

RALPH NADER RADIO HOUR EPISODE 486 TRANSCRIPT

Cold Open

Hal Weitzman: Joe Biden is obviously from Delaware. Did Joe Biden create the system? Did Joe Biden support the system? And he didn't create the system. He has not directly himself been involved in defending the system explicitly in the Senate or as President, but I would say that through his political career, his style exemplifies the system. He's been funded by the system; his voting record reflects the system. So he's very much a creature of this Delaware franchise.

In terms of his style, for example, Biden is known for his belief in bipartisanship, the deal making; that's a very Delaware type thing. It's known as the Delaware way. In terms of his funding, he's certainly a creature of the system. So through his 36 years in the Senate, his donors were all the big law firms that benefit from the system.

And then as you say, in terms of voting, he was very prominent as a senator in efforts around bankruptcy, for example, making it harder for people struggling with student loans to file for bankruptcy. Ironically, because now, of course, the administration is trying to combat the student loan problem. But in many ways, people struggling with student debt was aided by the bankruptcy rules around credit cards and around student loans.

And the reason that he did that was because he had in one ear, the credit card companies. Four out of the five big credit card companies are based in Delaware. And Joe Biden's political career has often been to act in defense of those credit card companies and to act in their interest, for example, by making it harder for people to file for personal bankruptcy.

End of Cold Open

Steve Skrovan: Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan, along with my guest co-host, Hannah Feldman. David is off this week. Hello, Hannah.

Hannah Feldman: Hello, Steve.

Steve Skrovan: Welcome aboard. And we're also going to welcome aboard the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hi. This show is one you'll never forget if you just hang in there for the whole interview with Hal Weitzman.

Steve Skrovan: You are correct, Ralph. In 2021, there were over 1.8 million legal entities incorporated in the state of Delaware. Meanwhile, Delaware's human population barely cleared 1 million. More than 60% of all Fortune 500 companies “live” in Delaware, along with small companies from all over the country and countless shell corporations that protect the wealth of oligarchs, money launderers, and the uber rich. How did Delaware end up with more registered businesses than registered voters? We'll ask today's guest, Hal Weitzman, the author of *What's the Matter with Delaware?: How the First State Has Favored the Rich, Powerful, and Criminal—and How It Costs Us All*. As always, somewhere along the line, we'll check in with our *Corporate Crime Reporter*, Russell Mokhiber. But first, how did Delaware become the Mid-Atlantic's answer to the Cayman Islands, Hannah?

Hannah Feldman: Hal Weitzman is executive director for intellectual capital at the University of Chicago Booth School of Business and Editor-in-Chief of *Chicago Booth*

Review. A former *Financial Times* editor and foreign correspondent, he is the author of *Latin Lessons: How South America Stopped Listening to the United States and Started Prospering* and *What's the Matter with Delaware?: How the First State Has Favored the Rich, Powerful, and Criminal—and How It Costs Us All*. Welcome to the *Ralph Nader Radio Hour*, Hal Weitzman.

Hal Weitzman: Thank you very much for the invitation.

Ralph Nader: Welcome, Hal. And for people who want to know what first state refers to, it refers to the first state that ratified our Constitution after the Convention in 1787, which was Delaware. This is an extraordinary book, listeners. I want you to hang in with us, try to absorb the enormity of what Delaware corporate law means to you, to the country, and to the world, as a haven for corporations. I'll try to be as clear as I can and hope to be as clear as Hal Weitzman is in his book. And just to start it off, he draws the analogy of you borrowing a book in a library.

And he said, “In Delaware, getting a library card requires you to produce a photo ID and proof of address. In Delaware, you can officially establish a business or a corporation without proof of your identity, address, or phone number, and you don't need to turn up in person to do so.” I'm quoting continually from his book. “Picking up a library card may not allow you to do anything much more nefarious than illegally copying a CD. But corporate names have been used for much more devastating ends – money laundering, financing terrorism, both international and domestic, buying elections, busting sanctions, acquiring weapons of mass destruction, bribery, corruption, and kleptocracy.”

By the mechanisms permitted with the hundreds of thousands of corporations registered in Delaware, not to mention limited liability companies (LLCs), which we'll talk about in a moment. Let me ask you the first question. Why did you, out of the University of Chicago School of Business decide to write this book?

Hal Weitzman: Delaware has always been on my radar. It seemed to me as a corporate reporter based in Chicago for the *Financial Times* that all roads led to Delaware. Delaware, as I later discovered, was the corporate version of the office of births, marriages, and deaths – the registrar. It was for corporate life events. When companies were born – if you'll excuse the metaphor – they were born frequently in Delaware. When they merged or when they had disputes, they went to Delaware. And when they went into bankruptcy, they also went to Delaware.

So the question I always had was, why Delaware? And the more that I dug into that question after I was a reporter and came to the University of Chicago, the more interesting and murky it became.

