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Dace Blaskovitz: Welcome back to Money and Politics in Delaware. Charles Elson. Charles Elson, University of Delaware professor, Weinberg Center and Corporate Governance. And let's go. Let's go right for it Charles.

Dace Blaskovitz: Now I have a second though, let me do one more thing. I want to plug you. September 13th, state of Delaware. You did one these back in the spring. You had 300 people. Everybody was there. I think the Wall Street Journal had two reporters. Fast forward to September 13th. What's happening at the University of Delaware?

Charles Elson: The Investor Stewardship Group, which is the group of, professional group, if you will, of the largest investors in the United States. We meet in here at Clayton Hall, interestingly enough, and talking about their principles of governance, their voting principles. Also in attendance will be a number of corporate representatives and companies in which they invest. One of the keynoters is Marty Lipton, the corporate lawyer who invented the poison pill, and certainly someone who's on the other side of the shareholder/stakeholder debate. Not my side, actually we're going to be kind of talking about it in a forum which will be fun. And I think it's an interesting occasion for everyone who's interested.

Charles Elson: There's a charge to it now Dace, because it's being run, not by us, but by the group itself, which basically has no money, other than the money that they can take in for running this program. It's spent on the program itself, I should say. So, it's open registration, and the public is invited. Again, invited to register. Unlike our user programs, it is a paid one. But, hey, they got to cover their bills.

Dace Blaskovitz: Call Jerry, who's one of Charles's gatekeepers. Jerry's wonderful. 302-831-6157.

Dace Blaskovitz: My favorite to break the mood, put a little happy face on it. Just 10 seconds. My favorite Charles Elson story, it just dawned on me, it has nothing to do with Charles, ironically it has everything to do with me. And that was back in the spring.

Dace Blaskovitz: Charles put me next, because I attended, put me next to a college professor, who I'll leave nameless, who had a rather strong opinion that politics belong everywhere, in the bathroom, in the boardroom. They believed absolutely everywhere. To which I turned to him and said, "My politics or yours?" And with that, he spit his coffee out. And then the story gets more funny, because then I said, I gave it a pregnant pause, and then I came back for the knockout punch, and I said, "Your politics or Charles Elson's politics, who's paying for that cup of coffee?" And with that, he had a temper tantrum and walked away. So there is your giggle for the day Charles.

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Charles Elson: Always entertaining Dace.

Dace Blaskovitz: Well, let's go back to the subject on hand. 181 CEOs write a, what do you call it, a manifesto was your word choice that said, "Gee whiz, poo-poo on those shareholders. We are now altruistic, and it's all about stakeholders." Did those CEOs, Charles Elson, have the board's permission to make a statement, any statement but that one, regarding corporate governance?

Charles Elson: I would doubt it. I can't imagine a board that's elected by the shareholders voting to approve basically a shift in policy that's contrary to Delaware law, and contrary to the law of every state. I mean today, every state says that when you invest in a company, your shareholder's rights come first. Why? Because if the company goes broke, the shareholders are last to get paid. They're last in line. And therefore, they get something in return for being last in line. They get to vote on the directors who vote on the managers. And that's why we have shareholder primacy.

Charles Elson: I mean, the idea is if you don't protect investors, no one will invest. And then the world stops. And I think that for CEOs who signed that, to do this, I think they made a terrible mistake. I think it was ill-advised, it was probably rashly considered, it sort of appeared out of nowhere, this thing, and I think they made a terrible mistake. And when their performance flags, and suddenly their shareholders will hold them to account, they're going to wave this statement in front of their nose and say, "Were you more concerned with this, or you concerned about running a good business?" Because let me tell you something, a profitable business helps everyone.

Charles Elson: Long term profitability in a business helps the community, it helps employees, it helps customers, and suppliers. Because to run a business long term at a profitable rate, you've got to take care of those stakes. You have to be respectful to your employees, respectful to your community, and everyone has to feel that they're a part of a great operation. Everyone benefits. But when you remove that pole star of shareholder value, which creates accountability, you remove accountability, and you ultimately destroy results. And in the end, all of us end up miserable, given the last few results that transpire.

Charles Elson: Companies that have been run on that model, typically don't ultimately do very well. Look at General Electric, where the CEO, Mr. Immelt, was very big on the stakeholder theory model for a long time. Where is GE now? Where is... Well let's go back couple years. What ever happened to Eastman Kodak? Is it the same that it was? I don't think so. Go back... What happened to Bethlehem Steel? Is that still around? No. Now, there're a lot of reasons for those, with the difficulties of those companies, obviously. But part of it was management. And a good part of it was management that wasn't held accountable. It wasn't focused on the right things. And here you have it. It's too bad.

Charles Elson: And the problem is, when companies like that get in trouble, it isn't just a few people impacted, it's thousands of people, many thousands of people. People who work for the company, people who live in the communities in which those companies operate. I mean when a manager finds themselves accountable to no one and engages in conduct that's problematic, the losers are many, many, many people. And they usually walk off with a good retirement and a decent amount of money put away, and the rest of us lose. That's why that theory, the stakeholders theory, I find so problematic. And that's why what these CEOs have done, I found so troubling.

Charles Elson: One of the authors of it, Mr. Gorsky from Johnson and Johnson, who espoused great community values, this week, or the company was found by a judge to have had a role in the opioid crisis, and fined over half a billion dollars. Obviously, there was a community, I guess community primacy, if you will, might not have been so much in the minds of... Some would view that that verdict would suggest that community values was at a problem state at some of those operations.

Dace Blaskovitz: Charles I'm going to cross the line. I'm going to jump you, despite our deep friendship and we just like each other. But what happens, what are the repercussions? You had, assuming, and we're all assuming these 181 did not get their board approval on a corporate governance issue, basically neutering or telling their boards that, not to use an ugly word, but to get lost. What is the repercussions to these CEOs for going hypothetically, apparently for going rogue?

Charles Elson: You know there's a very good article in Fortune this week, written by Geoff Colvin, who is one of the editors at Fortune, who very codon approach to this whole thing. He was very critical of what they did. And one of the arguments he made was that this has opened a legal can of worms for them. Because if you express sentiment that if you should've downplayed the investors and something goes wrong, whether you still have a legal obligation to them, you open up a potential suit. Or if you say you favor you other stakes and something goes wrong, you create a stakeholder suit against you for not living up to your word to the stakes.

Charles Elson: And who knows what comes out of this. It probably ultimately ends up in Delaware, 'cause these companies are all home here. My gut would be, it doesn't get that far, that ultimately something will go wrong and the shareholders will wave this in front of them, and ultimately they'll go. And the boards will replace them. I think ultimately that that will be the result of what they've done. Again, it'll take a while to play itself out.

Dace Blaskovitz: By the way, you got 30, 45 seconds. My two cents is you're going to have a wave of litigation the first time you have under performance. Some smarty pants litigation attorney's going to sue you for stakeholders versus shareholders. What do you think in 30 seconds?

Charles Elson: Oh I think all you need to sue someone is a piece of paper and a pencil. I never underestimate the cleverness of the Plaintiff’s law that come up with interesting theories. Yeah, you'll hear from this stuff again. It was a terrible mistake. And I think they will regretfully regret it down the road. It was the wrong thing to do.

Dace Blaskovitz: Wow! Just simply wow. Charles Elson, corporate governance expert, University of Delaware. The event, September 13th. As he said, again, there's a fee, but the phone number 302-831-6157. I highly recommend it. I really enjoy these events.

Dace Blaskovitz: We'll see you next week for more Money and Politics in Delaware.