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 —

The Harvard Corporation, as fiduciary of a non-profit educational institution, is bound by the laws of the Commonwealth to promote the well-being of Harvard's students and community and to further the university's commitment to "the advancement and education of youth." Under the Massachusetts Uniform Prudential Management of Institutional Funds Act, the Harvard Corporation has a fiduciary duty to invest with consideration for the University's "charitable purposes" — a duty that distinguishes non-profit institutions from other investors. Instead, the Corporation has invested a portion of Harvard's $41.9 billion endowment in the fossil fuel industry — damaging the world's natural systems, disproportionately harming youth, poor people, and communities of color, and imperiling the university's financial and physical condition. In the midst of the climate crisis, powerful institutions must take responsibility for their contributions to global warming. As concerned students, faculty, alumni, political leaders, civic groups, and community members, we ask that you investigate this conduct and that you use your enforcement powers to order the Harvard Corporation to cease its investments in fossil fuels.

Massachusetts law provides rules that charitable managers and investors must follow in managing institutional funds. As stewards of the Harvard endowment, the Corporation is required to act in good faith and with loyalty, taking care that its investments further the purposes of the university. The Corporation may not simply seek profit at any cost: the privileges that Harvard enjoys as a non-profit institution come with the responsibility to ensure that its resources are put to socially beneficial ends. By investing an estimated $838 million in fossil fuel stocks, the Corporation has violated these duties to Harvard and the public.

The values that should guide the Corporation's investments are clear. Under its 1650 Charter, the Harvard Corporation may receive "gifts, legacies, lands, and revenues for the advancement of all good literature arts and sciences" and to promote the "education of the . . . youth." Harvard's mission statement speaks of "inspiring every member of our community to strive toward a more just, fair, and promising world," while Harvard's environmental commitment recognizes that universities have "a special role and a special responsibility in confronting the challenges of climate change and sustainability." Harvard President Lawrence Bacow stated in 2020 that "Harvard's endowment should be a leader in shaping pathways to a sustainable future." And yet, despite the demonstrable financial and social benefits of institutional fossil fuel divestment, the Corporation has remained steadfast in its support of an industry whose business model is based on environmental destruction and social injustice.

Climate change is an existential threat to humanity and our environment. 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 10,000 premature deaths daily. Communities of color disproportionately suffer pollution and health detriments from fossil fuel extraction and combustion. Poor people bear the brunt of climate-based economic disruption, as illustrated by the plight of climate migrants and refugees already 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 unabated climate change.

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the Corporation has repeatedly refused to apply Harvard's values to its 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 distort public debate about how to deal with the climate crisis — including through efforts targeting Harvard scientists and researchers. The industry's spread of scientific misinformation undermines the work of Harvard 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 diverted or delayed serious government action to address the climate crisis, placing a special burden on young people whose futures will be most impacted by these investments. Even as it recognizes "a special role and a special responsibility in confronting the challenges of climate change and sustainability," the Corporation channels funds to an industry dedicated to winning short-term profits at the expense of the public good.

A similar inversion of values underlies the Corporation's funding of climate degradation despite its duty to protect Harvard's physical property. In the coming decades, sea level rise, higher temperatures, extreme rainfall, invasive pests, 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. Even under the most optimistic warming scenarios, large portions of Harvard's campus — including the bulk of its Allston campus — will regularly lie under water by century's end. Instead of facilitating such injuries, the Corporation should be doing everything in its power to prevent them.

This reckless support of a dangerous industry is compounded by conflicts of interest involving members of the Corporation and the fossil fuel sector. Several Corporation members work for major fossil fuel companies or derive significant business income from their ties with the industry. In addition, the Corporation has allowed large amounts of fossil fuel money to flow into Harvard's academic and research programs. These facts raise serious questions regarding the Corporation's duty of loyalty to Harvard, especially in light of the severe threat posed by the fossil fuel industry to the university.

The Corporation is bound by an additional legal duty: the requirement to manage Harvard'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. The domestic coal sector has nearly collapsed, and natural gas likewise stands to lose much of its 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 alleged fraud. Fossil fuel companies such as ExxonMobil have allegedly misled investors by concealing the anticipated impact of climate change and energy regulation on the value of assets such as untapped oil reserves. Your office is currently suing ExxonMobil over this practice, building on years of investigative reporting showing that fossil fuel companies' purported values are grossly inflated. The Corporation continues to invest in the sector despite its legal duty to exercise care and prudence in avoiding dangerous securities.