Ralph Nader: When I was at Harvard Law School in my corporation class, I began to notice that in one case after another, that we discussed under the auspices of our dear professor, was a Delaware case, chancery court (insert link to explain chancery court?). So one day someone in the class raised his hand and said, “Professor, why are we focusing so much on cases decided in little Delaware instead of New York or California or Massachusetts?” And I'll never forget his answer, he said, “Because there's a much more intensive development of corporate law in Delaware – period.” Not a single comment on the thesis of your book, which is, it is a corporate haven for all kinds of shenanigans from people in this country and around the world. So how easy and fast is it to start a corporation – register or incorporate one in the state of Delaware, especially if you're willing to pay a little higher registration fee?

Hal Weitzman: You talked about some of it in the part that you quoted. We could set up an LLC in Delaware by the end of this recording and we wouldn't need to go to Delaware. We don't need to show any documentation. It's actually even easier than you suggested because if we pay the fee, we can get it done officially in 30 minutes. In fact, since I wrote this book, people have told me if you make the right phone calls, you can get it done in as few as ten minutes.

Ralph Nader: A lot of these LLCs (limited liability companies) that find their way into creation in Delaware are shell corporations, for example Donald Trump's business. You point out in the book that he has 500 of these shell corporations,. Describe the difference between the LLCs and normal corporations in the law of Delaware.

Hal Weitzman: An LLC is a lightly regulated company structure, limited liability company. Limited liability is the underpinning of all business. And the way we've structured it in the United States, a limited liability company means that the corporate governance and the reporting is either light or non-existent. So it's a very useful vehicle for all sorts of business activity. Ninety nine percent or more of the LLCs that are formed are perfectly lawful and they're doing all kinds of legitimate business. But the fact that one is able to set up an anonymous LLC has also enabled it to be used by all sorts of nefarious actors, as you mentioned. And I mentioned the cases of kleptocracy, which makes it sound like it's foreign actors, but there are a lot of U.S. actors using it for activities like smuggling, trafficking of arms, drugs, and child sex trafficking.

It's a light structure, so think about it this way. There are corporations, for example, the Amazons[.com, Inc.] and the Googles that have a significant amount of reporting to do. They have to issue quarterly reports to shareholders and to the SEC. And there's some transparency there that is required. With LLCs, there's no transparency required, not even any transparency required of who the owners are, to the extent that when I was researching this book, I had a last-minute panic and contacted the Delaware Secretary of State's office to ask what proportion of the LLCs formed in Delaware every year, which is a vast number, are owned by US residents and what proportion are operated, owned, and controlled by non-US residents?

And they told me, "We don't know." And there is no way of knowing because they have this "don't ask, don't tell" system where there is no question on the form asking where are you based? Who are the real owners? None of that is required. So it doesn't take a big leap of imagination to see how that can be used by nefarious actors.

One wrinkle: you asked originally. "How easy is it?" And I said one of the things that makes it extra easy is you can do it in 30 minutes or maybe as few as ten minutes. But another wrinkle is the office stays open until midnight for registrations. So we could set up a company at 11:30 and still have it completed and established by the end of the day. You have the ability to set up an anonymous company with no documentation verification required. I don't have to go to Delaware, and I can set it up within 30 minutes in the middle of the night. Now what kind of people want to use that sort of service?

Ralph Nader: Before we get into what it means for Delaware's state revenue, which is an incentive for what they're doing here, on page 93 of your book, you basically say that the result is it's easier to set up a corporation in Delaware than in many places around the world that we think of as tax havens or homes for dirty money. Traditionally, for example, an international money launderer – by the way, big banks have been international money launderers – looking for a new location to set up a shell company might consider several locations to form the business and start laundering cash like Belize, the Cayman Islands, Panama, Bermuda, or the United

States. Until very recently, and we'll get around to a new law that Congress passed, the one that required the least documentation, you write was the United States, meaning the state of Delaware.

What do the fees that pour into Delaware from all these companies like the big New York banks that have hundreds of shell corporations in places like Delaware and the Cayman Islands make up in terms of the state revenue?

Hal Weitzman: Every time somebody registers a company, they have to pay an initial fee, and then they have to pay an annual fee to keep it in good standing. So all those fees amount to a tiny bit; they're not large fees because for most LLCs, which is the vast majority of the companies there, that's just a few hundred dollars. For the bigger companies, it could go up to a few hundred thousand dollars. But for a big public company, that's nothing.

Take all those relatively small fees in large volume, and there are fewer than a million residents of the entire state Delaware compared to 1.8 million companies. So if you take all those 1.8 million companies and all the fees plus all the associated revenue, like abandoned property, it adds up. Another example of such revenue is if you buy and give a gift card to a legally based Delaware retail company like Home Depot used to be, all the money on that gift card wasn't spent – let's imagine only \$7 out of \$10 of that gift card was used, the remaining \$3 would eventually revert to Delaware. Or if you have a brokerage account and the financial institution is based in Delaware, which many are, and you left a few cents in the brokerage account or a couple of dollars there, that money would eventually revert to the state of Delaware.

You might think, well how much money could that be? It actually adds up to half a billion dollars a year, so that's a significant amount of revenue plus all the revenue that comes from bankruptcy court, which is also an adjunct business to the main fees and everything else that goes into what's called the franchise. The revenue from fees plus all the associated revenue adds up to about 40% of Delaware's state revenues.

Ralph Nader: 40%.

Hal Weitzman: 40%.

