantor's death. This does not reduce the income tax payable on the assets' appreciation. In fact, it accelerates it. But it allows the grantor to pay the income tax, which reduces the size of the grantor's taxable estate. This effectively allows the grantor's beneficiaries to recover 40% of the income tax paid on the gains and eliminates the unrecognized gain the dynasty trust otherwise would have if the assets were not sold.

Example: G, who has exhausted his lifetime exclusion, has established a dynasty trust, which now holds a \$100 million portfolio of real estate, with a cost basis of \$11.77 million. G also has \$30 million in cash remaining in his own estate. With no further planning, if G dies and the dynasty trust sells the real estate portfolio following his death, his estate will pay federal estate tax of \$12 million (40% of \$30 million) and the dynasty trust or its beneficiaries will eventually pay about \$21 million in income tax (at the 23.8% capital gains tax rate) on the \$88.23 million gain in the trust's asset value, for a total tax bill of \$33 million.

If instead the dynasty trust sells the real estate portfolio prior to G's death, G will pay \$21 million of income tax, same as the dynasty trust would in the case of post-death sale, but his taxable estate would be reduced to \$9 million, thereby reducing the estate tax on G's estate to \$3.6 million (40% of \$9 million), an \$8.4 million savings (\$12 million minus \$3.6 million). This creates two benefits: the net tax cost on the sale of the real property is reduced to \$12.6 million (\$21 million paid less the \$8.4 million estate-tax saving), the effective rate being reduced from 23.8% (the capital gains rate) to 14.3%; and the tax is paid from wealth held outside the dynasty trust, thereby preserving the wealth held in the dynasty trust.

- **The Asset Swap:** Another strategy utilizing stepped-up basis is to have the grantor swap cash for an equivalent value in dynasty trust assets. For example, suppose H established a dynasty trust for the benefit of his children, which holds an office building now worth \$100 million with a cost basis of \$10 million. Suppose further that H still has \$20 million in cash. H might then borrow an additional \$80 million from a commercial bank and purchase the office building from the dynasty trust for its \$100 million value. Now the dynasty trust has \$100 million in cash. H still has a net worth of \$20 million (the \$100 million building minus the \$80 million loan), so his ultimate estate tax liability will be unchanged. While H still is alive, the rental income from the property is sufficient to service the \$80 million bank loan. Upon H's death, the building, subject to the \$80 million debt, passes to H's children with a stepped-up basis of \$100 million. The children sell the building to the dynasty trust for \$100 million and pay off the bank loan. The dynasty trust holds the building again, but with a stepped-up basis of \$100 million.
- **The Aggressive Code Interpretation:** Finally, [some tax avoidance planners](#) take the express position that assets held in a dynasty trust that is an IDGT during the grantor's lifetime qualify for the step-up in basis under current law.<sup>34</sup> Although that position is perceived by many as extremely aggressive, there is no reported court case addressing the issue.

## The Solution

The solution to the use of stepped-up basis to enlarge dynasty trust holdings is two-fold. First, Americans for Tax Fairness supports the Biden administration's original plan to replace stepped-up basis with a requirement that unrecognized gain generally must be recognized at death, subject to modest exemptions and provisions to defer the payment of tax by family farms, ranches and small businesses. The need to reform stepped-up basis goes beyond dynasty trust planning, as it is one of the worst loopholes in the tax law today.<sup>35</sup> Second, to address the "Backdoor Step-Up", the IDGT loophole should be closed as discussed earlier.

# SCALE OF WEALTH TRANSFER TAX AVOIDANCE

## ESTATE TAX AVOIDANCE BY DYNASTY TRUST ASSETS OVER THE NEXT 30 YEARS

We estimate that the dynasty trust loopholes reviewed in this report could allow the ultrarich to accumulate roughly \$21 trillion in wealth in dynasty trusts between now and 2045 and avoid roughly \$8.4 trillion in estate and other wealth transfer taxes, assuming the current 40% estate tax rate remains unchanged. The total taxes avoided would compound, however, with each passing generation, as the amounts held in dynasty trusts continued to accumulate.

That \$8.4 trillion is equivalent to the cost of over four Build Back Better plans costing \$1.75 trillion each over ten years. About half of the \$8.4 trillion is equivalent to the cost of 24 years of the expanded Child Tax Credit (CTC), which was included in the House-passed BBB bill and is estimated to [reduce childhood poverty by 40%](#).<sup>36</sup> The expanded CTC [costs about \\$1.6 trillion](#) over 10 years, or roughly \$160 billion a year.<sup>37</sup>

According to the research and consulting firm Cerulli Associates, older generations will [hand down some \\$84.4 trillion](#) between now and 2045.<sup>38</sup> Roughly \$72.6 trillion will go to heirs—increasingly Millennials and Generation Xers—with the balance going to philanthropy.

About 29% of that \$72.6 trillion—\$21 trillion—is likely held by the wealthiest 0.5% of the population, based on the latest estimates of how America’s total wealth is distributed by economists **Thomas Piketty**, **Emmanuel Saez** and **Gabriel Zucman**.<sup>39</sup> That top 0.5% of the population—households with wealth of \$17.5

million or more each<sup>40</sup>—will likely transfer most of that current and future wealth into dynasty trusts, as opposed to making outright transfers to heirs or putting the money in shorter-term trusts, which do not exist in perpetuity like dynasty trusts.<sup>41</sup>

## EXTENSIVE EXPLOITATION OF TAX LOOPHOLES BY THE ULTRARICH

[ProPublica’s blockbuster reporting](#) in September 2021 based on IRS tax returns revealed that over half of the 100 wealthiest Americans had exploited “special trusts” to avoid wealth-transfer taxes.<sup>42</sup> Included in that group were **Mark Zuckerberg**, **Charles Koch** and his late brother, **David Koch**, **Michael Bloomberg**, **Stephen Schwarzman**, **Leonard Lauder**, and **Laurene Powell Jobs**. Billionaires beyond those in the top 100, including media mogul **Oprah Winfrey**, fashion designer **Calvin Klein** and auto parts heir and Blackwater founder **Erik Prince**, also used special trusts to avoid wealth-transfer taxes.



