

Attorney General Maura Healey  
Office of the Attorney General  
Non-Profit Organizations/Public Charities Division  
One Ashburton Place, Boston, MA 02108

Dear Attorney General Healey —

As the climate crisis worsens, powerful institutions must take responsibility for their contributions to global warming. The Trustees of Boston College, as managers of a non-profit educational institution, are bound by the laws of the Commonwealth to promote the well-being of Boston College's students and community and to further the university's commitment to the "pursuit of a just society." Instead, the Trustees have invested a portion of Boston College's \$2.6 billion endowment in the fossil fuel industry — damaging the world's natural systems, harming poor people and communities of color, and imperiling the university's financial and physical well-being. As concerned students, faculty, political leaders, civic groups, and community members, we ask that you investigate this conduct and that you use your enforcement powers to order the Trustees of Boston College to cease their investments in fossil fuels.

Massachusetts law lays out the rules that charitable managers and investors must follow in managing institutional funds. As stewards of the Boston College endowment, the Trustees are required to act in good faith and with loyalty, taking care that their investments further the purposes of the university. The Trustees may not simply seek profit at all cost: the privileges that Boston College enjoys as a non-profit institution — including exemption from many state and federal taxes — come with the responsibility to ensure that its resources are put to socially beneficial ends. By dedicating university assets to destructive and illegal activity — an estimated \$200 million in fossil fuel stocks — the Trustees have violated these duties to Boston College and the public.

The values that should guide the Trustees' investments are clear. Boston College's mission statement includes commitments to "the pursuit of a just society," "academic freedom," and "careful stewardship of its resources." Boston College touts a dedication to environmental and social justice: its Institutional Master Plan "encourage[s] the University community to contribute time and talent to the larger communities in which they live and work, including efforts in sustainability to ensure the quality of life for future generations." As a Catholic and Jesuit institution, Boston College commits itself to upholding and promoting the Catholic Church's teachings on and guidelines for care of the environment. But, despite Pope Francis's recent directive to Catholic institutions to divest from fossil fuels — and despite the successful divestment efforts of hundreds of Catholic universities — the Trustees have remained steadfast in their support of an industry whose business model is based on environmental destruction and social injustice.

Climate change is not simply an environmental problem. In addition to sea level rise, extreme weather events, and species die-off, climate change causes injuries to all members of society, and particularly to the most vulnerable. Pollution from the combustion of fossil fuels results in an estimated ten thousand premature deaths daily. Communities of color disproportionately experience the pollution and health effects that result from fossil fuel extraction and combustion. Poor people bear the brunt of climate-based economic disruption, as

seen in the plight of migrants and refugees forced from their homes by drought, flooding, and social conflict. Indigenous communities are regularly invaded and harmed by the spread of fossil fuel infrastructure. As a result of the economic precarity and increased burden of care work that results from climate disruptions, women suffer more serious injuries from rising temperatures.

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the Trustees have steadfastly refused to apply Boston College's values to their investment activity. This conduct is especially galling for managers of an institution of higher education. Fossil fuel companies have long engaged in a well-documented campaign to undermine climate science and to distort public debate about how to deal with the climate crisis. The industry's spread of scientific misinformation undermines the work of Boston College faculty and students who are researching and designing solutions for a sustainable future. Likewise, the flow of fossil fuel money to politicians and think tanks has prevented serious government action to address the climate crisis, placing a special burden on young people whose futures will be most impacted by this passivity. Even as they espouse commitments to "academic freedom" and to "to ensure the quality of life for future generations," the Trustees thwart these goals by channeling funds to an industry dedicated to winning short-term profits at the cost of the public good.

A similar inversion of values is seen in the Trustees' funding of climate degradation despite their duty to protect Boston College's physical property. In the coming decades, sea level rise, higher temperatures, pest invasions, and many other environmental changes will pose serious threats to university land and buildings. Administrators will be forced to retrofit facilities and manage infrastructure disruptions, even as air quality on campus deteriorates. Instead of facilitating such injuries, the Trustees should be doing everything in their power to prevent them.

The Trustees are bound by an additional legal duty: the requirement to manage Boston College's assets with prudence. Prudent investment practice simply cannot be squared with the ownership of fossil fuel assets. Investment in the oil, gas, and coal sectors has become excessively risky thanks to increased government regulation and the fossil fuel industry's own failure to diversify its operations and to avoid capital-intensive extraction. Fossil fuel stocks have performed significantly worse than market averages in recent years. In the last several months, the oil industry has begun to crumble, with the COVID-19 pandemic adding to already historic losses. Coal and natural gas likewise stand to lose much of their value as cheaper, more sustainable energy sources become more readily available. For any prudent investor, these signs clearly indicate that continued investment in fossil fuels is a losing proposition.

Exacerbating the industry's poor financial performance is a well-documented pattern of fraud. Fossil fuel companies such as ExxonMobil have long misled investors by concealing the anticipated impact of climate change and energy regulation on the value of assets like untapped oil reserves. Your office is currently suing ExxonMobil over this practice, building off of years of investigative reporting showing that fossil fuel companies' purported values are grossly inflated. The Trustees continue to invest in the sector despite their legal duty to exercise care and prudence in avoiding dangerous securities.

The Trustees cannot plead ignorance of their duty to divest. For years, Boston College students and faculty have pushed for investment practices that align with the university's mission. This pressure was instrumental in the Trustees' decision in the 1980s to withdraw investments from companies doing business in apartheid South Africa, an acknowledgment that their investment activity must comport with Boston College's missions and values. In recent

years, the undergraduate governing body has overwhelmingly passed resolutions calling for the creation of a socially responsible investment committee and for divestment from fossil fuels. An undergraduate referendum calling for divestment passed with 84% of the vote. Numerous letters have been sent to the Trustees on the issue, often in tandem with other Catholic and Jesuit groups. Nonetheless, the Trustees have spurned all efforts at persuasion. In recent months, this intransigence has extended to a refusal even to meet with student leaders advocating divestment. Such behavior cannot be squared with the duty to manage the university's assets in good faith.

It is too late for the Trustees to deny the relation between their investments and climate change. Their obligation under Massachusetts law and the governing documents of Boston College is clear: they must divest from fossil fuels.

We have included below a fuller description of the Trustees' violations, along with documents and reports supporting the claims made in this complaint.

Sincerely,

Concerned alumni, scientists, politicians, and advocacy groups:

*Michelle Wu, Boston City Councilor*  
*Emily Norton, Newton City Councilor*  
*James Hansen, Director of Climate Science,*  
*Awareness and Solutions at Columbia*  
*University's Earth Institute; Former*  
*Director of NASA's Goddard Institute of*  
*Space Studies*

*350 Mass*  
*Atlantic Coast Conference Climate Justice*  
*Coalition*  
*Awakening for Earth*  
*Better Future Project*  
*Boston Catholic Climate Movement*  
*Catholic Divestment Network*  
*Climable*  
*Climate Code Blue*  
*College Climate Coalition*  
*Divest Ed*  
*Extinction Rebellion Boston*  
*Fossil Fuel Divest Harvard*  
*Greater Boston Physicians for Social*  
*Responsibility*  
*GreenFaith*  
*Law Students for Climate Accountability*  
*Massachusetts Sierra Club*  
*Mass Divest Coalition*

*Our Revolution Mass*  
*Resist the Pipelines*

*Adreinne Allen, '01*  
*Husband Allen, GCSOM MBA '09*  
*Raymond Bakaitis, MCAS '71*  
*Matthew Barad, MCAS '19*  
*Joshua Behrens, MCAS '18*  
*Robert Boberg, LSOE '63*  
*David Brooks, BCSSW '72*  
*Edward Byrne, MCAS '18*  
*Evelyn Cassara, BSN '60*  
*Aaron Cecil, parishioner, St. Ignatius*  
*Church*  
*Anni Cecil, GMCAS '97, Professor of*  
*History, Wheaton College*  
*James Congo, MCAS '71*  
*James Connor, parishioner, St. Ignatius*  
*Church*  
*Martin Connor, parishioner, St. Ignatius*  
*Church*  
*Maureen Connor, parishioner, St. Ignatius*  
*Church*  
*Kathleen M. Crawford, MCAS '79*  
*Delia Ridge Creamer, MCAS '16*  
*Paul C. Doherty, Professor of English,*  
*Boston College*