Ralph Nader: Delaware has no sales tax, so 40% is the incentive.

Hal Weitzman: In addition to Delaware having no sales tax, it has generally low taxes. They call it the loose spending state with red taxes. They've achieved every politician's dream of big spending, low taxes. And the way they've achieved that is by diverting tax revenue from elsewhere and taking in vast numbers of relatively small corporate fees. So it's a pile them high, sell them cheap type business as opposed to other states, which have depended on corporate income tax. And corporate income tax receipts have completely collapsed over the past 50 years because companies have increasingly found ways to avoid paying tax in their home states. And one of the ways they've avoided that is by funneling money through holding companies in Delaware.

Ralph Nader: As you say in your book, shell companies are hollow. There's nothing underneath the name and legal entity. Shell corporations have no real employees, no offices, no significant assets, or operations they exist on paper only.

Before we get to Delaware Joe Biden and how he grew out of this corporate context in his political career, in the state of Delaware, the major law firms, the legislature, and Delaware's Secretary of State, over the years have created a very powerful embrace to make sure that

Delaware stays number one in terms of a haven for these kinds of corporations and making sure that the federal government interferes the least, especially if they start talking about a federal corporation charter for big corporations, the way Senator Elizabeth Warren alluded to once. So let's start with how the law is created. It doesn't start with the legislature. Your book says it starts with an organization called the Corporation Law Council in Delaware. Tell us about it.

Hal Weitzman: The Corporation Law Council is a committee of the Delaware Bar that contains 26 serving lawyers who are still working and appearing in court, and they come from the top firms in Delaware. It's a small tight-knit group that gets together every year and decides on a set of proposals to update the Delaware corporate code. Now the Delaware corporate code, as you talked about from your Harvard Law School days, is the corporate code for the United States. The reason you were learning about Delaware is because that's effectively US corporate law. So the proposals that they're going to put forward are effectively proposals that will pertain to the entire United States, and the changes that they're proposing are highly significant. What happens to those changes? They go to the Delaware legislature, which is full of part-time legislators paid about \$45,000 a year. Almost none of them are lawyers. They have no experience in corporate law, and are not well placed to judge these usually arcane changes to the law. Additionally, the Corporation Council doesn't come to the chamber and explain why these changes are needed. There's no rationale given. Usually, the proposed changes are rubberstamped and then they go to the Governor's office where they are also rubberstamped. So effectively, the lawyers write their own rules, and these are the lawyers who are appearing in the chancery court, the business court in the state of Delaware that decides all the big cases. And the same lawyers who appear in that court are the ones who write the rules. So that's the system.

There's a story I tell in the book about one of the Delaware legislators who put forward a proposal for a bill of his own to change the corporate code. And when this proposal appeared before the Judiciary Committee, the Head of the Judiciary Committeewoman asked him, "Are you proposing this, or has it gone through the process?" He said, "The process, what process are you talking about?" She said, "Has it come from this Corporation Council, or you are proposing it yourself?" He said, "No, no, I'm proposing it." And she said, "No, no, no, you can't do that. All the changes to the corporate code have to come from the Corporation Council."

In other words, you, an elected lawmaker, have no right to make law. Only the unelected lawyers have the right to change the corporate code, which as I say is the corporate code for the United States and effectively for much of the world as well, because there are also a lot of non-US corporations that are registered in Delaware.

The way they put it among lawyers is that the system has bypassed political uncertainty. We know that lawyers, investors, and corporations hate political uncertainty because it might affect their profit-making process. And in Delaware, they've perfected that system. They have completely bypassed any political uncertainty and therefore also bypassed any oversight or regulation.

Ralph Nader: Now this skeptical lawmaker in the Delaware legislature was his name John Kowalko?

Hal Weitzman: Yeah, that's the guy.

Ralph Nader: And he's still at it? He's still raising these impertinent questions and getting rolled over?

Hal Weitzman: No, he's not, unfortunately. John Kowalko is retired. This is the guy who styled himself the Bernie Sanders of Delaware, a former union leader who was elected to the Delaware legislature, and for many years, was a maverick who challenged all sorts of cozy arrangements that had been going on in Delaware. He has taken a well-deserved retirement.

There's a whole load of new legislators, liberal legislators who have come in, but very few yet have the knowledge of this somewhat complicated system and are engaged with it in the same way. As you can imagine, Delaware, like many other states after the pandemic, has its own social, environmental, and political problems. And this is not high up on most people's agenda. So that's the challenge.

Ralph Nader: Yeah, I used to say DuPont dominated Delaware so much as we pointed out in our book, *Corporate State*, many years ago. And GM is one of the many companies chartered in Delaware. I said GM could buy Delaware in a weekend if DuPont was willing to sell it.

Now, as our listeners may begin to wonder, what's that got to do with us? Well, hold your horses listeners. As Hal Weitzman says in his book, *What's the Matter with Delaware?: How the First State Has Favored the Rich, Powerful, and Criminal—and How It Costs Us All*, “Even if you've never been there, you probably have many connections to Delaware. Most of us do. Delaware is inescapable; Delaware is everywhere.” And can you turn to page 14 and read the examples that you give on how it affects people's daily lives all over the country and just read it until it ends with Delaware's public coffers.