The Corporation cannot plead ignorance of its duty to divest. For years, Harvard students and faculty have pushed for investment practices that align with the university's mission. This pressure was instrumental in the Corporation's decision in 1986 to withdraw investments from companies doing business in apartheid South Africa, its 1990 divestment from the tobacco industry, and its 2006 divestment from certain companies doing business in Darfur: acknowledgments that its investment activity must comport with Harvard's missions and values. In recent years, various student and faculty bodies have voted for fossil fuel divestment, a position consistently endorsed by majorities in student referenda. Repeated rallies, reports, and requests for negotiation have alerted the Corporation to its fiduciary responsibility. Nonetheless, the Corporation has spurned all efforts at persuasion. Such behavior cannot be squared with the duty to manage the university's assets in good faith.

It is too late for the Corporation to deny the relation between its investments and climate change. Its obligations under Massachusetts law and its own governing documents are clear, and fossil fuel investment is incompatible with those obligations.

We have included below a fuller description of the Corporation's violations, along with documents and reports supporting the claims made in this complaint. We would appreciate the opportunity to have members of our group meet with your staff to discuss legal avenues to address this matter.

Sincerely,

Concerned students, faculty, alumni, financial and political leaders, scientists, civic groups, and community members [listed on the pages that follow]:

Fossil Fuel Divest Harvard

Elected Officials
State Representative Nika Elugardo, *MA 15th Suffolk (HKS '04)*
State Representative Erika Uyterhoeven, *MA 27th Suffolk (HBS '19)*
Councilor Ben Ewen-Campen, *Ward 3, City of Somerville (GSAS ‘14)*
Councilor and former Mayor Marc McGovern, *City of Cambridge*
Councilor Patricia M. Nolan, *City of Cambridge (HCOL ‘80)*
Councilor Emily Norton, *Ward 2, City of Newton (HKS ‘95)*
Councilor Jivan Sobrinho-Wheeler, *City of Cambridge*
Councilor Quinton Zondervan, *City of Cambridge*
Councilor Michelle Wu, *At-Large, City of Boston (HCOL ‘07, HLS ‘12)*

Climate Science and Policy Community
Dr. Philip G. Alston, *John Norton Pomeroy Professor of Law, New York University and former UN Special Rapporteur*
Dr. James E. Hansen, *Director, Climate Science and Awareness Program, Earth Institute, Columbia University*
Dr. John Harte, *Professor of the Graduate School in the Department of Environmental Science, University of California, Berkeley (HCOL ‘61)*
Dr. Benjamin Franta, *Stanford University, Director of Accountability Research, Climate Social Science Network (GSAS ‘16)*
Dr. Mark Z. Jacobson, *Professor of Civil and Environmental Engineering and Director of the Atmosphere/Energy Program, Stanford University*
Dr. Ayana Elizabeth Johnson, *founder and CEO, Ocean Collectiv (HCOL ‘02)*
Dr. Peter Kalmus, *Climate Scientist, NASA JPL (HCOL ‘97)*
Dr. Daniel Kammen, *Class of 1935 Distinguished Professor of Energy, University of California, Berkeley and Coordinating Lead Author, IPCC (GSAS ‘88)*
Dr. Robert Howarth, *David R. Atkinson Professor of Ecology and Environmental Biology, Cornell University*
Dr. Michael E. Mann, *Distinguished Professor of Atmospheric Science, Penn State*
Dr. Nathan Phillips, *Professor in the Department of Earth and Environment, Boston University*

Alumni and Community Members
Craig Altemose, *Executive Director, Better Future Project (HLS and HKS ‘10)*
Veronica Coptis, *Executive Director, Center for Coalfield Justice*
Nathán Goldberg, *Co-Founder and Policy & Strategy Director, Harvard Forward (HCOL ‘18)*
Dr. Todd Gitlin, *Professor of Journalism and Sociology, Columbia University (HCOL ‘63)*
Denis Hayes, *founder of Earth Day (HKS ‘70)*
Ellen Dorsey, *Executive Director, Wallace Global Fund*
Joan M. Hutchins, *former Harvard Board of Overseers president (HCOL ‘61)*
Bevis Longstreth, *former Securities and Exchange Commission member (HLS ‘61)*
State Senator Chloe Maxmin, *ME 13 (HCOL ‘15)*
Thomas Oliphant, *Political Columnist (HCOL ‘67)*

Danielle Strasburg, *Campaign Manager*, *Harvard Forward (HCOL '18)*
Camila Thorndike, *National Advocacy Director, Climate XChange (HKS '20)*
Dr. Gay Seidman, *former Harvard Board of Overseers member and Martindale Bascom Professor of Sociology, UW-Madison (HCOL '78)*
Rev. Fred Small, *Executive Director, Massachusetts Interfaith Power & Light (HDS '99)*
Lee Wasserman, *Director, Rockefeller Family Fund*
Rand Wentworth, *President Emeritus, Land Trust Alliance*
Senator Timothy E. Wirth, *former Harvard Board of Overseers member and former U.S. Senator from Colorado (HCOL '61)*
Kelsey Wirth, *Chair and Co-founder, Mothers Out Front (HCOL '92)*