*Kelsey Dullea, MCAS '18*  
*Jim 'Strad' Engler, MCAS '71*  
*Fr. Gerald F. Finnegan, S.J., BA '60, MA '61*  
*Alyssa Florack, MCAS '17*  
*Ann Fowler, Ed. '67*  
*David S. Fowler, Ed. '67*  
*Savannah Freitas, MCAS '20*  
*John Christopher Furlong Jr. '18*  
*Joseph Galeota, MCAS '98, CSON '00, GLSOE & STM '05, CSOM '07*  
*Nick Fuller Googins, MCAS '04*  
*Blake Harvey, MCAS '18*  
*Josh Koretz, parishioner, St. Ignatius Church*  
*Kayla Lawlor, MCAS '20*  
*Xinyan Liu, MCAS '17, LSOE '19*  
*Frances Lamey Ludwig, '63*  
*Erin Lothes, MA '97, Professor of Theology, College of St. Elizabeth*  
*Scott Maddern, CSOM '73*  
*Sirine Mansouri, '18*  
*Mary McDonnell, MCAS '67*

*Cara McPhillips, LSOE '16*  
*Maura Lester McSweeney, MCAS '17, BCSSW '22*  
*Erin Olejnik, MCAS '18*  
*Debra Packard, parishioner, St. Ignatius Church*  
*Nicole Presta, parishioner, St. Ignatius Church*  
*Michael Pring, parishioner, St. Ignatius Church*  
*Therese Pring, parishioner, St. Ignatius Church*  
*Robert Ryan, MCAS '66*  
*Aaron Salzman, MCAS '20*  
*John Sheehan, MCAS '60*  
*Maureen Sheehan, MCAS '60*  
*Juliette Swersky, '19*  
*Maria Termini, parishioner, St. Ignatius Church*  
*Andrew Vaccaro, MCAS '20*  
*Alex Wiedmann*  
*Dan Willis, parishioner, St. Ignatius Church*

Prepared with assistance from attorneys at Climate Defense Project.

cc:

*Peter K. Markell*  
*Chairman, Board of Trustees, Boston College*

*John F. Fish*  
*Vice Chairman, Board of Trustees, Boston College*

*Fr. William P. Leahy, S.J.*  
*President, Boston College*

*John Zona*  
*Chief Investment Officer, Boston College*

*John Burke*  
*Financial Vice President & Treasurer, Boston College*

*Michael Lochhead*  
*Executive Vice President, Boston College*

*Fr. Casey Beaumier, S.J.*  
*Vice President & University Secretary, Boston College*

*Thomas Mogan*  
*Associate Vice President for Student Engagement, Boston College*

*Fr. James Miracky, SJ*  
*Provincial Assistant for Higher Education, Jesuits East Province, Jesuits of US and Canada*

*Vatican Office of Education*  
*Office of Higher Education of the Catholic Church, Congregation for Catholic Education, The Vatican*

*Rev. Eric Cadin*  
*Director, Office For Campus Ministry, Archdiocese of Boston*

## **SUPPORTING DOCUMENTATION**

### *The Trustees' violation of Massachusetts law*

Boston College is a charitable corporation organized under Massachusetts General Law Chapter 180, section 4(a). According to the Bylaws of Boston College, the Trustees “exercises ultimate authority over, and bears ultimate responsibility for, all acts of the Corporation.”<sup>1</sup>

- Continued investment in fossil fuels by the Trustees of Boston College *violates the fiduciary duties spelled out in the Massachusetts Uniform Prudential Management of Institutional Funds Act (UPMIFA)* and in Massachusetts common law.
  - UPMIFA states that, “[s]ubject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.”<sup>2</sup>
  - UPMIFA further requires that, “[i]n addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.”<sup>3</sup>
  - UPMIFA lists several factors that must be considered in managing and investing an institutional fund, including: “general economic conditions . . . the role that each investment or course of action plays within the overall investment portfolio of the fund . . . the expected total return from income and the appreciation of investments . . . [and] an asset’s special relationship or special value, if any, to the charitable purposes of the institution.”<sup>4</sup>
  - The Supreme Judicial Court has written that “[t]hose entrusted with the management of funds dedicated to charitable purposes and donated out of a sense of social or moral responsibility owe an especially high degree of accountability to the individual donors as well as to the community” (noting that the law requires “heightened scrutiny of the management of nonprofit corporations”).<sup>5</sup>
  - Although the directors of charitable institutions may delegate investment authority to an external agent,<sup>6</sup> such delegation does not suspend the duty of each director to act “in good faith and in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position with respect to a similar corporation organized under this chapter would use under similar circumstances.”<sup>7</sup> When reliance upon the advice of an external agent produces results adverse to the mission of the institution, a

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<sup>1</sup> [Boston College University Statutes](#) (adopted by resolution of the Board of Trustees, Mar. 7 1980, amended through June 5 2009).

<sup>2</sup> M.G.L. c. 180A § 2(a).

<sup>3</sup> M.G.L. c. 180A § 2(b).

<sup>4</sup> M.G.L. c. 180A § 2(e)(2).

<sup>5</sup> *Boston Athletic Assn. v. International Marathons, Inc.*, 392 Mass 356, 366 and 366, n. 12 (1984)

<sup>6</sup> M.G.L. c. 180A § 4.

<sup>7</sup> M.G.L. c. 180 § 6C.

director “shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.”<sup>8</sup>

- The Trustees of Boston College have ***failed to consider the charitable purposes of the institution and the purposes of the institutional fund*** by financially supporting the degradation of the climate, widespread damage to ecological and human health, and massive injuries to environmental and social equity. These outcomes of the Trustees’ investment practices are directly contrary to Boston College’s commitment to the “pursuit of a just society” and to “leadership in environmental stewardship and sustainability.” The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene Boston College’s value of “academic freedom” and its mission of “producing nationally and internationally significant research that advances insight and understanding, thereby both enriching culture and addressing important societal needs.”<sup>9</sup> As such, continued investment in fossil fuel holdings ***violates the Trustees’ duty to consider an asset’s special relationship or special value, if any, to the charitable purposes of the institution.***
- The Trustees have ***violated their duty of loyalty*** to the Boston College community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to Boston College property.
- The Trustees have ***violated their duty to act in good faith*** by refusing to abide by their previous commitments to socially responsible investing; by ignoring the warnings of students, faculty, the Catholic Church, and the Attorney General that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus groups to push the university’s investment practices toward a more consistent and sustainable approach.
- The Trustees have ***violated their duty of care*** by investing the university’s endowment in financially risky fossil fuel stocks, which have underperformed for years and are currently at the risk of a general collapse in value. This violation is exacerbated by the Trustees’ failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of investment.
- In a report analyzing analogous fiduciary duties owed by public pension funds, the Center for International Environmental Law concludes that “climate change should be considered an independent risk variable when making investment decisions, and it will trigger the obligations of pension fund fiduciaries . . . . If pension fund fiduciaries do not take the financial risks posed by climate change seriously, they may be subject to liability. A failure to properly consider climate change as a risk factor could result in lawsuits under various theories of liability for breaches of fiduciary duties.”<sup>10</sup>
  - The report identifies four categories of risk to the value of fossil fuel assets: 1) impact risk (the risk of loss due to the physical effects of global warming, such as sea level rise and wildfires); 2) carbon asset risk (the risk that fossil fuel reserves will never be exploited and remain unprofitable); 3) transition risk (the risk that regulation and the growth of renewable energy will render fossil fuel products too

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<sup>8</sup> *Id.*

<sup>9</sup> [The Mission of Boston College](#) (approved by the Board of Trustees May 31 1996).

<sup>10</sup> Center for International Environmental Law, [Trillion Dollar Transformation](#) (December 2016), 1-2.



expensive for or unappealing to consumers); and 4) litigation risk (the risk of financial penalties from lawsuits and other legal actions, such as the Attorney General’s action against ExxonMobil).

- o As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that “[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings.”<sup>11</sup>
- Boston College’s fossil fuel holdings are estimated at \$200 million. Due to the fact that the endowment’s composition is not publicly disclosed, a precise figure is unknown.<sup>12</sup>

### ***Boston College’s social and environmental commitments***

In addition to their general duties to the public as managers of a charity, the Trustees are legally bound to uphold the particular *charitable purposes* and values of Boston College, which include commitments to social justice and environmental well-being. The Trustees have clearly acknowledged in the past that this legal duty extends to the manner in which they invest the university’s assets.