Hal Weitzman: Okay. “If you bought this book or anything else on Amazon, you're giving money to a corporation registered in Delaware. If you used Google to find out about the book, you used a service run by a company incorporated in Delaware, as is its parent company, Alphabet [Inc.]. Perhaps you prefer shopping in real stores. So you went to Walmart. That, too, is incorporated in Delaware. If you're more upscale and went to Whole Foods, it's owned by Amazon. So that takes you back to Delaware. If you use the credit card to make your purchase, your credit card issuer may very well be incorporated in Delaware. If you got there in an Uber, you were generating revenue for a Delaware company. You may well be on Facebook or Twitter, which are also Delaware corporations.” Of course I should interject that Twitter, since the publication of this book, has been taken private by Elon Musk, of course.

Back to the book. “If you've saved money in a retirement account, like half of all working Americans, your funds are very likely invested in a range of companies incorporated in Delaware. If you have a student loan, your lender may well be a Delaware corporation. If you have a brokerage account to buy stocks, both your broker and most of the companies whose stocks you're buying are likely incorporated in Delaware. Even if you just have a bank account, there's a good chance your bank is incorporated in Delaware.

If you've ever given money to a US presidential campaign or a political action committee, it might well have been registered in Delaware. If you've ever bought anyone a gift card and they failed to spend all of it, you may have inadvertently paid into Delaware's public coffers.”

Ralph Nader: Now, some listeners may say, “Okay, Hal Weitzman, so what? What does that mean to us?” And you answer it on page 19 briefly and then elaborate it. You say, “But Delaware's influence on US corporate life is immense. Its corporate code is the corporate code of the United States. It has effectively set the rules on how much interest credit card companies can charge their customers. It has helped companies and wealthy individuals avoid paying taxes, harming the public finances of other US states. It has shielded the illicit and unethical use of

corporate entities. If you care about tax dodging, if you care about how corporations behave and how to hold them accountable, if you care about regulating the financial sector, if you care about secret funding that flows into US political campaigns, or if you're just curious about what happens to the economy on gift cards when the cards themselves get lost down the back of the sofa and the money is never spent, you should care about Delaware." So let's talk about Joe Biden and the credit card companies and what went on as described in your book.

Hal Weitzman: Sure. Well, so I often get asked, "Joe Biden is obviously from Delaware. Did Joe Biden create the system? Did Joe Biden support the system?" And he didn't create the system. He has not directly himself been involved in defending the system explicitly in the Senate or as President, but I would say that through his political career, his style exemplifies the system. He's been funded by the system; his voting record reflects the system. So he's very much a creature of this Delaware franchise.

In terms of his style, Biden is known for his belief in bipartisanship, the deal making; that's a very Delaware type thing. They call it the Delaware way. In terms of his funding, he's certainly a creature of the system. So through his 36 years in the Senate, his donors were all the big law firms that benefit from the system. And then, as you say, in terms of voting, he was very prominent as a Senator in efforts on around bankruptcy, for example, making it harder for people struggling with student loans to file for bankruptcy. Ironic, because now, of course, the administration is trying to combat the student loan problem. But in many ways, that was aided by the bankruptcy rules around credit cards and around student loans.

And the reason that he did that was because he had in one ear, the credit card companies. Four out of the five big credit card lenders are based in Delaware. We can talk about how they ended up there, but they are hugely important for the state. By the way, the fifth one that isn't is American Express, but the other four are all there. So if you look at your credit card, you may have wondered why do I get this mail from Delaware? Why is my bill coming from Delaware? It's because the big credit card lenders were lured there in the 1980s. How were they lured there? Essentially because Delaware got rid of the caps that they used to have on interest rates. So when previously various states set caps on interest rates, Delaware was one of the first states to say it would get rid of the caps so companies could charge whatever interest they wanted. And that same system still exists today.

Ralph Nader: How high can these interest rates go on rollover payday loans, for example?

Hal Weitzman: In theory there is no limit, Ralph, to the amount of interest that companies can charge. Of course they don't charge 1,000% interest like a loan shark would because then they would get clamped down on by Congress. But there is nothing in law stopping rates being as high as a company would want to set them. And any attempts that have been made to put caps at the state level elsewhere won't work, because the company is registered in Delaware and Delaware law applies. That's why four out of the five big credit card companies are based in Delaware and Joe Biden's political career has often been to act in defense of those credit card companies and to act in their interests, for example, by making it harder for people to file for personal bankruptcy

Ralph Nader: And companies like Visa, Mastercard, other big credit card companies are now charging over 20% interest for unpaid monthly balances by credit card consumer holders. Over 20%. And sometimes it goes to 30% because there's no cap as you put it. Tell us briefly about

Stephen Colbert's discovery when he learned about what could go on and he put his toe into a presidential election campaign.