Billionaire Charles Koch

It's impossible to say precisely how much wealth the ultrarich have stashed in various forms of dynasty trusts, and how much they are avoiding in taxes, because such matters are generally kept private. Below is what we know or have tried to estimate.

### Use of the Estate and Generation-Skipping Tax Exemption

In a primer for potential clients, Northern Trust Company shows the dramatic increase in the rate of growth for dynastic wealth made possible by the generation-skipping tax exemption. The amount to which a bequest of \$11.7 million would grow in 75 years if left outright (not in trust) would be \$98 million—an eight-fold increase. Its value would increase to \$454 million if left to a generation-skipping tax-exempt dynasty trust based in Nevada—a 39-fold increase.<sup>43</sup>

The South Dakota Trust Company goes even further, showing how dynasty-trust wealth starting at \$5 million can grow at a modest 6% annual growth rate to be more than \$5 billion in

an over 1,000-fold increase; or to more than \$463 billion at a 10% growth rate.<sup>44</sup> [See Table]

### Use of Zeroed-out GRATs

- The attorney who invented zeroed-out GRATs, **Richard Covey**, estimated in 2013 that wealthy Americans had, through this loophole, avoided over \$100 billion in estate and gift tax since the turn of the century.<sup>46</sup>
- “Special trusts” that the September 2021 [ProPublica](#) report discussed above, which were maintained by over half of the nation’s 100 richest billionaires, refers mainly to zeroed-out GRATs.<sup>47</sup>
- In October 2021, [Bloomberg Businessweek](#) featured an extensive report on the wealth transfer tax avoidance planning of **Philip Knight**, the founder of **Nike**, and 15th wealthiest American according to [Forbes](#).<sup>48</sup> The foundation of Knight’s tax avoidance planning was the GRAT, according to Bloomberg. Using nine GRATs, Knight

## Economics: Dynasty Trust vs. Outright Gift

### Assumptions:

\$5 million investment

Trust lasts for 120 years

50% federal/state transfer tax every 30 years

Annual After-Tax Growth	Value of Dynasty Trust After 120 Years	Value of Property If No Trust
6%	<b>\$5,440,938,740</b>	\$340,058,671
7%	\$16,788,941,915	\$1,049,308,870
8%	\$51,264,964,713	\$3,204,060,295
9%	\$154,935,078,746	\$9,683,442,422
10%	<b>\$463,545,344,089</b>	\$28,971,584,006

Source: South Dakota Trust Company LLC<sup>45</sup>

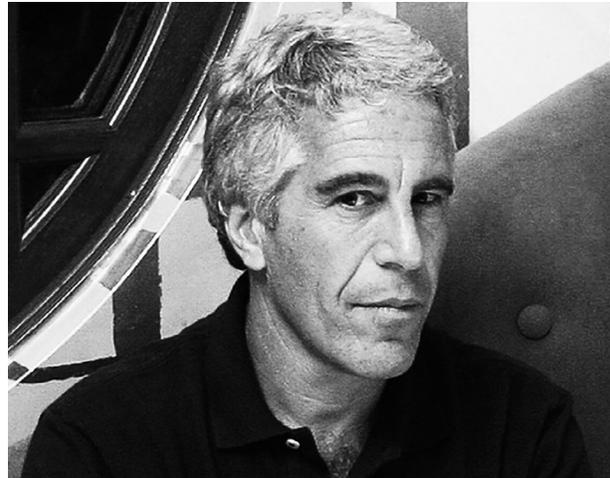
successfully transferred, tax-free, Nike shares now worth \$6.1 billion to a trust for his heirs.

Bloomberg's analysis confirmed ProPublica's findings on the widespread use of GRATs. Out of 70 S&P 500 companies randomly selected by Bloomberg, over half had executives and top shareholders using GRATs, which collectively held over \$12 billion worth of shares.

- Between 2002-2013 **Sheldon Adelson** and his wife **Miriam** used at least 25 zeroed-out GRATs to transfer \$7.9 billion to their descendants free of estate and gift tax, according to [Bloomberg](#).<sup>49</sup> If those transfers had been subject to gift tax, the total bill would have been \$2.8 billion, or 35%.
- Bloomberg also reported GRATs were used to preserve the fortunes of other ultrarich, including **Facebook** founder **Mark Zuckerberg**, **JPMorgan Chase** bank chair **Jamie Dimon**, **Goldman Sachs** chief **Lloyd Blankfein**, **Dish Network** head **Charles Ergen**, fashion designer **Ralph Lauren** and **New York Knicks** owner **Charles Dolan**.
- In 2021, [it was revealed](#) that convicted sex offender **Jeffrey Epstein** earned enormous fees by structuring GRATs for billionaire **Leon Black**, the longtime CEO of **Apollo Global Capital**, to save him over \$500 million in gift and estate tax.<sup>50</sup>

## Use of Valuation Discounts

- SEC filings indicate that **Nike** founder **Philip Knight** transferred units in a limited liability company holding shares of Nike, Inc., to a trust for the benefit of his descendants. The LLC units were valued at 15% less than the value of the Nike shares allocable to them, which translated into a tax-free gift of over \$215 million.<sup>53</sup>



Jeffrey Epstein made millions structuring GRATs for billionaire clients like Leon Black, CEO of Apollo Global Capital.

Assuming a 40% gift-and- estate tax rate, that may have resulted in a tax cut of over \$86 million.