- Boston College’s mission statement commits it to “the pursuit of a just society”; to “producing nationally and internationally significant research that advances insight and understanding, thereby both enriching culture and addressing important societal needs”; to “academic freedom”; and to “careful stewardship of its resources in pursuit of its academic goals.”<sup>13</sup>
- In its 2008 Institutional Master Plan, Boston College reviews its dedication to environmental sustainability, noting that “Boston College recognizes that there are limits to the world’s resources. To ensure the quality of life for future generations, Boston College seeks to demonstrate leadership in environmental stewardship and sustainability.”<sup>14</sup> The Institutional Master Plan goes on to “encourage the University community to contribute time and talent to the larger communities in which they live and work, including efforts in sustainability to ensure the quality of life for future generations.”<sup>15</sup>
  - o The Institutional Master Plan touts Boston College’s efforts to build a sustainable campus, noting the university’s commitment that “development on each campus achieve higher levels of energy efficiency and champion the natural environment”

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<sup>11</sup> *Id.* at 5-7, 12-17, 19

<sup>12</sup> This estimate — which amounts to 7.7% of Boston College’s \$2.6 billion endowment (as of 2020), is based on the disclosed fossil fuel portion of other divested endowments as well as large mutual funds.

<sup>13</sup> [The Mission of Boston College](#).

<sup>14</sup> [Boston College Institutional Master Plan](#) (2008), 10-2.

<sup>15</sup> *Id.* at 10-3.

<sup>16</sup> and its intention “to pursue policies related to planning and land use that are compatible with the natural resources of the area.”<sup>17</sup>

- The Boston College website claims that the university is “committed to creating a greener campus by conserving resources and reducing the impact our services and activities have on the environment” and that it “embraces its sustainability goals” in the areas of “leadership,” “social justice,” “energy and climate change,” and “education and outreach.”<sup>18</sup>
- The Trustees have in the past recognized that their fiduciary duties require screening investments for their consistency with Boston College’s mission and values, and that divestment is at times necessary to satisfy this obligation. In the 1980s, the Trustees divested from companies doing business in apartheid South Africa. Then-Financial Vice President and Treasurer John Smith stated that “if our investment advisor bought stock in a company in clear violation of our ethical standards, we would dump it without questioning it. Some stocks are just not worth it.” Then-President Fr. Donald Monan, SJ stressed that financial considerations were not the most important factor in the divestment decision.<sup>19</sup>
- Until 2016, the Boston College Endowment website had a page titled “Ethical Investment Guidelines” that stated: “In the management of its investments, Boston College reflects the ethical, social, and moral principles inherent in its mission and heritage. In particular, the University is firmly committed to the promotion of the dignity of the individual, personal freedom, and social justice. The Board of Trustees desires that Boston College investments be handled in accordance with these principles so that gains from investments will not be derived from fraud, abusive power, greed, or injustice. A constant attempt will be made to apply these principles to the University’s investment practices. This means that investments held by the University will be examined periodically to ascertain whether the firms involved engage in practices or procedures opposed to the ethical, social, and moral principles guiding Boston College. It also means that the University will not undertake new investments in companies that operate in conflict with these principles.”<sup>20</sup>

### ***Boston College’s Catholic and Jesuit values***

The *charitable purposes* that the Trustees are bound to uphold include Catholic and Jesuit values. As has been made clear in recent statements by the Pope, these values require protection of the environment, the poor, and racial minorities, all of which are harmed by the Trustees’ investments in fossil fuels.

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<sup>16</sup> *Id.* at 1-6.

<sup>17</sup> *Id.* at 10-6.

<sup>18</sup> [Boston College Facilities Management: Sustainability](#) (2020).

<sup>19</sup> Maura Lester McSweeney, [“Setting the World Aflame: Divestment, Ethics, and Jesuit Identity at Boston College.”](#) (*Elements*, Fall 2017), 45-55, 46

<sup>20</sup> [“Ethical Investment Guidelines”](#) (Boston College, May 15 2016).

- Boston College’s mission statement notes that “Boston College draws inspiration for its academic societal mission from its distinctive religious tradition. As a Catholic and Jesuit university, it is rooted in a world view that encounters God in all creation and through all human activity, especially in the search for truth in every discipline, in the desire to learn, and in the call to live justly together.”<sup>21</sup>
- In 2015, Pope Francis released the *Laudato Si’* encyclical, which called for action to protect the natural environment and those most exposed to the dangers of climate change and pollution.<sup>22</sup>
  - Pope Francis opened his plea by noting that “our common home is like a sister with whom we share our life and a beautiful mother who opens her arms to embrace us . . . This sister now cries out to us because of the harm we have inflicted on her by our irresponsible use and abuse of the goods with which God has endowed her. We have come to see ourselves as her lords and masters, entitled to plunder her at will. The violence present in our hearts, wounded by sin, is also reflected in the symptoms of sickness evident in the soil, in the water, in the air and in all forms of life.”<sup>23</sup>
  - The encyclical focused on the problem of global warming: “The climate is a common good, belonging to all and meant for all. At the global level, it is a complex system linked to many of the essential conditions for human life. A very solid scientific consensus indicates that we are presently witnessing a disturbing warming of the climatic system. In recent decades this warming has been accompanied by a constant rise in the sea level and, it would appear, by an increase of extreme weather events, even if a scientifically determinable cause cannot be assigned to each particular phenomenon. Humanity is called to recognize the need for changes of lifestyle, production and consumption, in order to combat this warming or at least the human causes which produce or aggravate it.”<sup>24</sup>
  - Pope Francis continued: “Climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. It represents one of the principal challenges facing humanity in our day . . . Many of those who possess more resources and economic or political power seem mostly to be concerned with masking the problems or concealing their symptoms, simply making efforts to reduce some of the negative impacts of climate change. However, many of these symptoms indicate that such effects will continue to worsen if we continue with current models of production and consumption. There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil fuels and developing sources of renewable energy.”<sup>25</sup>

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<sup>21</sup> [The Mission of Boston College](#).

<sup>22</sup> Pope Francis, [Encyclical Letter \*Laudato Si’\* of the Holy Father Francis on Care for Our Common Home](#) (Libreria Editrice Vaticana, 2015).

<sup>23</sup> *Id.* at ¶¶ 1, 2.

<sup>24</sup> *Id.* at ¶ 23.

<sup>25</sup> *Id.* at ¶ 25, 26.

- The Pope was explicit in naming investment and financial practices as a source of inaction on climate change: “economic powers continue to justify the current global system where priority tends to be given to speculation and the pursuit of financial gain, which fail to take the context into account, let alone the effects on human dignity and the natural environment. Here we see how environmental deterioration and human and ethical degradation are closely linked. Many people will deny doing anything wrong because distractions constantly dull our consciousness of just how limited and finite our world really is.” He went on to ask: “What would induce anyone, at this stage, to hold on to power only to be remembered for their inability to take action when it was urgent and necessary to do so?”<sup>26</sup>
- Speaking specifically of investment practices, Pope Francis noted that “[t]o stop investing in people, in order to gain greater short-term financial gain, is bad business for society” and that “[e]fforts to promote a sustainable use of natural resources are not a waste of money, but rather an investment capable of providing other economic benefits in the medium term. If we look at the larger picture, we can see that more diversified and innovative forms of production which impact less on the environment can prove very profitable.”<sup>27</sup>
- Finally, Pope Francis stated that “[i]f everything is related, then the health of a society’s institutions has consequences for the environment and the quality of human life. ‘Every violation of solidarity and civic friendship harms the environment.’”<sup>28</sup>
- Boston College is a member of the Association of Catholic Colleges and Universities and the Association of Jesuit Colleges and Universities. These associates signed a 2015 letter from Catholic higher education leaders in support of the *Laudato Si’* encyclical. It read, in part: “we commit ourselves as leaders in Catholic Higher Education globally to integrate care for the planet, integral human development, and concern for the poor within our research projects, our educational curricula and public programming, our institutional infrastructures, policies and practices, and our political and social involvements as colleges and universities.”<sup>29</sup>
- In 2020, the Vatican released “Journey Towards Care for Our Common Home: Five Years After *Laudato Si’*,” a set of guidelines for implementing the vision of the 2015 encyclical. The document included a call to divest from companies that harm the environment.
  - The guidelines on financial practice note that “[i]nvestors can encourage positive changes in various sectors of the economy. This is the case when they decide not to invest in companies that fail to meet certain standards (human rights, child labour, environmental and so forth) . . . Those who wish to make ethical investments consonant with their religious beliefs can have recourse to filters and consulting, even though they may at times have to accept a lower profit.”

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<sup>26</sup> *Id.* at ¶¶ 56, 57.

<sup>27</sup> *Id.* at ¶¶ 128, 191

<sup>28</sup> *Id.* at ¶ 142 (quoting Pope Benedict XVI, *Encyclical Letter Caritas in Veritate* (2009), 51: AAS 101 (2009), 687).

<sup>29</sup> Ignatian Solidarity Network, “[Laudato Si: On Care for Our Common Home: Statement of Leaders in Catholic Education Globally](#)” (2015).