Hal Weitzman: Yes, Stephen Colbert, of course we know from his current role on *The Late Show*. But before then, you'll remember he was a character called Stephen Colbert, a somewhat of obnoxious rightwing, fictitious TV host, but with the same name Stephen Colbert. And in that character, I think he had a bid to become president himself, but he set up a shell corporation and the shell corporation was set up to raise money for his political campaign. And it was a joke, but it revealed how little he had to do in order to set it up. He didn't have to supply any information. He didn't have to go to Delaware. Nothing needed to be verified and it could all be done very quickly. This was a device to demonstrate how easy it was to set up a corporation that could receive anonymous donations and was itself anonymous. But there's a serious point, which is that so much of our politics, both right and left, is connected through Delaware. AOC [Alexandria Ocasio-Cortez] had political action committees registered in Delaware, as did Donald Trump, Hillary Clinton, and many, many other politicians. And these organizations can receive anonymous donations, or, for example, one political action committee registered in Delaware can receive donations from an LLC, which can itself be anonymous.

So when Citizens United [v FEC] decision came down, a lot of people threw their hands up in despair and said, now that corporations can give unlimited donations to political campaigns, what can we do about it? There is nothing we can do. But there is some transparency, because political action committees do actually have to report the identity of their donors. But if the donor is an anonymous LLC, all they have to report is Acme LLC gave us donation of \$500,000. I don't know who is behind Acme LLC. So the anonymity of the corporate system feeds into a dark money funneled through the political system as well. The anonymity isn't just a corporate problem, it's also a political problem that infects our politics, and it means that voters really don't know who is behind political campaigns.

Ralph Nader: And why don't you tell us the net result of this corporate government in Delaware of anonymity, of secrecy and of complexity. Isn't that the formula?

Hal Weitzman: Yes, I think you've described it well. The complexity part is that I can have an LLC that is owned by another LLC; it's not just contained in Delaware. Sometimes people who defend Delaware will say to me that it's not just Delaware. And They're right, it's not just Delaware. If I put Delaware together with the Cayman Islands and Cyprus and the Republic of Ireland, I'm able to construct an international web of corporate ownership that is incredibly hard to penetrate and I can use that to avoid taxes or to do all sorts of nefarious activities.

And so, Delaware is part of a bigger story, which is the international story of criminality, kleptocracy and tax avoidance that has poisoned our political system. It's a credit to this administration that they've recognized the damaging effect of corporate tax evasion and avoidance on our political system. But it's very, very hard to do anything about it. And even the attempt to set a minimum corporate tax rate for the world, which Janet Yellin spearheaded, has been very hard to implement. Delaware is part of that system. It's not the be all and end all, but it's the American version of that international system that helps companies avoid paying their fair share.

Ralph Nader: But Delaware's race to the bottom also affects other states who want to compete with the race to the bottom like South Dakota on credit cards and states like Wyoming and Nevada. So the epidemic, so to speak, is spreading to other states who are sniffing the revenues

from these fees and are trying to attract the same kind of nefarious activity that's now so solidly lodged in Delaware. You talk about a little light at the end of the tunnel, which is the Corporate Transparency Act, which was passed during the Trump administration of all things. And it goes into effect this year. Can you describe its impact and how it's going to affect Delaware and the people of this country?

Hal Weitzman: Which just shows you how this really should be a bipartisan issue. Because to give you one example, we can disagree about US foreign policy, but if our foreign policy is to clamp down on the international finances of Russian oligarchs, whether you think that's a good idea or not. But if we want to be able to do that, we have to know what companies they operate. And if we don't know that, then we won't be able to affect foreign policy at all. So it's one small example of how actually this could be a bipartisan issue.

You talked about the Corporate Transparency Act, which is a first-time attempt to set up a registry of owners of US companies, which we've never before had in the United States. In the UK, my home country, for many, many years, there's been a registry at Company's House, freely searchable, anybody can use it; it's not perfect. You might find a company that claims to be operated by Mickey Mouse, but at least it's searchable. There is documentation there to go through and where there are holes, it's clear that there are holes. In the United States, we don't even have that information because nobody has collected it. It's significant that for the first time people will be required to supply information about who owns the companies that are registered in the United States. However, there's a lot of big loopholes here that not make me optimistic that effort will be successful. For one thing, this is a private registry, so it'll only be viewable to the US Treasury. You and I won't be able to search this information. And that compares unfavorably with registries set up elsewhere. We'll be depending on a very small federal government department, FinCEN [Financial Crimes Enforcement Network]; it's the financial crimes unit of the Treasury, which has 300 people and it will have another 100 people. Then there'll be 400 employees going through tens of millions of documents, which is what is going to come in from all the companies registered around the United States. That unit won't have the resources to verify this information. So you may get a repeat of the Mickey Mouse phenomenon that I talked about in the UK.

This will be setting up a huge burden on small businesses, which is why they oppose this legislation. Currently, one need only register a company, let's say, in Delaware, but with this legislation one would have to reregister the same company with the federal government. And when you ask transparency campaigners what is the best way of doing it, they suggest just asking the people who the owners are at the point of registration. If we set up a company, the obvious question is who's operating company or who is behind it? Nobody is asked to send a separate set of documents somewhere else. That would be like us taking a flight and then two weeks later having to send in a photocopy of our passport or driver's license, which would be nonsensical. Documents should be checked at the same time. And, we aren't checking them at the same time because Delaware doesn't want to ask its registering agents to collect and verify that information. It wanted to get rid of that responsibility, so it shoved it off to the federal government, which means that every company in the United States will have to file double the paperwork because of Delaware.