- A recent [Federal District Court decision](#) upheld the use of the valuation discounts by billionaire **Peter Buck**, the now deceased co-founder of **Subway**, to avoid tens of millions of dollars in wealth-transfer tax.<sup>51</sup> Nearly immediately after purchasing parcels of timberland, Buck divided them into undivided interests and gifted a 48% undivided interest to each of his sons, on which he claimed valuation discounts of over 50%. The court rejected an IRS challenge to Buck's valuation.<sup>52</sup>

## Use of Intentionally Defective Grantor Trusts

Real-life examples of IDGTs are not available because unless one has the actual trust document there is no way to discern whether a trust with a name like "The Smith Family Trust" is an IDGT or some other type of trust. (This is unlike "GRAT", a word often referenced in SEC filings or even included in the name of a trust.)

As a result, we only can speculate about the potential for tax avoidance through IDGTs. In an earlier discussion we showed how **Elon Musk** could hypothetically have moved over \$21 billion in wealth to an IDGT and paid no estate or gift taxes.

But you don't have to own stock in a young company at the leading edge of groundbreaking technology to use subsequent sales to IDGTs to escape tax on the transfer of billion-dollar fortunes. In its briefing paper, [Covid 19, A Perfect Storm for Estate Tax Avoidance](#), the Institute for Policy Studies shows how ordinary billionaires with average stock market gains could have used an IDGT to save billions in wealth transfer tax.<sup>54</sup>

## CASE EXAMPLES OF THE USE OF FAMILY DYNASTY TRUSTS TO AVOID TAXES

**The Mars Family:** Although the **Mars family** has not divulged any details of its estate planning, they have demonstrated their disdain for the estate tax through their staunch support of its repeal.<sup>55</sup> And there are at least three indications that the family employs dynasty trusts to safeguard their fortune. First, reporting on a recently filed [Tax Court case](#) indicates that **Forrest Mars, Sr.**, and his wife **Audrey Mars** created two trusts in 1940 that were funded with



Jacqueline Mars and granddaughters

Mars, Inc. stock.<sup>56</sup> Second, the death of successive family patriarchs over the past 25 years did not reduce the family's reported wealth, as would have happened if estate tax had been paid. Third, the reported wealth of family members in the same generation tends to be almost exactly equal, suggesting that their wealth is held in a trust separated into equal shares.<sup>57</sup>

How much might a dynasty trust have allowed the **Mars family** to avoid in estate tax? In 1999, when **Forrest Mars, Sr.**, died, he was reported by *Forbes* to be worth \$4 billion.<sup>58</sup> At the 55% rate then in effect, an estate tax of \$2.2 billion would have been due on that fortune if not protected by tax-avoidance strategies. In 2016, when Forrest Mars, Jr., died he was reportedly worth around \$25 billion.<sup>59</sup> At the 40% rate in effect then, that would translate to a \$10 billion tax bill were the wealth subject to estate or generation-skipping tax.

Incidentally, those tax bills would not have threatened the Mars family's ownership of its candy company, the [fourth largest privately owned corporation](#) in the United States.<sup>60</sup> Even if they did not have sufficient cash to pay the tax bill immediately, estate tax law permits the deferral for up to 15 years on the tax due on the value of a family business<sup>61</sup>—presumably one with \$40 billion in annual revenue<sup>62</sup>—to ensure the business does not have to be sold to satisfy the debt.

**The Scripps Family:** According to [reporting by ProPublica](#), in 1922 newspaper magnate **E.W. Scripps** placed all of his newspaper stock in trust for his descendants, naming his son **Robert Paine Scripps** as trustee.<sup>63</sup> At the time, trusts were subject to the rule against perpetuities, so Scripps' trust finally was distributed in 2012.

But the Scripps family dynasty trust planning didn't end with the distribution of E.W.'s 1922 trust. Nine members of the Scripps family

together have more than 125 GRATs, tax records viewed by ProPublica showed. One great-great-grandchild of Scripps received more than \$210 million in income before her 19th birthday, those confidential tax records showed. She alone had already used at least 10 GRATs. And by the age of 17, she had her very own dynasty trust. Except her dynasty trust likely will last far longer than the 90-year lifespan of her great-great-grandfather's trust. Under the friendly trust laws currently in place in many states, trusts can last for centuries, even forever.

A recent ProPublica report included the image of one of Scripps' great-great-grandsons, Max Logan, posed on Instagram holding a stack of cash, his arm festooned with diamond-encrusted watches. Private jets and a fleet of Lamborghinis ferry him between a mountain getaway in Aspen and a gun range in Miami, where he shoots a [gold AK-47](#).<sup>64</sup>

**The Mellon Family:** This family's fortune goes back to Thomas Mellon, the father of Treasury Secretary Andrew Mellon and great-great-grandfather of the current senior generation of the Mellon family. [ProPublica describes Thomas Mellon this way](#).<sup>65</sup>

*Steeped in social Darwinism, Mellon viewed the acquisition of wealth as a mark of merit and poverty as a failure of character. Mellon wrote in his autobiography that voting rights were responsible for many of society's ills, driving higher spending, borrowing and taxes. Not far below the surface of these fears was racism. After the Civil War, Mellon toured the South, where he wrote that he was disgusted to see Louisiana's Legislature captured by what he called "stolid, stupid, rude and awkward field negroes, lolling on the seats or crunching peanuts." These representatives, he declared, were puppets of white Northerners who were using "corrupt schemes to rob the property owners and taxpayers."*



E.W. Scripps' great-great-grandson Max Logan shows off diamond-encrusted watches and handfuls of cash on his Instagram page

Subsequent generations of Mellons shared their patriarch's disdain for taxes. As Treasury Secretary, Andrew Mellon sought to eliminate the estate tax. He didn't succeed, but the tax plan he hatched in 1926 dramatically lowered income and estate tax rates and repealed the gift tax entirely. Before the gift tax was reinstated, Mellon gifted millions to his two children.