- The document specifically calls on Catholic institutions to “[p]romote ethical, responsible, and integral criteria for investment decision making, taking care not to support companies that harm human or social ecology (for example, through abortion or the arms trade), or environmental ecology (for example, through the use of fossil fuels),” and, “through networks and universities, [to] raise awareness about ethics, the common good and responsibility in banking and the financial intermediation sector.” The document stated that Catholic institutions should “[p]romote responsible investments in social and environmental sectors, for example by evaluating progressive divestment from the fossil-fuel sector.”<sup>30</sup>
- In October 2020, Pope Francis reiterated his commitment to divestment from fossil fuels, explicitly calling on investors to pull their money from companies that damage the environment.<sup>31</sup>
- The United States Conference of Catholic Bishops’ Socially Responsible Investment Guidelines states that “[s]ocially responsible investment involves investment strategies based on Catholic moral principles. These strategies are based on the moral demands posed by the virtues of prudence and justice.” The Guidelines specifically state that the Conference will divest from those companies whose policies are found to be discriminatory against people of varied ethnic and racial backgrounds that have been historically disadvantaged.”<sup>32</sup> As described more fully in the section below, fossil fuel companies fall into this category, as the environmental effects of their business activity disproportionately harm Indigenous, non-white, and poor communities.
- The Jesuit Refugee Service — with which Boston College has formed a partnership<sup>33</sup> — has recognized climate change as a major factor in the displacement of refugees, and has committed to “urgently work to address climate change, as well as the recognition that the environment is central to achieving our missions to serve the world’s poorest and most vulnerable people.”<sup>34</sup>

### *Fossil fuel companies and climate change*

The *charitable purposes* of Boston College are directly contravened by the business activity of fossil fuel companies, which produces and exacerbates climate change. By funding this activity, the Trustees expose the Boston College community and society at large to severe injury, violating the *duty of loyalty*.

- Climate change is a result of global warming produced primarily by increased anthropogenic releases of carbon dioxide. The main contributor to these releases is the combustion of fossil fuels.

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<sup>30</sup> Interdicasterial Working Group of the Holy See on Integral Ecology, [“Journey Towards Care for Our Common Home: Five Years After \*Laudato Si’\*.”](#) 177-9 (2020).

<sup>31</sup> Philip Pullella, [“Pull investments from companies not committed to environment, pope says”](#) (*Reuters*, Oct. 10, 2020).

<sup>32</sup> United States Conference of Catholic Bishops, [Socially Responsible Investment Guidelines](#). (Nov. 12 2003).

<sup>33</sup> Sean Smith, [“BC partners with Jesuit Refugee Service”](#) (*BC News*, May 2019).

<sup>34</sup> [“Climate Refugees—Your Questions Answered”](#) (Jesuit Refugee Service, Apr. 22 2019).

- According to the Intergovernmental Panel on Climate Change (IPCC), the leading global authority on climate science, human activity has already caused global temperatures to rise 1 degree Celsius over pre-industrial levels. If the current rate of emissions continues, temperatures will likely reach 1.5 degrees Celsius above pre-industrial levels between 2030 and 2052.<sup>35</sup>
  - The IPCC concludes that 1.5 degrees Celsius of warming will result in serious harms to human health, economic well-being, food security, water supplies, biodiversity, and the stability of ocean levels and temperatures.<sup>36</sup>
  - In order to keep warming below 1.5 degrees Celsius, the IPCC calculates that emissions of carbon dioxide must decline 45% from 2010 levels by 2030 and reach net zero by 2050.<sup>37</sup> The IPCC 2018 report states that “[p]athways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems . . . These systems transitions are unprecedented in terms of scale, but not necessarily in terms of speed, and imply deep emissions reductions in all sectors.”<sup>38</sup>
- The Fourth National Climate Assessment, released in 2018 by thirteen federal agencies comprising the U.S. Global Change Research Program (USGCRP), noted that “[t]he impacts of climate change are already being felt in communities across the country. More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality.”<sup>39</sup>
  - The USGRCP report concluded that, as a result of climate change, “annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states.”<sup>40</sup>

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<sup>35</sup> Intergovernmental Panel on Climate Change (IPCC), [“Summary for Policymakers.”](#) *Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*. V. Masson-Delmotte, P. Zhai, H. O. Pörtner, D. Roberts, J. Skea, P. R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J. B. R. Matthews, Y. Chen, X. Zhou, M. I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, T. Waterfield, eds. (Geneva: World Meteorological Organization, 2018), 4.

<sup>36</sup> *Id.* at 4-10.

<sup>37</sup> *Id.* at 12.

<sup>38</sup> *Id.* at 15.

<sup>39</sup> U.S. Global Change Research Program, [Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States](#), Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart, eds. (2018, revised 2020), 25

<sup>40</sup> *Id.* at 26.

- As a result of climate change, the Boston area is expected to experience dramatic increases in sea level rise, coastal storms, extreme precipitation events, and extreme heat over the next century.<sup>41</sup>
- The fossil fuel industry remains resolutely committed to a business model that exacerbates climate change. For example, the 2018 investment plan by ExxonMobil, one of the world’s largest oil companies, predicted that the firm’s expanded oil and gas production would directly release an additional 21 million tons of carbon dioxide annually by 2025. When added to the emissions released by “end uses” of the company’s products, the total additional emissions of ExxonMobil’s growth strategy would amount to around 100 million tons of carbon dioxide per year. This figure — which represents only the anticipated *expansion* of ExxonMobil’s business — is roughly equivalent to the entire annual emissions of the country of Greece. (ExxonMobil’s growth strategy has since changed in light of the COVID-19 pandemic).<sup>42</sup>
- Boston College itself produces scientific and policy research that demonstrates the harmful consequences of fossil fuel use and the need to eliminate oil, gas, and coal from the global economy. A 2020 report by the Boston College Schiller Center for Integrated Science and Society examines interventions in developing countries and identifies “the most successful, practical actions to achieve co-benefits of pollution reduction and climate change mitigation.”
  - The Schiller Center report concludes that “[t]he single most effective action to achieve co-benefits is to phase out the use of coal and other fossil fuels . . . for power production.”
  - The report concludes further that “[t]he major damage to health and the largest driver of increased climate effects is the combustion of fossil fuels to provide energy for households and industry and to support the expansion of affordable transport for billions. The only sustainable solution lies in finding alternatives to the growing use of fossil fuel.”<sup>43</sup>

### *The social effects of climate change*

Mounting evidence demonstrates that fossil fuel investments create disproportionate burdens on people of color, Indigenous communities, and poor communities. Such investments also harm the public health and property of Massachusetts residents, including those in the Boston College community, violating the Trustees’ duties to *consider the charitable purpose* of Boston College and to act with *loyalty* towards its community and property.

- Climate change has massive social impacts on so-called frontline communities, including minority and Indigenous communities that disproportionately experience the effects of air

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<sup>41</sup> Boston Research Advisory Group, [Climate Change and Sea Level Rise Projections for Boston](#) (Climate Ready Boston, June 1 2016).

<sup>42</sup> Kevin Crowley and Akshat Rathi, [“Exxon’s Plan for Surging Carbon Emissions Revealed in Leaked Documents”](#) (*Bloomberg*, Oct. 5 2020).

<sup>43</sup> Boston College Schiller Institute for Integrated Science and Society, Global Alliance on Health and Pollution, and Air Quality Asia, [Air Pollution Interventions: Seeking the Intersection Between Climate and Health](#) (2020), 4, 7, 37

pollution, sea level rise, drought, and other warming consequences.<sup>44</sup> In general, those who have contributed the least to the climate crisis by virtue of their economic position stand to suffer the most from dislocation and natural disasters caused by increased warming.

- Climate change exacerbates racial inequality by focusing health and economic injuries on people of color, who tend to have fewer economic resources to adjust to rising temperature, are more likely to live in flood-prone and high-heat areas, and tend to receive less government assistance to deal with emergencies.<sup>45</sup>
- According to a study from the Program for Environmental and Regional Equity at the University of Southern California, racial minorities will disproportionately suffer from an inability to pay for basic necessities and for decreased job prospects in sectors such as agriculture and tourism as the climate crisis accelerates.<sup>46</sup>
- The spread of fossil fuel infrastructure — business activity which lies at the source of the climate crisis — has had a particularly harmful effect on Indigenous peoples, whose communities are often invaded and polluted by private companies working in concert with state actors. According to the United Nations Department of Economic and Social Affairs, “[c]limate change exacerbates the difficulties already faced by indigenous communities including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.”<sup>47</sup>
- Migration due to climate change has increased in recent years and is anticipated to grow exponentially in coming years as many areas of the globe become inhospitable to agriculture and human habitation, provoking political and social instability.<sup>48</sup>
- The Massachusetts Department of Public Health predicts that state residents will suffer increased exposure to Lyme disease, Salmonella, water-related infections, and mental health stresses as a result of rising global warming.<sup>49</sup>
- Massachusetts businesses and properties are already being impacted by climate change, particularly by flooding, and anticipated sea-level rise will require major changes to Boston-area building infrastructure.<sup>50</sup>
- Damage to state and public infrastructure, such as public transportation and electric utilities, is expected as a result of increased temperatures, affecting the areas where

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<sup>44</sup> Mary Robinson Foundation, *The Geography of Climate Justice* (2011).