Not only does this Delaware problem carry on and is now amplified for every company in the United States, but a gap is set up, because there is a month between registering in Delaware and

registering with the federal government and who knows what can happen in that month. All sorts of nefarious activity could take place and then the company could effectively be abandoned. Although it's seemingly a step forward, I'm not at all optimistic that the way that we've set this up – this weird bifurcated system designed to accommodate Delaware and its preferences, will be successful. It's at best a very hesitant and faltering step forward.

Ralph Nader: You have four recommendations at the end of your book for effectively starting the process. First, the US government should make public its registry of corporate owners as the European Union, UK, Canada, and other countries do. Second, the US Congress should close the loopholes of the Corporate Transparency Act passed by Congress in 2019. Third, the Delaware Corporation Law Council, which is the legislative law creator made up of corporate lawyers, should make its proceedings public and allow time for expert opinion to inform debate in the Delaware legislature. Fourth, this same Corporation Law Council should be expanded to include legal experts representing stakeholders other than shareholders who could begin a process of formalizing a wider, more objective set of management performance budgets that would update the business judgment rule – currently protecting from liability, directors who exercise that authority in good faith and with reasonable care, even when with the benefit of hindsight, the actions taken resulted in an unfortunate result – with clear criteria relating to the wider impact of corporate decisions.

You're recommending fairly modest stuff. I say that because back in the 1970s, we wanted to launch a national discussion of big corporations to replace Delaware [as the corporate charter state] and other states. And as you point out in your book, that was a proposal initially supported by President Teddy Roosevelt, William Howard Taft, Woodrow Wilson, and later, by some senators, Senator [Joseph] O'Mahoney from Wyoming in 1940.

In 1976 the *New York Times* printed our entire proposal summary in a full page on the bicentennial year of our country. Ever since then, sporadic articles have appeared here and there about the federal incorporation proposal. Don't you see that as incorporating the essence of your recommendations and going further to recognize that global corporations and the corporate law of Delaware are totally antagonistic to any equitable rule of law in any democratic society? What's your position on that?

Hal Weitzman: That's a big question. It's admirable that in the 70s the *New York Times* published a full-page piece on your proposal to fix the corporate problem in Delaware with your recommendations, and you are Ralph Nader. I'm just a humble academic in Chicago who apparently has no friends at the *New York Times*. I think it's an interesting proposal. The reason I went modest rather than making huge proposals is that for years I've been reading books that say, "That makes sense." And then you get to the final chapter, and it says, "We need a global authority for peace and love." And my conclusion is that ain't going to happen. So I've enjoyed these type of books, but I'm sort of left with nothing. I want to do something that's an extension of what's already happening. For example, we're setting up this corporate registry, it's private. Let's make it public. We are setting up this corporate registry. Let's not give exemptions to charities, for example, because charitable type organizations, 501(c)(3)s, etc., can be used for non-benevolent ends, let's put it that way. So I wanted to extend things that were already happening.

Would a federal incorporation law requiring registering all companies & creating them at the federal level, sense? Perhaps. And the fact that we're setting up this registry might actually make that make even more sense than it ever has. Would it solve all the issues of tax evasion,

complexity, lack of corporate governance? I'm not convinced that it would, which is why I didn't recommend it. Because to me, the issue is not just about where you locate the company because that process of control would then transfer to the federal level. And we know that congressional representatives and senators often don't read the legislation that they vote on and also don't really know what they're doing much of the time. So to me, it's not about that. It's about getting more oversight. For example, as you quoted, and I talk about in the book, companies have been telling us for years that they care not just about their shareholders, but about their stakeholders, which means the people who don't own them but are affected by their decisions – employees, the environment, the general public. But those groups have no say whatsoever in how the corporate code is conducted nor about how to uphold the standards and behaviors that we expect from our corporate leaders. And so, if you open that up, that opening up can be much more powerful than changing the location of where companies are registered.

Ralph Nader: Well, in fairness to our proposal, we recommended a complete rewriting of the contract between government and corporations. So it wasn't just the points you've made, it's to bring it up to the stage of globalization, artificial intelligence, autonomous weapons, and all these things that corporations are involved in, and to rewrite the governmental agreement, which creates corporations through charters and gives them all kinds of privileges and immunities and bring it up to date for the complete rearrangement of an agreement that is over 200 years old.

Hal Weitzman: I wasn't at all criticizing your proposals. You are Ralph Nader, so you propose Ralph Nader type proposals. And I'm me, so mine are much more modest. I also wanted to start a conversation about things that are very achievable and easy and quick.