Andrew's brother Richard also passed millions to his children, including his daughter, **Sarah Mellon Scaife**. Sarah transferred her wealth to dynasty trusts for her son, **Richard Mellon Scaife**, and her grandchildren. Richard's trust, according to ProPublica, began showering him with cash once he turned 25. He used much of those distributions to fund anti-tax organizations, but also lived royally, jetting in a DC-9 he owned between his estate outside of Pittsburgh and his vacation homes in Nantucket and Pebble Beach.

The trust Sarah Mellon Scaife established for her grandchildren (the great-great-grandchildren of Thomas Mellon) distributed millions to them and still held \$660 million as of 2020, some 151 years after Thomas Mellon founded a bank that would become the original source of the family fortune.

# ALARMING FUTURE OF DYNASTIC WEALTH

The past four decades have seen the growth of old dynastic fortunes and the creation of new fortunes destined to become even larger dynastic fortunes within a few decades. Between 1990 and October 2021, billionaire wealth grew from an inflation-adjusted [\\$240 billion to over \\$5 trillion](#), according to ATF’s analysis of Forbes data.<sup>66</sup> The number of U.S. billionaires rose from 66 in 1990 to 745 last October.<sup>67</sup>

For example, the inaugural Forbes 400 list in 1982 reported that **David Rockefeller**, grandson of oil magnate **John D. Rockefeller**, had a net worth of just under \$1 billion.<sup>68</sup> When he died 35 years later in 2017, **Rockefeller’s** wealth had more than tripled, to \$3.3 billion.<sup>69</sup>

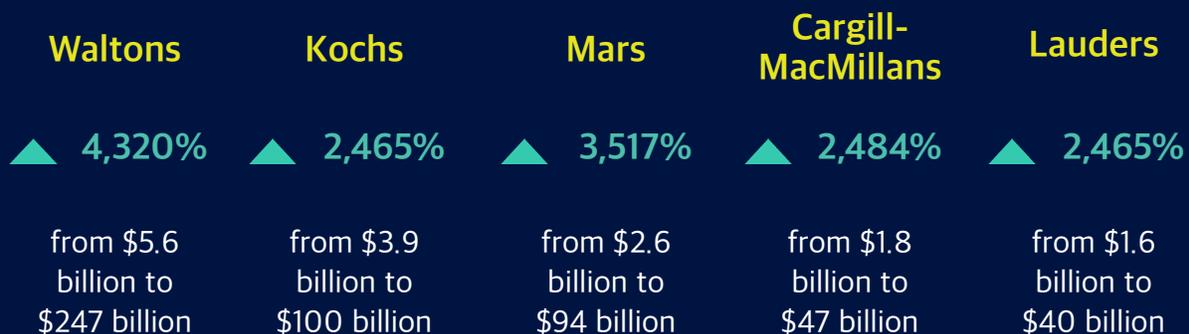
Other old money fortunes grew more spectacularly. According to a recent [Institute for Policy Studies \(IPS\)](#) report, America’s five wealthiest dynastic families saw their inflation-adjusted wealth increase by a median 2,484% between 1983 and 2020.<sup>70</sup> [See below chart]

But as much as familiar fortunes have blossomed in the low-regulation, low-tax, wealth-worshipping environment of the previous 40 years, the next 40 and beyond could see the rise of economic dynasties that will make the old money look small.

Modern fortunes created by entrepreneurs like **Jeff Bezos** and **Elon Musk** have been born into this wealth-welcoming world and so have had a chance to proliferate without any of the impediments that held back private fortunes in the middle of the last century. And if tax and other policies aren’t reformed soon, the wealth in dynasty trusts created by today’s billionaires will reach staggering heights.

Already, the size of modern fortunes is astounding. A report by Americans for Tax Fairness and the Institute for Policy Studies shows that during the coronavirus pandemic, between March 2020 and October 2021, the collective wealth of U.S. billionaires increased by 70%, or \$2.1 trillion, skyrocketing from under \$3 trillion to over \$5 trillion. [See Table on next page]

## Wealth increases between 1983 and 2020



## Pandemic Wealth Growth of Top 15 Billionaires

Name	Net Worth Mar. 18, 2020 (\$ Billions)	Net Worth Oct. 15, 2021 (\$ Billions)	19 Month Wealth Growth (\$ Billions)	19 Month % Wealth Growth	Primary Wealth Source
Elon Musk	\$24.6	\$209.4	\$184.8	751.0%	Tesla, SpaceX
Jeff Bezos	\$113.0	\$192.2	\$79.2	70.1%	Amazon
Bill Gates	\$98.0	\$132.4	\$34.4	35.1%	Microsoft
Larry Ellison	\$59.0	\$124.5	\$65.5	111.1%	Oracle
Larry Page	\$50.9	\$120.7	\$69.8	137.2%	Google
Mark Zuckerberg	\$54.7	\$117.6	\$62.9	114.9%	Facebook
Sergey Brin	\$49.1	\$116.3	\$67.2	136.9%	Google
Warren Buffett	\$67.5	\$102.2	\$34.7	51.4%	Berkshire Hathaway
Steve Ballmer	\$52.7	\$96.9	\$44.2	83.9%	Microsoft
Jim Walton	\$54.6	\$65.4	\$10.8	19.8%	Walmart
Alice Walton	\$54.4	\$64.5	\$10.1	18.5%	Walmart
Rob Walton	\$54.1	\$64.2	\$10.1	18.6%	Walmart
Michael Bloomberg	\$48	\$59.0	\$11.0	22.9%	Bloomberg LP
Phil Knight	\$29.5	\$57.9	\$28.4	96.4%	Nike
MacKenzie Scott	\$36.0	\$55.5	\$19.5	54.1%	Amazon
<b>SUBTOTAL</b>	<b>\$846.1</b>	<b>\$1,578.7</b>	<b>\$732.6</b>	<b>86.6%</b>	
<b>ALL OTHERS</b>	<b>\$2,101.4</b>	<b>\$3,440.7</b>	<b>\$1,339.3</b>	<b>63.7%</b>	
<b>U.S. TOTAL</b>	<b>\$2,947.5</b>	<b>\$5,019.4</b>	<b>\$2,071.9</b>	<b>70.3%</b>	