<sup>45</sup> Steven Hiseh, [“People of Color Are Already Getting Hit the Hardest by Climate Change”](#) (*The Nation*, Apr. 22 2014); Office of Health Equity's Climate Change and Health Equity Program, [“Racism Increases Vulnerability to Health Impacts of Climate Change”](#) (California Department of Public Health, Aug. 17 2020).

<sup>46</sup> Rachel Morello Frosch, Manuel Pastor, Jim Sadd, and Seth Shonkoff, *The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap* (University of Southern California Program on Environmental and Regional Equity, May 2009).

<sup>47</sup> United Nations Department of Economic and Social Affairs — Indigenous Peoples, [“Climate Change”](#) (2020).

<sup>48</sup> Michael Werz and Laura Conley, *Climate Change, Migration, and Conflict* (Center for American Progress, 2012).

<sup>49</sup> Massachusetts Department of Public Health, [“Climate and Health Profiles”](#) (Sep. 24 2020).

<sup>50</sup> Kathryn Wright, Jeremy Koo, and Andy Belden, *Enhancing Resilience in Boston: A Guide for Large Buildings and Institutions* (A Better City, Feb. 2015).



Boston College owns property and causing the effects of climate change to be borne by the general public.<sup>51</sup>

- Climate change causes an increase in the frequency of pandemics such as COVID-19: according to the Intergovernmental Platform on Biodiversity and Ecosystem Services, climate change will “cause substantial future pandemic risks and other localized disease emergence.”<sup>52</sup> A recent paper published in *The New England Journal of Medicine* concludes that the climate crisis exacerbates the effects of COVID-19, as high heat, wildfire smoke, and high pollen counts amplify underlying conditions such as pulmonary disease, and as emergency responses to events such as hurricanes and fires reduce the ability to mitigate COVID-19 spread. These effects are felt particularly by the most vulnerable communities.<sup>53</sup>

### *The financial risk of fossil fuel investments*

As asset managers, the Trustees have violated their *duty of care* by failing to divest from fossil fuels despite ample evidence of the industry’s financial precarity. The untenable value thesis of fossil fuel investments is especially concerning for investors at charitable institutions. As a public charity dedicated to “the pursuit of a just society,” Boston College is ostensibly committed to mitigating the worst effects of climate change. Such mitigation requires government regulation to reduce greenhouse gas emissions and the growth of the green technology sector — developments that pose an existential threat to the fossil fuel industry. In other words, the Trustees’ fiduciary duties oblige them to promote the financial non-viability of the fossil fuel sector, making any continued investment in the sector unreasonable on its face.

- Oil, gas, and coal companies face an extremely uncertain financial future due to mismanagement, the failure to prepare for a renewable energy economy, social pressures and unrest created by the unequally distributed health and economic burdens of fossil fuel products, and the pressures of COVID-19.
  - Oil and gas stocks have greatly underperformed other investments over the last 10 years. While the S&P 500 has gained approximately 187% in value since 2010, the S&P Oil and Gas Exploration and Production fund has lost approximately 75% of its value and the S&P Oil and Gas Equipment and Services Fund has lost approximately 90% of its value.<sup>54</sup> Even prior to the COVID-19 crisis, leading financial analyst Jim Cramer stated that fossil fuel stocks were “just done” as profitable investments, thanks to falling demand and the impact of divestment campaigns.<sup>55</sup>

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<sup>51</sup> [City of Newton Climate Change Vulnerability Assessment and Action Plan](#) (City of Newton, Dec. 2018).

<sup>52</sup> Intergovernmental Platform on Biodiversity and Ecosystem Services, [IPBES Workshop on Biodiversity and Pandemics: Workshop Report](#) (Oct. 29 2020).

<sup>53</sup> Renee Salas, James M. Schultz, and Caren G. Solomon, [“The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response.”](#) (*New England Journal of Medicine* Sep. 10 2020).

<sup>54</sup> Data from [S&P Dow Jones Indices](#) (S&P Global, Dec. 2020).

<sup>55</sup> Kevin Stankiewicz, [“There’s no more money to be made in oil and gas stocks, Jim Cramer says”](#) (*CNBC*, Feb. 3 2020).

- From the fourth quarter of 2019 to August 2020, seven of the world’s largest oil companies lost \$87 billion in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.<sup>56</sup>
- Larry Fink, the CEO of BlackRock, the world’s largest investment manager, wrote in a January 2020 letter to corporate CEOs that “[c]limate change has become a defining factor in companies’ long-term prospects . . . and I believe we are on the edge of a fundamental reshaping of finance.”
  - Fink noted that “climate risk is investment risk” and that asset managers have a duty to promote investments that help transition the economy away from fossil fuels: “As a fiduciary, our responsibility is to help clients navigate this transition. Our investment conviction is that sustainability- and climate-integrated portfolios can provide better risk-adjusted returns to investors. And with the impact of sustainability on investment returns increasing, we believe that sustainable investing is the strongest foundation for client portfolios going forward.”
  - Fink listed several measures to ensure that BlackRock’s investments align with a sustainable future and the warming targets set under the Paris Agreement. These investment strategies include “making sustainability integral to portfolio construction and risk management; exiting investments that present a high sustainability-related risk, such as thermal coal producers; launching new investment products that screen fossil fuels; and strengthening our commitment to sustainability and transparency in our investment stewardship activities.”<sup>57</sup>
- In August, ExxonMobil was dropped from the Dow Jones stock index, a reflection of the company’s rapidly declining business: since 2008, its market capitalization has shrunk from \$500 billion to around \$175 billion.<sup>58</sup>
- Since 2010, and the midst of this financial crisis, the world’s five oil “supermajors” — ExxonMobil, BP, Chevron, Shell, and Total SA — have spent far more on dividends and stock buybacks (\$556 billion) than they have earned from business operations (\$340 billion), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.<sup>59</sup>
- The coal industry, especially in the United States, is collapsing: the share of U.S. electricity produced by coal has declined from 45% in 2008 to 24% in 2020, while eight coal companies, including the largest private coal firm, declared bankruptcy in 2019.<sup>60</sup>
- As outlined in *The Financial Case for Fossil Fuel Divestment* by the Sightline Institute and the Institute for Energy Economics and Financial Analysis, investment in the fossil fuel sector is now unacceptably risky thanks to price volatility, the rise of renewable energy sources, and government climate regulations. The traditional value thesis that justified investment in the sector — based on the assumptions that demand for oil, gas,

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<sup>56</sup> Jillian Ambrose, [“Seven top oil firms downgrade \\$87bn in nine months.”](#) (*The Guardian*, Aug. 14 2020).

<sup>57</sup> Larry Fink, [“A Fundamental Reshaping of Finance.”](#) (*BlackRock*, Jan. 14 2020).

<sup>58</sup> Avi Salzman, [“Why Exxon Is Being Dropped From the Dow.”](#) (*Barron’s* Aug. 25 2020).

<sup>59</sup> Clark Williams-Derry, Tom Sanzillo, and Kathy Hipple, [In Q1, Four of Five Oil Majors Paid More Cash to Investors Than They Made From Operations](#). (*Institute for Energy Economics and Financial Analysis*, May 2020).