Harvard Faculty
Prof. Elizabeth Bartholet, *Morris Wasserstein Public Interest Professor of Law (RAD '62, HLS '65)*
Dr. Joyce Chaplin, *James Duncan Phillips Professor of Early American History*
Dr. Marshall Ganz, *Senior Lecturer in Public Policy (HCOL '92, HKS '93, GSAS '00)*
Dr. Virginie Greene, *Professor of Romance Languages and Literatures*
Dr. James Engell, *Gurney Professor of English Literature and Professor of Comparative Literature*
Dr. Edward Hall, *Norman E. Vuilleumier Professor of Philosophy*
Dr. Regina LaRocque, MD MPH, *Associate Professor of Medicine (HSPH '97)*
Dr. Timothy Patrick McCarthy, *Lecturer on History & Literature, Public Policy, and Education (HCOL '93)*
Dr. Naomi Oreskes, *Henry Charles Lea Professor of the History of Science and Affiliated Professor of Earth and Planetary Sciences*
Dr. Richard Parker, *Lecturer in Public Policy and Senior Fellow, Shorenstein Center on Media, Politics, and Public Policy*
Dr. James Recht, *MD, Assistant Professor of Psychiatry*
Dr. Geoffrey Supran, *Research Fellow, Department of the History of Science*
Dr. Cornel West, *Victor S. Thomas Professor of the Practice of Public Philosophy (HCOL '74, GSAS '76)*
Dr. Shoshana Zuboff, *Charles Edward Wilson Professor of Business Administration Emerita (GSAS '80)*

For individual signatories, institutional affiliation is for identification purposes only.

Organizations
350.org
350 Mass
Atlantic Coast Conference Climate Justice Coalition
Better Future Project
Boston Catholic Climate Movement
Center for Biological Diversity
Climate Justice at Boston College
College Climate Coalition
Divest Ed

Fossil Fuel Divest Harvard Alumni
Friends of the Earth
Greater Boston Physicians for Social Responsibility
GreenFaith
Harvard Out of Occupied Palestine
Harvard Black Students Association
Harvard College Young Democratic Socialists of America
Harvard Forward
HGSU-UAW Local 5118
Law Students for Climate Accountability
Massachusetts Peace Action
Medical Students for a Sustainable Future
MIT Divest
Mothers Out Front
Polluters Out
Progressive Mass
Rainforest Action Network
Seeding Sovereignty
Stand.earth
Sunrise Boston
XR Boston
Zero Hour

Prepared with assistance from attorneys at Climate Defense Project.

cc:

Lawrence S. Bacow
President, Harvard University
Member, Harvard Corporation
Member of the Board of Directors, Harvard Management Company

Timothy R. Barakett
Fellow, Harvard Corporation

R. Martin Chávez
President, Harvard Board of Overseers

Kenneth I. Chennault
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SUPPORTING DOCUMENTATION

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I. The Harvard Corporation's violation of Massachusetts law

The President and Fellows of Harvard College ("the Harvard Corporation") is a charitable corporation organized under Massachusetts General Law Chapter 180, section 4. Its charter was granted by the Great and General Court of Massachusetts in 1650 and is recognized in Part II, Chapter V of the Massachusetts Constitution. Under the 1650 Charter, the Harvard Corporation may receive "gifts, legacies, lands, and revenues for the advancement of all good literature arts and sciences" and to promote the "education of the . . . youth."[1] Under the Massachusetts Constitution, such "gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors."[2] The Harvard Corporation "exercises fiduciary responsibility with regard to the University's academic, financial, and physical resources and overall well-being."[3]

- Continued investment in fossil fuels by the Harvard Corporation ***violates the fiduciary duties spelled out in the Massachusetts Uniform Prudent 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."[4] The model UPMIFA drafting committee describes consideration of "charitable purposes" as a "fundamental duty,"[5] and this requirement distinguishes charitable investors like the Harvard Corporation from other entities such as pension funds.
    - 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."[6]
    - 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."[7]
    - 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

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[1] Harvard Charter of 1650, Harvard Library (Dec. 1, 2020).
[2] Mass Const. part II, ch. V, art. II.
[3] Harvard's President and Leadership, Harvard University (2021).
[4] M.G.L. c. 180A § 2(a).
[5] National Conference of Commissioners on Uniform State Laws, Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments (2006), 15.
[6] M.G.L. c. 180A § 2(b).
[7] M.G.L. c. 180A § 2(e)(2).