Sources: [Americans for Tax Fairness and Institute for Policy Studies](#), analysis of Forbes billionaires data<sup>71</sup>

Ten billionaires saw their wealth increase four-fold or more. The wealth of America's top 15 billionaires soared 87% during the pandemic, with eight "centi-billionaires" topping the list.

How large could today's fortunes grow as they evolve into dynastic wealth?

A look at one fortune that has made the transition from new wealth to dynastic wealth relatively recently provides a glimpse of what the future will hold for dynastic fortunes in the absence of substantial changes in tax and other

policies.

Consider the **Walton family**. **Sam Walton** is widely considered to have been a self-made man. Starting with a small store in Arkansas, he grew **Walmart** into America's largest retailer. Walton topped the 1987 Forbes 400 list, with an estimated wealth of \$8.5 billion.<sup>72</sup> Walton died in 1992 and his wife, **Helen**, died in 2007. Today, the Walton family fortune sits comfortably above the \$200 billion level.<sup>73</sup>

While all the details of the Walton family



Sam Walton and family

estate plan are not known to us, [reporting by Bloomberg](#) makes it clear avoidance of transfer tax was a high priority for **Sam and Helen Walton**.<sup>74</sup> Expenditures for lobbying to repeal the estate tax indicate the next generation of Waltons also is adverse to paying wealth-transfer taxes. According to a 2006 report from Public Citizen and United for a Fair Economy, the [Walton family spent millions](#) directly and through trade associations on efforts to repeal the estate tax.<sup>75</sup>

Other older family fortunes, such as the **Mars** and **Koch** families, could reach or exceed the one-half trillion dollar mark within 20 years.<sup>76</sup>

The activities of the current generation of **Waltons** show that the inheritors of dynastic wealth, with the assistance of their wealth defense industry attendants, often use their political power to protect and advance their privileged positions. If they're successful in blocking meaningful reforms to wealth taxation, and the investment returns of the past 38 years continue for the next 20, the Walton family fortune could easily top a trillion dollars by 2041.<sup>77</sup> Based on their recent growth rates, the modern fortunes of **Bezos, Musk, Zuckerberg** and others likely could grow to even larger amounts.

# WEALTH DEFENSE INDUSTRY FUELS DYNASTIC WEALTH ACCUMULATION AND FRUSTRATES CHARITABLE IMPULSES

Feeding off the super-rich and with its own selfish interest in maintaining economic dynasties is the “wealth defense industry”: the complex of trust companies, family offices, financial advisers, attorneys, accountants and others that for a high price preserve, protect and expand family fortunes. States that water down their financial rules to attract wealth defense industry jobs and politicians who solicit campaign contributions from rich families can be viewed as part of the industry as well.

**Chuck Collins** of the Institute for Policy Studies, who researched the wealth defense industry extensively for his book *The Wealth Hoarders*, believes 90,000 is a conservative estimate for the number of wealth defense professionals in the United States.<sup>78</sup> They work at law firms in estate planning and related specialties; serve ultra-wealthy clients at private banks, wealth management firms, and accounting firms; and staff family offices. Collins stresses:

“What is important to grasp is the staggering amount of legal, planning and accounting firepower devoted to wealth defense. Tens of thousands of livelihoods are devoted to protecting the dynastic wealth of the richest 0.1 percent.”

These well-paid attendants to the ultrawealthy can have a stronger incentive than the wealthy themselves to shield family fortunes from government oversight, charitable inclinations, taxes and anything else that could shrink the money pile. That’s because their incomes are often based on the size of the dynasty they’re tending. While a fit of conscience might cause a lucky heir to want to donate part of his inheritance to charity or contribute to the



**What is important to grasp is the staggering amount of legal, planning and accounting firepower devoted to wealth defense. Tens of thousands of livelihoods are devoted to protecting the dynastic wealth of the richest 0.1 percent.**

Chuck Collins, Institute for Policy Studies

political cause of fairer taxes, those who make their living off the fortunes of others feel no such compunction to spread the wealth.

The relationship between the workers of the wealth defense industry and their ultrarich clients compounds the problems of dynastic wealth. It benefits wealth defense workers when their ultrarich clients see themselves as exceptional and view communal contributions like payment of taxes with disdain. When the ultrarich strive to grow their fortunes ever larger, far beyond what’s required to provide for their future needs and those of their descendants, their courtiers in the wealth defense industry benefit more than they do. The marginal benefit of the additional growth in wealth to the ultrarich is minimal. The marginal benefit of the additional compensation to their attendants, by contrast, is significant.

The terms of trust agreements and the discretion afforded trust officers and other fiduciaries over trust assets can frustrate philanthropic urges of the wealthy. The trustee can always mask his self-interest in blocking charitable distributions with concern for the interests of later generations. Effectively, the beneficiary is told: “No, you can’t use this wealth held for your benefit for charitable purposes because 50 years from now your grandchildren may need it.” And because of the language of trust documents, a dynasty trust beneficiary may find his trustee

more receptive to a request for a distribution for an extravagance like a new Lamborghini that benefits him directly, than to a request for one intended for a charity that feeds hungry children or fights malaria.