<sup>60</sup> Fred Pearce, [“As Investors and Insurers Back Away, the Economics of Coal Turn Toxic”](#) (*Yale Environment 360*, March 10 2020).

and coal will continue to grow and that companies' extensive untapped reserves represent a sure source of future profits — are no longer tenable.<sup>61</sup>

- There are various reasons for the fossil fuel industry's transformation from a secure source of investment returns to a dangerously speculative risk sector: "The world economy is shifting toward less energy-intensive models of growth, fracking has driven down commodity and energy costs and prices, and renewable energy and electric vehicles are gaining market share. Litigation on climate change and other environmental issues is expanding and campaigns in opposition to fossil fuels have matured. They are now a material risk to the fossil fuel sector and a force for the reallocation of capital to renewable energy and electric vehicles as a source of economic growth. The risks, taken cumulatively, suggest that the investment thesis advanced by the coal, oil and gas sector that worked for decades has lost its validity."<sup>62</sup>
- The report notes that "[t]he financial case for fossil fuel divestment is strong. Over the past three and five years [prior to 2018], respectively, global stock indexes without fossil fuel holdings have outperformed otherwise identical indexes that include fossil fuel companies. Fossil fuel companies once led the economy and world stock markets. They now lag . . . Fossil fuel stocks, once prime blue-chip contributors to institutional funds, are now increasingly speculative. Revenues are volatile, growth opportunities are limited, and the outlook is decidedly negative."<sup>63</sup>
- Comparing fossil fuel-free funds to traditional funds, the report concludes that divesting endowments of oil, gas, and coal holdings poses no risk to future returns: "Over the past five years, the MSCI-All Country Global Index without fossil fuels has outperformed the Index that includes fossil fuels."<sup>64</sup>
- According to a 2019 study by the Mercer consulting firm, investment portfolios will be greatly affected by future global warming. If warming is held to 2 degrees Celsius — the target set by the 2015 Paris Agreement — the global economy will suffer significant damage from climate change while also transitioning to a renewable energy base. In this scenario, according to the study, portfolio assets in the coal industry will suffer cumulative impacts of -58.9% by 2030 and -100% by 2050, while assets in oil and gas will suffer cumulative impacts of -42.1% and -95.1%, respectively.<sup>65</sup>
- In its most recent financial stability report, the Federal Reserve reported that "climate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks."<sup>66</sup>
- A wave of litigation against companies responsible for climate change damages poses an additional risk to investment in the fossil fuel sector. A report from the law firm Clyde &

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<sup>61</sup> Tom Sanzillo, Kathy Hipple, and Clark Williams-Derry, [The Financial Case for Fossil Fuel Divestment](#) (Sightline Institute and the Institute for Energy Economics and Financial Analysis, July 2018)

<sup>62</sup> *Id.* at 4.

<sup>63</sup> *Id.* at 1.

<sup>64</sup> *Id.* at 38.

<sup>65</sup> Mercer LLC, [Investing in a Time of Climate Change: The Sequel 2019](#) (2019), 34

<sup>66</sup> Board of Governors of the Federal Reserve System, [Financial Stability Report](#) (Nov. 2020), 58

Co LLP concludes that “[o]il majors are currently facing threatened or pending litigation on a number of fronts and across a number of jurisdictions. Their liability insurers and reinsurers will undoubtedly be watching these cases with keen interest . . . Companies in a number of sectors may find themselves exposed not just to damages claims for climate change, but also the cost of defending litigation, the reputational harm of being associated with such litigation and the consequential impacts on operations and value.”<sup>67</sup>

- In a sign of the growing consensus that fund managers have a duty to assess climate risks in their portfolios, the multibillion-dollar Australian Retail Employees Superannuation Trust (REST) recently settled a beneficiary lawsuit that faulted the fund for failing to disclose how it would manage the risks posed by climate change and the plummeting value of fossil fuel stocks. REST acknowledged that “climate change is a material, direct and current financial risk” and committed to manage its investments in a way that would support net-zero greenhouse gas emissions by 2050 and the Paris Agreement goal of 1.5 degrees Celsius warming.<sup>68</sup>

### ***Industry fraud and the fiduciary duty to avoid fraudulent investments***

Despite well-known facts regarding the fossil fuel industry’s efforts to defraud investors, the Trustees have persisted in buying industry securities, resulting in a violation of their *duty of care*.

- Fossil fuel companies have long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This fraud has been a matter of public record since at least 2015<sup>69</sup> and a matter of common knowledge for investors in Massachusetts since at least 2019, when the Attorney General sued ExxonMobil for misleading consumers and investors.
  - In 2019, the Massachusetts Attorney General sued ExxonMobil, one of the world’s leading oil companies, for three alleged violations of the Massachusetts Consumer Protection Act.
    - The state’s Second Amended Complaint alleges that “[f]or many years, Exxon Mobil Corporation (“ExxonMobil” or the “Company”), the world’s largest publicly traded oil and gas company, systematically and intentionally has misled Massachusetts investors and consumers about climate change. In order to increase its short-term profits, stock price, and access to capital, ExxonMobil has been dishonest with investors about the material climate-driven risks to its business and with consumers about how its fossil fuel products cause climate change—all in violation of Massachusetts law.”<sup>70</sup>

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<sup>67</sup> Clyde & Co LLP, [Climate change: Liability risks](#) (March 2019), 37.

<sup>68</sup> Michael Slezak, [“Rest super fund commits to net-zero emission investments after Brisbane man sues”](#) (*ABC News*, Nov. 2 2020).

<sup>69</sup> Neela Banerjee, Lisa Song, and David Hasemyer, [“Exxon’s Own Research Confirmed Fossil Fuels’ Role in Global Warming Decades Ago”](#) (*Inside Climate News*, Sep. 16, 2015).

<sup>70</sup> Second Amended Complaint, *Massachusetts v. ExxonMobil*, No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5 2020) at 1.

- According to the Complaint, ExxonMobil scientists in the 1970s accurately predicted the rate of global warming that would be caused by fossil fuel use. The company was well aware of how its business activity would damage the planet; for example, a company scientist told management in 1981 that climate change will “produce effects which will indeed be catastrophic” and that it would be necessary to sharply reduce fossil fuel use.<sup>71</sup>
- Despite this knowledge, ExxonMobil — like many of its peers in the industry — persisted in a “highly misleading” campaign to spread doubt about climate science and to prevent measures that would decrease the use of fossil fuels. As late as 2015, ExxonMobil’s CEO was publicly disputing the scientific consensus that rising atmospheric carbon dioxide levels produce catastrophic warming.<sup>72</sup>
- The Attorney General concluded that ExxonMobil’s value will fall precipitously in coming years, thanks in large part to an expected transition to renewable energy that will make the companies’ oil and gas reserves valueless: “When those reserves cease to have future value, other things being equal, ExxonMobil securities are likely to decline in value as well, perhaps dramatically, much as the market value of coal companies has collapsed in recent years as the deployment of cleaner, more efficient fuel sources has reduced expected future coal demand.”<sup>73</sup>
- According to the Complaint, “The systemic risk climate change poses to the world’s financial markets is comparable to, and could well exceed, the impact of the 2008 global financial crisis . . . The risks of climate change and regulatory responses to it pose an existential threat to [the company’s] business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors.”<sup>74</sup>
- The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like Boston College in danger of serious financial damage: “ExxonMobil’s omissions and misrepresentations put its Massachusetts investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances.”<sup>75</sup>
- Despite the revelation of this fraudulent behavior, and in the face of existential threats to their business models, oil companies continue to refuse to provide investors with any assurances that they are preparing for the effects of climate change. ExxonMobil and Chevron, for example, have blocked shareholder proposals that ask the companies to

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<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 9, 50-51.

<sup>73</sup> *Id.* at 8.

<sup>74</sup> *Id.* at 65, 80-81.

<sup>75</sup> *Id.* at 138.

describe how they will adjust their operations to satisfy the warming targets established under the Paris Agreement.<sup>76</sup>

### *The financial prudence of fossil fuel divestment*

The Trustees have also violated their *duty of care* by failing to act on the fact that fossil fuel divestment, in addition to being required by charitable duties, is a financially prudent investment strategy.

- Divestment from fossil fuels does not threaten the profitability of invested funds and thus does not violate a fiduciary’s duty to ensure the prudent management of an endowment. In recent years, investment portfolios lacking fossil fuel holdings have matched or outperformed funds still containing the risky investments.
  - The most comprehensive study to date of the endowment performance at universities that have divested from fossil fuels concludes that divestment does not have a negative effect on investment returns.<sup>77</sup>
  - A 2019 study of university endowments that adopt “socially responsible investment” [SRI] policies concludes that such policies benefit the universities. Surveying SRI endowment returns from 2010 to 2019, the study reports that “donations are 33.3% per year higher among universities that incorporate SRI policies into their endowments” and that “SRI policies predict greater university donations, higher student enrollment, and more extensive risk management practices by the endowment fund.”<sup>78</sup> While the study suggests that SRI policies such as fossil fuel divestment may come at a small financial cost to university endowments, this finding is likely out of date due to the fossil fuel sector’s rapidly deteriorating financial outlook (see above).
  - For example, the Canadian Genus Capital Fossil Free CanGlobe Equity Fund — which excludes investments in oil, gas, or coal companies as well as utilities and transportation companies that rely on fossil fuels — produced a 12.83% annualized return from July 2013 to July 2019, outperforming its benchmark and the overall Canadian stock market.<sup>79</sup>
  - In 2020, the financial research agency Morningstar reported that European sustainable investment funds — defined as “funds that use environmental, social, and governance criteria as a key part of their security selection and portfolio-construction process, and/or indicate that they pursue a sustainability-related theme, and/or seek a measurable positive impact alongside

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<sup>76</sup> Dana Drugman, [“Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk”](#) (*The Climate Docket*, Jan. 29 2020).