Ralph Nader: Yes. And you certainly have done that in this book. We're talking with Hal Weitzman, the author of *What's the Matter with Delaware?: How the First State Has Favored the Rich, Powerful, and Criminal—and How It Costs Us All*. I couldn't help but compare Tom [Thomas] Frank's book, *What's the Matter with Kansas?*, a few years ago, which was the bestseller about how rural Kansas voters vote for rightwing Republicans who turn against the interests of these rural Kansas voters. But when you write a book about giant corporations and the evasions, immunities, and impunities they acquire because they use Delaware corporate law, it is, shall we say, not widely reviewed or commented on. So here's my last recommendation. You really need a national conversation, and you properly said it should start in Congress. I couldn't agree more. How do you start the conversation in Congress? You have a University of Chicago business school conference, invite all the states that are very upset with how Delaware corporate law has pulled down or disengaged the relevance of their corporate law. Have the press come, get educated, and then reverberate it to members of Congress who are more amenable to get the ball rolling in our national legislature. What about that?

Hal Weitzman: I'm trying my best. This book is intended to make things happen. So I wasn't just writing it; I'm a journalist, so I was writing it partly because it's interesting, but also partly because I want things to change. I'm trying my hardest. I appreciate you inviting me on the show to put my points across. I know you obviously have a big platform, and we'll try and get the word out there together.

Ralph Nader: And I think because University of Chicago business school reflects a conservative view of business, the Chicago School of Economics would be a good place to start. It's not the only time that a university conference has started something rumbling to Washington, so I hope you'll consider it and talk about it with the people on the faculty and the administration who

could actually get it done. They couldn't start with a better book than what you have valiantly written. And I can't commend you high enough for it. Steve, question?

Steve Skrovan: Yes, Hal, it seems like Delaware is the island of misfit corporations. And if I'm a misfit corporation, why would I bother going to the Cayman Islands if I can go to Delaware? Is it just the weather?

Hal Weitzman: Something ironically that's happened is that the Caymans, Panama, Cyprus, all the traditional places that one would go to set up a shell corporation, have had a lot of pressure put on them by big economic players like the UK, United States, and European Union. And they have actually had to tighten up their rules to a certain extent because they cannot afford nor do they have the political power to stand up to those big players, whereas the United States itself has flown under the radar. Even the UK has been under quite a lot of pressure, because of the Russia-Ukraine issue, to tidy up its act. But the United States, much less so.

The Corporate Transparency Act has been touted as having solved the problem. Next year when we set up this registry, we'll see whether all corporate wrongdoing will suddenly disappear. I doubt it will abate even over the next ten years. So perhaps it will have some effect at the margin, but I doubt it's going to be particularly significant.

Ironically, one reason to be in Delaware is because it's not the Cayman Islands. I tell a story in the book about a journalist who went down to Panama in the 1980s on the trail of strongman Manuel Noriega's finances. Noriega had very complicated finances with real estate in Paris, and so he was trying to work out what was actually going on. That American investigative reporter met a partner from the firm, Mossack Fonseca, which you might remember, leaked the information that provided the Panama Papers.

And so, Ramon Fonseca, one half of that firm, went out for a meal with this American investigative reporter, told him all about how he helped people around the world hide their money in various exotic places. And at the end of that conversation, this journalist said to Roman Fonseca, "It's so interesting you tell me about how you've helped people hide their money all around the world. May I ask you where you hide *your* money?" And quick as a flash, Ramon Fonseca said, "Oh, in Delaware. They'll never find it there." Apparently there is a huge attraction to being less than exciting, less than exotic and flying under the radar, which proved to be a huge strength for Delaware.

Ralph Nader: And by working under the US Constitution it's more stable and permanent. Hannah?

Hannah Feldman: I'm curious how does one become a registered agent in Delaware? Is there a way to cut problem companies off at the knees by cutting them loose from their registered agents on the ground?

Hal Weitzman: You mean an agent that has the power to create companies? Just so I understand, is that what you mean?

Hannah Feldman: The Department of State refers to a registered agent as a person who theoretically is physically in Delaware.

Hal Weitzman: Yeah, that's right. These are all sorts of different sizes. There are large ones such as the one that famously calls itself Harvard Business Services (HBS) that has zero affiliation with Harvard University, where Ralph took his law school classes, but of course HBS enjoys that name. And there some other big ones. And then some are the equivalent of mom-and-pop shops

run out of their home. So it's the burden to become – I would call them registering agents because that's what they're actually doing. But for registered agents, the hurdle is pretty low. Some of them have a couple of clients. And they will just do those (couple of) registrations every year. The bigger ones, of course, have hundreds of thousands of clients.

There is a location in Wilmington, 1209 North Orange Street that has hundreds of thousands of corporations registered there. It's kind of a squat boring orange building on a street in downtown Wilmington that you would walk by. But Coca-Cola, Amazon, and Google are there. They vary in size a lot.

And one thing that Delaware has been very keen on is protecting them from any sort of extra burden. A whole new system is being set up that's based on not burdening these companies, these registering agents, with asking such questions as “Who actually is in charge of this company? Who actually owns this company?” And then seeing any kind of documentation verifying that. And I assume they're doing that because they don't want them to be held liable if anything goes wrong. Currently, they have this don't ask - don't tell policy. So nobody could be held liable because no information is collected.

And I talk in the book about law enforcement going to Delaware and trying to find out information about companies that have been connected with international law illicit activities. But there's nothing to find. There's no there there. There is no information to find because they don't ask.