In a conversation with **Collins, Brooke Harrington**, author of [Capital Without Borders](#), observed that the wealth defense industry is “helping a tiny fraction of very wealthy families at the expense of all the families in the world.”<sup>79</sup>

## SOCIETAL PROBLEMS OF DYNASTIC WEALTH

The ill effects of dynastic wealth go far beyond the unfair concentration of the fruits of the country’s prosperity in the hands of a very few. Following is a discussion of just a few of the pervasive problems wrought by America’s extreme accumulation of dynastic wealth.<sup>80</sup>

### CONCENTRATION OF POLITICAL POWER

Colossal fortunes are inimical to a healthy, functioning democracy. As a famous quote attributed to [Supreme Court justice Louis Brandeis](#) puts it: “We can have democracy in this country or we can have great wealth concentrated in the hands of a few, but we can’t have both.”<sup>81</sup>

Economic power translates into political power through campaign donations and lobbying. Since 2009, according to the [New York Times](#), just twelve “mega-donors” have accounted for one of every thirteen dollars contributed by tens of thousands of donors to federal candidates and

political groups. The lowest total contributions of any mega-donor was \$63 million.<sup>82</sup>

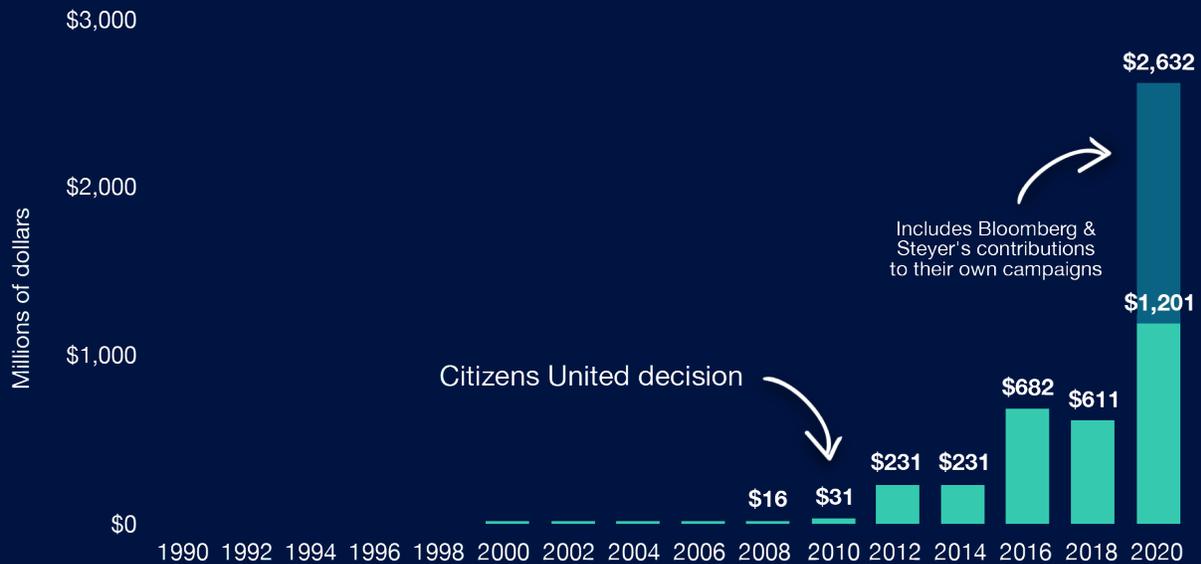
**Timothy Mellon** is one of those mega-donors. The grandson of financier [Andrew Mellon](#) and great-grandson of bank founder [Thomas Mellon](#), who began the family dynasty in the mid-1800s, Timothy has made political contributions since 2009 totaling \$70 million.<sup>83</sup> In 2020, he contributed over \$10 million to the super PAC supporting the re-election of **President Trump**.

Americans for Tax Fairness reports that billionaires as a group have dramatically ramped up their political donations subsequent to the Supreme Court’s decision in *Citizens United* in 2010.<sup>84</sup> It allowed for the rise of “super PACs”, which can raise unlimited amounts of campaign cash. Billionaires and other wealthy people have used them to spend more and more on elections. Contributions rose from \$31 million in the 2010 elections (the first held under the new rules) to \$1.2 billion in 2020—a nearly 40-fold increase. [See Figure]

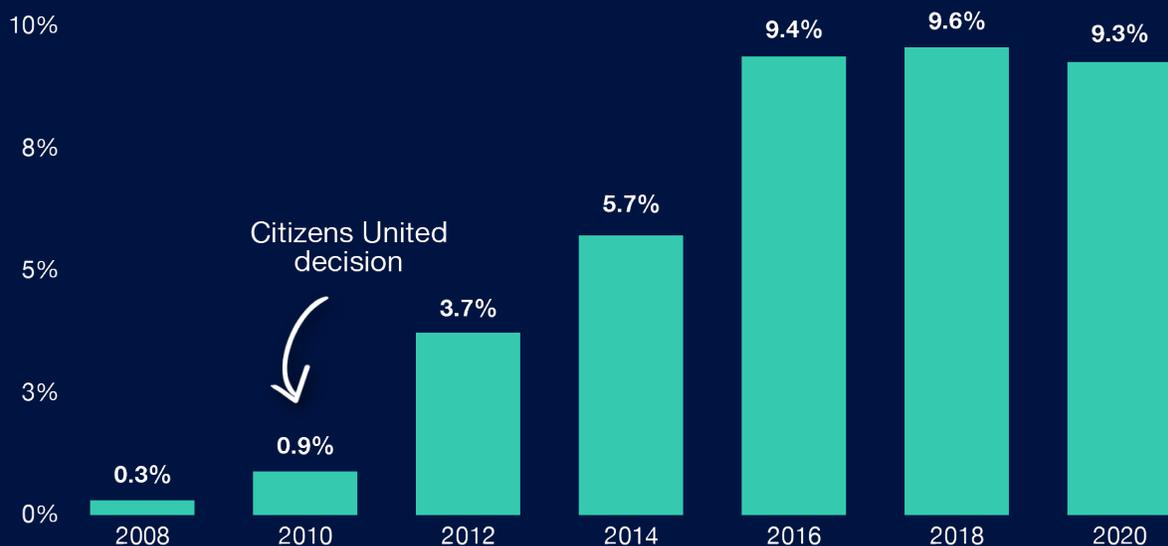
The increase in billionaire campaign contributions as a percentage of total campaign contributions has been equally dramatic. In the 2020 election cycle, billionaires contributed nearly \$1 out of every \$10, while making up just 0.01% of all