<sup>77</sup> Christopher Ryan and Christopher Mariscano, [Examining the Impact of Divestment from Fossil Fuels on University Endowments](#), (17 *NYU J. L. and Business*, Roger Williams Univ. L. Studies Paper No. 195, June 23 2020).

<sup>78</sup> George O. Aragon, Yuxiang Jiang, Juha Joenväärä, and Cristian Ioan Tiu, [Socially Responsible Investments: Costs and Benefits for University Endowment Funds](#) (July 21 2020), 5.

<sup>79</sup> Genus Fossil Free Investing, [Divestment Report: Six Years of Fossil Free Investing](#) (2019).

financial return” — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.

### ***Divestment by peer institutions***

In light of divestment by hundreds of large institutional investors, including many universities like Boston College, the Trustees have failed to *invest with the care that an ordinarily prudent person in a like position would exercise under similar circumstances*.

- Institutional investment from the fossil fuel industry has become increasingly common in recent years. Echoing the points made above, those divesting from fossil fuels point to the moral and financial imperative of abandoning holdings in oil, gas, and coal.
  - In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is an effective means of reducing the fossil fuel industry’s harmful effects on the climate, citing the example of Boston College’s peer institutions such as Georgetown University: “Insofar as they damage companies’ reputations for their social responsibility and environmental stewardship, and thus their societal ‘license to operate,’ divestment efforts pose an additional climate-related risk to oil and gas companies. In 2018, an oil major that competes with ExxonMobil acknowledged that divestment campaigns and related efforts pose a material risk to its business and the price of its securities.”<sup>80</sup>
  - Many major universities have committed to stripping their endowments of fossil fuel assets, acknowledging that such holdings are inconsistent with their charitable, educational, and scientific missions. These institutions include: Boston University (coal and tar sands), Brandeis University (coal), Brown University, Columbia University (coal), Cornell University, George Washington University, Johns Hopkins University (coal), Middlebury College, Oxford University, Stanford University (coal), Syracuse University, the University of California, the University of Cambridge, the University of Massachusetts, the University of Vermont, and Yale University (partial).<sup>81</sup>
  - Hundreds of faith-based organizations have also divested, including the Church of England (coal and tar sands), the Episcopal Church, USA (partial), the Islamic Society of North America, the Lutheran World Federation, the Unitarian Universalist Association, the United Church of Christ, and the World Council of Churches.<sup>82</sup>
  - Pension funds that have divested from fossil fuels include the California Public Employees’ Retirement System (coal), the California State Teachers’ Retirement System (coal), the country of Ireland, the New York City Employees Retirement System, the New York State Common Retirement Fund, the Teachers Retirement

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<sup>80</sup> Second Amended Complaint, *Massachusetts v. ExxonMobil* at 109.

<sup>81</sup> *GoFossilFree.org*, [“1000+ Divestment Commitments”](#) (updated Dec. 9 2020).

<sup>82</sup> *Id.*

System of the City of New York, and the City of Providence, Rhode Island (partial).<sup>83</sup>

- Other major funds that have divested include Norway’s \$1.1 trillion sovereign wealth fund (oil and gas exploration and production)<sup>84</sup> and the \$90 billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).<sup>85</sup>
- Hundreds of Catholic institutions, such as archdioceses and national conferences of bishops and Jesuits, have divested from fossil fuels.<sup>86</sup> In November 2020, 42 additional Catholic institutions committed to divestment, including the Association of U.S. Catholic Priests and the Commission of the Bishops’ Conferences of the European Union.<sup>87</sup>
- Catholic universities like Boston College have likewise divested from the fossil fuel industry, citing their Catholic mission as a special reason to cease supporting the industry’s destructive activities.
  - After committing to fossil fuel divestment in 2014, the University of Dayton has reallocated its oil, gas, and coal assets to sustainable holdings and has seen no negative impact on its overall endowment performance.<sup>88</sup>
  - On February 6, 2020, Georgetown University, a Jesuit institution like Boston College, announced its plans to “divest from public securities of fossil fuel companies within the next five years and divest from existing private investments in those companies over the next 10 years.” In the university’s press release announcing the decision, Georgetown’s chief investment officer Michael Barry noted that “climate change, in addition to threatening our planet, is increasing the risk of investing in oil and gas companies, as we expect a more volatile range of financial outcomes.”<sup>89</sup> The university’s divestment decision was based on the recommendation of its Committee on Investments and Social Responsibility [CISR], which underscored the following points in a memorandum to the university’s investment committee:
    - The exploration and extraction of fossil fuels “directly contribute to climate change because burning these fuels increases atmospheric carbon dioxide, one of the major causes of climate change. Therefore, we recommend that Georgetown avoid investments in companies whose primary business is the exploration or extraction of fossil fuels. Further, CISR believes this proposal can be achieved with limited long-term risk to the endowment. Georgetown, as both a Catholic and Jesuit institution and leading global university, should not only ‘do no harm’ through

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<sup>83</sup> *Id.*

<sup>84</sup> Terje Solsvik, [“Norway sovereign wealth fund to divest oil explorers, keep refiners”](#) (*Reuters*, Oct. 1 2019).

<sup>85</sup> Jillian Ambrose, [“Major investment firm dumps Exxon, Chevron and Rio Tinto stock”](#) (*The Guardian*, Aug. 24 2020).

<sup>86</sup> Global Catholic Climate Movement, [“Who Is Divesting and Why?”](#) (updated Oct. 27 2020).

<sup>87</sup> Brian Roewe, [“42 Catholic institutions to divest from fossil fuels, bring total to over 200.”](#) (*EarthBeat*, Nov. 16, 2020).

<sup>88</sup> Brian Roewe, [“How the University of Dayton divested from fossil fuels — and what happened to its bottom line”](#) (*EarthBeat*, Jul. 14 2020).

<sup>89</sup> [Fossil Fuels Divestment Continues Georgetown’s Commitment to Sustainability](#) (Georgetown University, Feb. 6, 2020).



- management of its endowment but also use its power as an institutional investor to invest in solutions to climate change.”
- “Divesting from fossil fuel companies and investing in clean energy will advance Georgetown’s sustainability goals. The University promotes care for creation and environmental sustainability through many different academic initiatives, University programs, and operational projects. Aligning the University’s endowment with the ongoing work of our faculty, students, and staff will demonstrate Georgetown’s commitment to promote the common good by doing our part to address the global climate crisis.”<sup>90</sup>
  - On September 12, 2018, the Board of Trustees of Seattle University, a Jesuit institution like Boston College, approved the recommendations of its Socially Responsible Investments [SRI] Advisory Working Group, committing the university to “fully divest the marketable portion of the endowment from any investments in companies owning fossil fuel reserves” by June 30, 2023. The recommendations adopted by the Board included the following conclusions:
    - “Few issues are as urgent to our students and all humanity as climate change. We can neither ignore the dire warnings of science nor the moral responsibility to confront climate change in every way possible. Our Jesuit education at its core calls us to act with integrity in discerning and responding to the moral issues of the day.”
    - “Climate change, and its many consequences, is creating a very different world that we must all prepare for and for which we must prepare our students. The knowledge that a fossil-fuel based economy drives rising sea levels, increasingly extreme weather and unprecedented loss of biodiversity should be a primary consideration in what it means to be ‘just and humane.’ Consequently, for Seattle University to remain a credible force for promoting justice and sustaining the common good, it must continuously re-examine its dependence on fossil fuel exploitation.”
    - “The consequences of a decision against divestment are also worth considering. At this stage, many would perceive such a decision as support for an economic status quo that uses the argument of ‘fiduciary responsibility’ to justify the maximization of returns despite social or environmental cost. Given the severity of the global warming issue, this would raise questions regarding the university’s commitment to mission, damaging our ability to attract and retain students for whom the idea of mission resonates. On the other hand, divesting would not only respect the institutional governance systems at Seattle U, but also it would highlight the ability of students to make a difference, thereby empowering them to continue advocating for justice.”
    - “We find it unlikely that donors expected the university to follow a completely amoral approach to investing and the university has already

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<sup>90</sup> Letter from Committee on Investments and Social Responsibility to Committee on Finance and Administration, Georgetown University Board of Directors: “[Recommendation on Sustainable Impact Investments and Fossil Fuel Divestment.](#)” (Jan. 16 2020).

decided that social issues should be incorporated into its financial planning. This is why the SRI committee was created in the first place. In light of our mission, it is important for the university to consider more than just maximization of financial return.”<sup>91</sup>

### ***The Trustees’ refusal to consider divestment from fossil fuels***

The Trustees have failed to act in *good faith* by ignoring repeated efforts by Boston College students and faculty to align the university’s investment practices with its charitable mission.