It's easy to become an agent. The agents are all different sizes and Delaware is desperate to protect these agents from any kind of liability or oversight. It would be great to ask the agents to collect more information, but that would have to come from the state of Delaware itself, because the federal government doesn't have any power over that. And Delaware has been very, very protective of these agents by not asking them to collect anything, so that does not seem a very likely outcome.

Ralph Nader: Before we close, I'm sure one of our maverick listeners is going to ask this question of you. “Hal Weitzman, why doesn't somebody set up a business in Downtown Wilmington in a big auditorium with lots of tables, and invite people from all over the country to incorporate themselves?” In other words, if you can't beat these corporations, become a corporation yourself. So Jane Doe and John Smith can come and incorporate themselves in Delaware and take advantages of the Delaware Corporation. How would you answer that?

Hal Weitzman: It's already happening. There's a huge growth in so-called “passthrough” companies. For example, “S” corporations. The number of people who have declared themselves corporations and funneled their income through that is huge with any kind of side hustle—Airbnb and renting out properties—have fueled a massive growth in the number of passthrough corporations, which enable people to pay lower taxes and to enjoy anonymity.

So let me give you an example of that. In Chicago, where I am, there's a website called BlockShopper. Type in the address of a property, and BlockShopper will tell you who owns that property. So if you don't want people to know that you bought that property, you can set up an anonymous LLC and have the property owned by the anonymous LLC. And a lot of people, particularly the more wealthy, do that because they don't want the publicity. If you run a hedge fund, you might not want people to know that you bought that property and how much you paid for it so they can hide at least the ownership information in an LLC.

Massive growth has occurred in the number of LLCs that have been set up and S corporations and other corporate structures. That's what's fueled the Delaware phenomenon. When you were there, Ralph, when you and your team wrote *The Company State* [*Ralph Nader's study group report on DuPont in Delaware 1973*], this was a very small business. In the 1980s, 1990s and 2000s, it's grown massively, and it continues to grow. When I wrote the book, there were 1.6 million companies registered in Delaware. Last year, there were 1.8. Who knows, by now, there's probably 2 million companies registered in Delaware. That growth isn't coming from big corporations. People aren't setting up more Apples and Googles, but they're setting up LLCs, often set up by one or two people for discrete projects or side hustles.

So you asked why don't we do it. They're already doing it through the state of Delaware and it's an extremely profitable business that turns Delaware effectively into a financial services firm more than the state.

Ralph Nader: Well, this has been a fascinating conversation with you, Hal Weitzman. And people interested in pursuing more answers to why, how, when can buy this book, *What's the Matter with Delaware?: How the First State Has Favored the Rich, Powerful, and Criminal—and How It Costs Us All*. It's a great book to donate to your library to be part of your neighborhood book club. It's a lot of drama, a lot of corruption, and a lot of challenge to us as citizens who believe in a strong democracy under the rule of law with fair play roaming the land from west to east and north to south. Thank you very much, Hal Weitzman.

Hal Weitzman: Thank you very much. It has been a great pleasure and honor to speak with you.

Steve Skrovan: We've been speaking with Hal Weitzman. We will link to his book, *What's the Matter with Delaware?* at ralphnaderradiohour.com. And now, let's check in with our *Corporate Crime Reporter*, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington DC, this is your *Corporate Crime Reporter* "Morning Minute" for Friday, June 30, 2023, I'm Russell Mokhiber.

Doctors and nurses are raising questions about hospital giant HCA [Healthcare] and the company's palliative and end-of-life care for patients. They say HCA officials press staff to persuade families of ailing patients to initiate such care. Although this can harm patients by withdrawing lifesaving treatments, the push can benefit HCA in two ways, the doctors and nurses said. It reduces in-hospital mortality rates, a closely watched quality measure, and can free up a hospital bed more quickly for HCA, potentially generating more insurance reimbursements from a new patient.

That's according to a report from NBC News. The report is based on interviews with six nurses and 27 doctors who currently practice at 16 HCA hospitals in seven states or did so previously. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan and along with Hannah Feldman and Ralph. That's our show. I want to thank our guest again, Hal Weitzman. For those of you listening on the radio, that's our show. For you, podcast listeners, stay tuned for some bonus material we call "The Wrap Up" featuring Francesco DeSantis' *In Case You Haven't Heard*. Catch up on all the latest with Francesco. And a transcript of this program will appear on the *Ralph Nader Radio Hour* Substack site soon after the episode's posted.

Hannah Feldman: Subscribe to us on our *Ralph Nader Radio Hour* YouTube channel. And for Ralph's weekly column, it's free, go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: The American Museum of Tort Law has gone virtual. Go to tortmuseum.org to explore the exhibits, take a virtual tour, and learn about iconic tort cases from history.

David Feldman: We have a new issue of the *Capitol Hill Citizen*. Out now. To order your copy of the *Capitol Hill Citizen* "Democracy Dies in Broad Daylight," go to capitolhillcitizen.com.

Steve Skrovan: And remember to continue the conversation after each show, go to the comments section at ralphnaderradiohour.com and post a comment or question on this week's episode.

Hannah Feldman: The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music, *Stand Up, Rise Up*, was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

Hannah Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody.