

SPECIAL EDITION  
DATA DELAWARE: Wednesday, November 13, 2019  
SUBJECT: Told ya so - insights from Professor Elson  
(Podcast transcript PART I)

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Dace Blaskovitz: Good morning. Welcome to Money and Politics in Delaware. I am your host, I am Dace Blaskovitz. And I have been battling a cold for three, four weeks, so bear with the voice. Great program today. In the second act, Greg Lavelle, former legislator, Greg Lavelle comes back. He does a post-mortem on the Kent County, Delaware turf, and then in the fourth segment we're going to talk about a news journal article that has him scolding hot. First half, welcome back, Charles Elson.

Charles Elson: Yeah, great to be back Dace. I guess I'm not going to be scolding hot.

Dace Blaskovitz: You were and I'll get you there. I'm about to push your button in just a minute. For a first time listener, Charles Elson is a regular to the program, and gosh, he has a fancy title. I say with a big smile that I'll say in just a minute. Disclosure is, he's a personal friend. He's a University of Delaware professor. He is the guru in my opinion, of corporate governance in the state of Delaware. We'll talk about that, but with that said, Charles, your fancy title.

Charles Elson: Yeah, I'm the Edgar S. Woolard Jr. Chair in Corporate Governance and the director of the John L. Weinberg Center for Corporate Governance in the College of Arts and Sciences at the University of Delaware.

Dace Blaskovitz: And is it true that 70% of the University of Delaware's positive publicity correlates to you and/or your center?

Charles Elson: Well, if anyone ever accuses you of being too, what not, plead guilty... You're nice to say that Dace, thank you.

Dace Blaskovitz: And in addition to that, it can get complicated. So I'm going to do big picture sentences and make it short, but you help people and organizations, entities with their ethics, with their stewardship and there is a mothership of organization in the index fund. That's what I'm trying to say. And in August of 2019, second news front, Wall Street Journal, the headline is that the index products are now larger than the actively managed... That the index products are a, four plus trillion dollar, pool of money. And Charles, you do something for that. What is it?

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Charles Elson: Well. The Weinberg Center is the home of something called ISG, which is the Investor Stewardship Group, which is basically a collective organization of all the largest passive funds. It basically has a code of conduct or code of voting conduct that is really housed here, where they will in fact create a voting standards around which their own voting standards are based and they'll vote their shares accordingly. And that group is basically headquartered, located here at the Weinberg Center at the University of Delaware. We just had a meeting of them a couple of weeks ago, which was really terrific, where they looked at their standards and how to amend those standards, in appropriate ways. So for University of Delaware, it's a really great thing to have... Obviously people say in Delaware, it's a great thing to have because that's most of the investible capital in the United States. Public investible capital is there.

Dace Blaskovitz: To the audience. Hang in here. Charles is a headline. Before we get to that headline, I want to do one more thing. I do want to... We go worldwide, we have listeners around the world, but we are Delaware focused, at least try to be. And with that said, I do want to comment on the vital importance of the incorporation franchise in the state of Delaware. If I remember right, this is a question, Charles, that the incorporation franchise as a line item to the state of Delaware, in its annual revenues, is somewhere between 27-29%. And Professor Elson says, if you add in related items such as, abandoned property, personal income tax from the people that feed off the system, that the state of Delaware gets 50 or 60% of its annual income from the incorporation franchise. And an incorporation franchise means, that companies are incorporated here or they do business here or they pay a fee to have a presence here. Charles Elson clean that up.

Charles Elson: Yeah, I would guess, maybe two thirds, 66% in the end of our tax revenues comes in some way, shape or form from that business. Whether you're right, it's the actual franchise tax itself or the personal income taxes or corporate income taxes around businesses that work in that space. The law firms and whatnot, corporation services companies. It's enormous, if it were to go away we'd be broke pretty quickly.

Dace Blaskovitz: And with that said, one more stat for somebody just tuning in. I believe it's something like almost two thirds of the Fortune 500 have their incorporation franchise, their legal nexus in the state of Delaware. Next subject, the next logical one is, we hear a lot about federalization, especially with Candidate Biden, and especially with Candidate Warren. And in the past, we are a many

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time visitor, one to 10 times a year. We learned that Biden's track record is arguably anti-Delaware. Senator Biden oversold Sarbanes-Oxley and federalized audit, said Elson. Vice President Biden oversold Dodd-Frank and that effort federalized compensation. And now we hear Elizabeth Warren will federalize everything. Teach us, Professor.

Charles Elson: Well, she's calling for a statute that basically takes away state incorporation and federalizes the incorporation of our largest companies, which basically would eliminate Delaware if that were to go through. It's a really interesting conundrum, if you will, for certainly our state political establishment, because the state establishment is overwhelmingly in the same party as Senator Warren. And if Senator Warren is elected, and then this is her promise. A) when the citizens of Delaware vote next year, will they vote for someone who has promised to basically eviscerate the state's primary business and B) is because federal, there's no room for state incorporation, which means basically the state goes broke. And can you effectively vote for someone? The interesting thing too, if you think about it, is we've also been one of these States that made a pledge and no matter what happens in this state, the state's electoral votes will go to whoever gets the greatest popular vote nationally.

Charles Elson: And as Senator Warren in fact does so and our citizens say, no, that's not a good idea. But the electoral college, our electoral representative has put her in office. That basically bankrupts the state. That's just an interesting conundrum for those in office to sort of think about. How are they going to deal with that? Vice President Biden, I don't think would support statute like that obviously. But if the nominee is the other person, what does the state, our Senators and our governor and our representative do, if in fact, her position basically would destroy the business of the state completely? The tax revenues of the state. What do they do? Do they recommend their fellow party members? And I'm being non-partisan here, I'm just asking question not making suggestion. And I don't know. That's a really great point.

Dace Blaskovitz: Charles. Let me put you on the spot, go for the jugular. Vice President Biden's track record is arguably anti-Delaware. You've said that on the air in your decade with us... Decade plus. Where's he come out on this?

Charles Elson: Well, that's a good question. I think what happened with him, to clarify, was that he was a supporter of Sarbanes-Oxley. And Sarbanes-Oxley, in the end did result in us losing the audit franchises, if you will. Dodd-Frank when he was vice president, obviously took away the compensation franchise. I wouldn't say that he directly would be anti-Delaware, but I do think it's troubling, concerning that

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those two bills got through the Senate in a way that wasn't helpful to us. Because I think Delaware had already adopted it on a state level, regulatory level, a lot of what those two bills called for. What it does is, it basically makes us more irrelevant.

Charles Elson: In other words, if you federalize those important areas, then our state courts, our Chancery court doesn't have the room to make decisions in that area because it's been federalized. And so basically the whole reason of coming to Delaware is our courts and our legal system, and if it's been federalized, then basically there's no reason to come to Delaware, just stay in the state where you happen to do business. That's the danger of it. I would never think that certainly, Senator Biden would ever have been anti-Delaware. I think the consequence though of some of the actions that occurred in that era have not been helpful to us. That's all.

Dace Blaskovitz: His name is Charles Elson, he's a professor at the University of Delaware. He is the guru of corporate governance. And what's going to happen, we're going to take a short break. Here's your headline, the business round-table. Nanny nanny poo poo. Charles Elson is down dancing around. He told you on this program. We will be right back.