- Members of the Boston College community have long argued that their university’s investment practices must comport with its Catholic and Jesuit values and with its mission as a public charity and institute of higher education.
  - In 2004, the Boston College Global Justice Project presented a proposal to University President Reverend William P. Leahy, S.J. to establish an advisory committee on socially responsible investment.<sup>92</sup>
  - In 2013, the Undergraduate Government of Boston College passed, by a 17-1 margin, a resolution calling on the university to divest all its fossil fuel holdings.<sup>93</sup>
  - In 2018, the Undergraduate Government of Boston College passed, by a 18-2 margin, a resolution reaffirming their previous call for the university to divest all fossil fuel holdings, citing new scientific, economic, and theological research.<sup>94</sup>
  - In 2019, an undergraduate referendum calling on Boston College to divest from fossil fuels passed with 84% of the vote. A university spokesman subsequently reiterated the administration’s refusal to do so.<sup>95</sup>
  - In 2019, divestment advocates at Boston College and in Catholic climate justice groups sent a letter to the Trustees asking that they act in accordance with the university’s Catholic values and the directives of the Pope and divest all fossil fuel investments by 2025 while committing to carbon neutrality by 2030.<sup>96</sup>
  - In 2019, the Undergraduate Government of Boston College passed a resolution calling on the Trustees to release information about the endowment’s investment in mutual funds, to create an advisory committee on socially responsible investing

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<sup>91</sup> Seattle University Socially Responsible Investments Advisory Working Group, [Recommendations on Fossil Fuel Divestment](#) (adopted Jan. 10, 2018, approved Sep. 13, 2018).

<sup>92</sup> Dan Elliott, [“Appealing to Jesuit tradition, group outlines proposal for creation of ‘socially responsible investing’ advisement board”](#) (*The Heights*, Feb. 3 2004).

<sup>93</sup> *Id.*

<sup>94</sup> Samatha Karl, [“UGBC Calls For Divestment From Fossil Fuels”](#) (*The Heights*, Apr. 4 2018, updated June 5 2020).

<sup>95</sup> Abby Hunt, [“BC Hesitant About Fossil Fuel Divestment”](#) (*The Heights*, Feb. 25 2019).

<sup>96</sup> Climate Justice at Boston College, The Catholic Divestment Network, The Global Catholic Climate Movement, Laudato Si’ Generation, [“Letter to Father Leahy, Board of Trustees, Office of Sustainability, and Dr. Brian Gareau, Associate Dean for the Core”](#) (April 25 2019).

in line with the university's values, and to invest in companies combating climate change.<sup>97</sup>

- In 2020, students and alumni of 30 colleges in the Atlantic Coast and Big Ten Conferences, including Boston College, sent a letter to university leaders noting that “climate justice is racial justice” and calling on them to divest from fossil fuels and redirect funds toward sustainable purposes and organizations.<sup>98</sup>
- Nearly 3,000 Boston College students, faculty, staff, and alumni — with representatives from every class year since 1960 — have signed a petition asking that the Trustees divest from fossil fuels.<sup>99</sup>
- Students have formed coalitions and sent communications to the Trustees and administrators jointly with students at other universities in Boston and Massachusetts and those from fellow Catholic and Jesuit schools through the Catholic Divestment Network, Global Catholic Climate Movement and other Catholic NGOs; the Atlantic Coast Conference through the ACC Climate Justice Coalition; and across the U.S. and Canada through the College Climate Coalition.
- Students have also sent specific communications regarding the Pope's call for divestment from fossil fuels which the administration said it would refuse to consider.
- However, the Trustees have steadfastly refused to respond to these overtures in good faith.
  - In 2004, the Trustees rejected the proposal presented by the Boston College Global Justice Project to create a socially responsible investment advisory committee.<sup>100</sup>
  - Over subsequent years, students continued to petition the university administration for transparency on its investment strategy. Although a Boston College spokesman stated that “the school steers clear of investments that would be inconsistent with the principles that guide the Jesuit university,” *The Boston Globe* noted that, in contrast to many Catholic institutes, “Boston College has not publicly ruled out any particular sector or type of company for investment.”<sup>101</sup>
  - In February 2013, the student group BC Fossil Free sent President Leahy a letter requesting a meeting to discuss climate change and the university's fossil fuel investments. Despite repeated further attempts to secure a meeting, the president did not respond.<sup>102</sup>
  - In the wake of repeated student proposals, referenda, and requests for meetings, Boston College removed the “Ethical Investing Guidelines” page from its endowment website, eliminating the following language: “In the management of

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<sup>97</sup> UGBC Student Assembly [“A Resolution Concerning Socially Responsible Investments and Increasing Financial Transparency”](#) (2019); Danny Flynn, [“Student Assembly Passes Resolutions on University Investment, New Structure”](#) (*The Heights*, Apr. 7 2019).

<sup>98</sup> Student and Alumni of Atlantic Coast and Big Ten Conference Schools, [“An Open Letter to the Endowment Managers, Trustees, and Administrators of the Atlantic Coast Conference”](#) (2020); Madeleine Romance, [“Student Groups From 30 Colleges Join in Call for Divestment”](#) (*The Heights*, Sep. 13 2020).

<sup>99</sup> Climate Justice @ Boston College, [“Sign Petition”](#) (Nov. 30 2020).

<sup>100</sup> Lau-Yan Tang, [“Trust in investing a student priority”](#) (*The Heights*, Mar. 31, 2005).

<sup>101</sup> G. Jeffrey MacDonald, [“Endowment battle brews at BC”](#) (*Boston Globe*, Apr. 3 2005).

<sup>102</sup> Eleanor Hildebrandt, [“Resolution Calls for Divestment”](#) (*The Heights*, Mar. 21 2013, updated June 1 2020).

its investments, Boston College reflects the ethical, social, and moral principles inherent in its mission and heritage. In particular, the University is firmly committed to the promotion of the dignity of the individual, personal freedom, and social justice. The Board of Trustees desires that Boston College investments be handled in accordance with these principles so that gains from investments will not be derived from fraud, abusive power, greed, or injustice. A constant attempt will be made to apply these principles to the University's investment practices. This means that investments held by the University will be examined periodically to ascertain whether the firms involved engage in practices or procedures opposed to the ethical, social, and moral principles guiding Boston College."<sup>103</sup>

- After undergraduates voted for divestment in 2019, a university spokesman reiterated the administration's opposition to the idea.<sup>104</sup>
- Following Pope Francis's 2020 call for Catholic universities to divest from fossil fuels, the Trustees once again reiterated their refusal to do so.<sup>105</sup>
- In meetings and email and letter exchanges, students and alumni independently and as members of the BC Global Justice Project, BC Fossil Free, and Climate Justice at Boston College have offered both compromises to and incremental steps toward divestment including greater transparency of investments, the creation of an advisory socially responsible investment committee, and divestment from certain fossil fuels. However, students have only been granted one meeting with Boston College president Fr. William Leahy, S.J. in the last ten years to discuss divestment, along with two meetings with chief investment officer John Zona in the last four years.
- In October 2020, Associate Vice President Thomas Mogan and others in the student conduct office told students associated with Climate Justice at Boston College that dialogue with administrators or trustees on socially responsible investing would not continue.

### *Conclusion*

The Non-Profit Organizations/Charities Division is responsible for ensuring that charitable assets are allocated appropriately and for investigating charitable managers' violations of fiduciary duties. We ask that you investigate the violations described above and that you take action to ensure that the investment activity of the Boston College Board of Trustees no longer harms the Boston College community, the Commonwealth, and the public.

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<sup>103</sup> ["Endowment: Ethical Investment Guidelines"](#) (Boston College, Sep. 19 2015) *compare to* ["Endowment"](#) (Boston College, Dec. 7 2020).

<sup>104</sup> Hunt, ["BC Hesitant About Fossil Fuel Divestment"](#)

<sup>105</sup> Scott Baker, ["BC Rejects Vatican's Call for Divestment"](#) (*The Heights*, June 25 2020).