donors contributing more than \$200. In the 2010 election cycle, the dawn of the Citizens United era, billionaires provided less than 1% of all contributions.”

## Total Billionaire Contributions by Election Cycle



## Billionaire Contributions as % of Total Federal Contributions



Source: [Americans for Tax Fairness](#) analysis of Forbes billionaires data and Center for Responsive Politics<sup>85</sup>



**We can have  
democracy in this  
country or we can  
have great wealth  
concentrated in the  
hands of a few, but we  
can't have both.**

Supreme Court Justice Louis Brandeis

Political scientists **Jeffrey Winters** and **Benjamin Page** have attempted to quantify the relative political power of America's wealthiest citizens. They created a Material Power Index (MPI) which found that "each of the top 400 or so richest Americans had on average about 22,000 times the political power of the average member of the bottom 90 percent, and each of the top 100 or so had nearly 60,000 times as much." Winters and Page tried to put this top-heavy polity into historical context, deciding that the political influence of America's top 400 was greater than the aristocracy of ancient Athens and "nearly identical" to that of ancient Rome.<sup>86</sup>

Unsurprisingly, America's dynasties use a lot of their purchased political power pursuing policies that preserve their wealth. A big self-preservation goal of dynastic wealth is repeal of the estate tax. Though, as described above, ultrarich families have found ways to mostly avoid the tax—and have used their political influence to weaken it—still it represents at least a potential threat to inherited wealth and dodging it takes time and resources that could be exerted on more pleasant tasks.

In 2015, Public Citizen [identified eight corporations](#) controlled by or connected to American family dynasties spearheading the

latest effort to repeal the estate tax.<sup>87</sup> Of those billionaire-related companies, only one was controlled by the family member who originally created the wealth. The others were controlled by children or more remote descendants of the wealth creator. In several cases, the family's wealth originated over a century in the past.

Funding the efforts of others is not the only way that inherited wealth is converted to political power. Sometimes, the heir to great fortune seeks and acquires a position to exercise power directly. One example is **Betsy DeVos**, an heiress to both the **DeVos** (through her husband) and **Prince** family fortunes. **DeVos** used her position of privilege to advocate for educational vouchers and other programs that shift financial resources from public to private schools.<sup>88</sup> Ultimately, **DeVos** was chosen by **Donald Trump** to serve as Secretary of Education.

## **DYNASTIC WEALTH ESCAPES PUBLIC OVERSIGHT OR REGULATION**

Family dynasties control greater wealth than many large businesses and have the ability to affect markets and local economies with their investment decisions. Yet unlike businesses, family dynasties are all but unregulated by any level of government.

Dynastic wealth is usually managed by one of two types of institutions, though they sometimes operate in tandem: the family office and the private trust company. A family office is an investment and management facility often of a size and complexity capable of serving many investors if it did not instead serve a single very rich family—generally, one with over \$100 million of investable assets. Family offices oversee investments, pay taxes, buy insurance and perform all the other many legal, accounting and investment-advisory tasks necessary to prudently tend huge fortunes. Even though



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they deal in the same high finance as public investment firms, family offices are exempt from the kind of federal regulatory oversight exerted over other “investment advisers.”

Among the requirements family offices are allowed to ignore are public disclosure about investment operations, office staffing, the amount of assets under management, and the office’s trading history. Family offices are also exempt from the rules and limitations of commercial financial institutions, allowing family offices to invest in risky ways that traditional investment firms might not.

An alternative (or, in some cases, an addition) to the family office is the private trust company, which are chartered by the state in which they’re formed and can therefore perform more independent functions for the dynasties they serve than can family offices. Unlike a family office, a private trust company can act as a

“fiduciary” for the family and its individual members, meaning it can make decisions on investments and other financial matters in what it deems is the best interest of the trust’s beneficiaries.

Although carrying a state charter, private trust companies are more lightly regulated than their public counterparts. Moreover, in some states high-wealth families can create totally unregulated private trust companies. These states permit trust companies to organize as limited-purpose corporations and, as long as the company is limited to serving the family, it is not subject to regulatory oversight. Private trust companies can thus escape from fiduciary and investment rules that would prohibit riskier investments. Like family offices, private trust companies are not required to make publicly available their annual reports or meeting minutes, list directors and officers, or share financial reports.

# REVERSING DYNASTIC WEALTH ACCUMULATION

The version of the Build Back Better Act (BBBA) approved by the House Ways and Means Committee in September 2021 included reforms that would have narrowed the IDGT, zeroed-out GRAT, and valuation discount loopholes.<sup>89</sup> It would have disallowed valuation discounts on nonbusiness assets and would have required all assets held in a grantor trust to be included in the estate of the grantor. Those measures would have raised \$19.9 billion and \$7.9 billion, respectively, between 2022 and 2031.<sup>90</sup> Although the reforms had shortcomings and were not sufficiently comprehensive, they were a clear step in the right direction.<sup>91</sup>

Unfortunately, for reasons not made clear to the public, the modest changes proposed by the House Ways and Means Committee were omitted from the final House version of BBBA, which passed in November. This omission immediately followed the publication of two blockbuster reports, by [ProPublica](#) and [Bloomberg Businessweek](#), about the massive exploitation of dynasty trust loopholes by America's billionaires.<sup>92</sup> Those reports bolstered the case for the final House bill to include dynasty-trust reforms.

The failure to place fixing the wealth-transfer tax system high on the tax reform agenda is no ordinary political failure. No honest policy objectives support the continuation of gaping estate-, gift- and generation-skipping tax loopholes that facilitate the creation and growth of dynasty trusts. This is a failure that threatens the country's future. Fortunately, it is a failure that can be remedied through quick, decisive action. Time is short, but there remains an opportunity to enact critical legislative reforms in Build Back Better legislation now before the U.S. Senate.

Measures are available to our political leaders to arrest and ultimately reverse the explosion in dynastic wealth. Americans for Tax Fairness proposes the following comprehensive approach:

1. **Enact the specific reform measures described in this report to close the gaping loopholes in the estate-, gift- and generation-skipping tax system.**<sup>93</sup> With those reforms in place, dynasty trust accumulations will be reduced substantially with the passing of each generation.
2. **Eliminate stepped-up basis: the policy that allows the wealthy to dodge taxes on a lifetime of investment gains, as President Biden proposed.**



**No honest policy objectives support the continuation of gaping estate-, gift- and generation-skipping tax loopholes that facilitate the creation and growth of dynasty trusts.**



## Measures are available to our political leaders to arrest and ultimately reverse the explosion in dynastic wealth.

3. Add an additional income tax bracket for trusts—five percentage points higher than the maximum income tax bracket for individuals—on undistributed trust income in excess of \$250,000. This will encourage the distribution of trust income to beneficiaries rather than the retention of income that causes the trust to grow even faster. Starting the additional bracket at \$250,000 of retained income would not penalize reasonable accumulations of trust income to provide for the future needs of trust beneficiaries, including young and disabled beneficiaries.

The increased distribution of income from dynasty trusts would slow the accumulation of dynastic wealth, which is critical with a nominal estate and generation-skipping tax rate of 40% and effective rates still lower, even after the existing loopholes are closed. Even if wealth held in a dynasty trust is subject to transfer tax of 40% once per generation, when invested at even a modest rate of return it still will grow in size nearly nine-fold over the course of three generations.<sup>94</sup>

4. The foregoing measures may be insufficient in the case of existing dynasty trusts and future extreme dynasty trust accumulations. The following additional safeguard is needed to address excessive accumulations of trust-held wealth: **Enact a wealth tax on dynasty trusts.** A model is the [Ultra-Millionaire Tax](#) proposed by Sen. Elizabeth Warren and Reps. Pramila Jayapal and Brendan Boyle.<sup>95</sup> It would assess a 2% annual tax on trust assets in excess of \$50 million, and a 1% additional annual tax on trust assets above \$1 billion. Since the main aim of a wealth tax on dynasty trusts would be to reduce their size and power—unlike a wealth tax on individuals, where revenue-raising is the principal goal—trusts would receive a dollar-for-dollar tax credit for any assets contributed to qualified charitable organizations, not including private foundations or donor advised funds. Under this proposal, all trusts created by the same person should be treated as one trust. [Note: This measure would not be necessary if Sen. Elizabeth Warren’ Ultra-Millionaires Tax or an alternative measure directed at excessive wealth accumulations were enacted.]

## CONCLUSION

America is at a crossroads. Two generations ago our grandparents failed to foresee the problems of unchecked accumulations of wealth. We're now suffering from the effects. If we fail to act now, the predicament our grandchildren face in a few generations will be far, far worse.

The closing paragraphs of a recent article, [America's Future: Trillionaire Trust Fund Babies?](#), by this report's author describes that future:<sup>96</sup>

*Over recent decades, Republicans have hollowed out our estate and gift tax laws. Their legislating has allowed tax avoidance planners to effortlessly pass billions from one generation to the next — and often to the next generation after that — without incurring tax liabilities.*

*One former Donald Trump economic adviser, Gary Cohn, infamously noted that “only morons pay estate tax.” We can condemn Cohn's disparagement of wealthy Americans who choose not to engage in tax avoidance, but we can't challenge his basic point: In the United States today, the estate tax has become essentially a voluntary levy.*

*Shady operators like the late Jeffrey Epstein got rich themselves, the New York Times [has detailed](#), by exploiting trusts to shelter billions in their clients' wealth from estate and gift taxes.*

*In 2013, Bloomberg [reports](#), the now deceased Sheldon Adelson used similar maneuvers to avoid gift taxes on his transfer of \$7.9 billion in trust to his children.*

*And the Forbes listing of the Mars family's wealth, [the Institute for Policy Studies has noted](#), indicates that two generations of Mars family grandees have now successfully done an end run around the federal estate tax.*

*With fortunes well into the billions passing virtually tax-free from one generation to the next, the era of trillionaire trust fund babies is fast approaching. Our leaders could prevent that era. All they need would be the courage to reform our broken estate and gift tax system.*

The choice is clear: We can fix our broken estate and gift tax system and stop the concentration of an ever-larger share of America's wealth inside enormous dynasty trusts, or we can trust our democracy to a handful of trillionaire trust fund babies.

Fortunately, we know what needs to be done. The legislative changes have already been developed. The sole remaining challenge is to summon the courage to stand up to the holders of dynastic wealth and their enablers.



**The legislative changes have already been developed. The sole remaining challenge is to summon the courage to stand up to the holders of dynastic wealth and their enablers.**

# ENDNOTES

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