to the individual donors as well as to the community" (noting that the law requires "heightened scrutiny of the management of nonprofit corporations").[8]

  - Although the directors of charitable institutions may delegate investment authority to an external agent,[9] 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."[10] When reliance upon the advice of an external agent produces results adverse to the mission of the institution, a 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."[11]

- The Harvard Corporation has ***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. The duty to consider the charitable purposes for which Harvard was established distinguishes the Harvard Corporation from other investors, imposing a special legal responsibility to screen assets for their possible interference with the university's goals. Yet the outcomes of the Harvard Corporation's fossil fuel investments are directly contrary to Harvard's mission to "strive toward a more just, fair, and promising world"[12] and its acknowledged "special role and [] special responsibility in confronting the challenges of climate change and sustainability."[13] The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene Harvard's mission to "educate the citizens and citizen-leaders for our society."[14] As such, continued investment in fossil fuel holdings ***violates the Harvard Corporation's duty to consider an asset's special relationship or special value, if any, to the charitable purposes of the institution.***
- The Harvard Corporation has ***violated its duty of loyalty*** to the Harvard community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to Harvard property, thus failing to act in the best interests of the institution. Members of the Harvard Corporation have also violated their duty of loyalty by indulging conflicts of interest with the fossil fuel industry, maintaining personal, professional, and financial ties to oil, gas, and coal companies even as these companies harm Harvard.
- The Harvard Corporation has ***violated its 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, alumni, 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.

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[8] Boston Athletic Assn. v. International Marathons, Inc., 392 Mass 356, 366 and 366, n. 12 (1984)
[9] M.G.L. c. 180A § 4.
[10] M.G.L. c. 180 § 6C.
[11] *Id.*
[12] Mission, Vision, & History, Harvard College (2021).
[13] Sustainability: Commitment, Harvard University (2020).
[14] Mission, Vision, & History, Harvard College (2021).

- The Harvard Corporation has ***violated its duty of care*** by investing the university's endowment in financially risky fossil fuel stocks, which have underperformed for years and are currently at risk of a general collapse in value. This violation is exacerbated by the Harvard Corporation's failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.
- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the original UPMIFA, has called for the application of the prudence standard to the threats of climate change. As Longstreth writes, the risks posed by fossil fuel investments are so serious that institutional investors will be hard-pressed to justify continued holdings in the industry: "The prudence standard of the Act can easily support a decision not to continue to hold or invest in fossil fuel companies. The risks and rewards now offered by such securities are asymmetric, in the sense that the foreseeable rewards are not likely to be equal to the foreseeable risks. The risk that, at some unknown and unknowable, yet highly likely, point in the future, markets will begin to adjust the equity price of fossil fuel company securities downward to reflect the swiftly changing future prospects of those companies, is as serious as it is immense. Moreover, the possibility of that adjustment being a swift one is also a serious risk. A decision to linger in an investment with such an overhanging risk, and expect to time one's exit before the danger is recognized in the market, is a strategy hard to fit within the concept of prudence."[15]
- In a report analyzing 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."[16]
    - 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 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).
    - 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."[17]

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[15] Bevis Longstreth, Outline of Possible Interpretative Release by States' Attorneys General Under The Uniform Prudent Management of Institutional Funds Act (Jan. 26, 2016).
[16] Trillion Dollar Transformation, Center for International Environmental Law (Dec. 2016), 1-2.
[17] *Id.* at 5-7, 12-17, 19

- Harvard's fossil fuel holdings are estimated at $838 million.[18]

II. Harvard's social and environmental commitments

In addition to their general duties to the public as managers of a charity, the Harvard Corporation is legally bound to uphold the particular *charitable purposes* and values of Harvard, which include commitments to social justice and environmental well-being. The Harvard Corporation has clearly acknowledged in the past that this legal duty extends to the manner in which it invests the university's assets.

- The Harvard Corporation's 1650 Charter commits the university to "the advancement and education of youth in all manner of good literature arts and sciences."[19]
- The Harvard Corporation's mission "to educate future leaders is woven throughout the Harvard College experience, inspiring every member of our community to strive toward a more just, fair, and promising world."[20]
- The Harvard Corporation has explicitly recognized the connections between its educational mission and fighting the climate crisis.
    - The "Sustainability" section of the Harvard website states: "Universities have an 'accountability to the future'—a special role and a special responsibility in confronting the challenges of climate change and sustainability. We aim to transform the University into a healthy, thriving, sustainable community that contributes positive social, economic, and environmental benefits. Our vision is rooted in our shared responsibility to build and operate a campus that contributes to the well-being of every member of our community—and ultimately to the health of the planet."[21]
    - The Harvard Corporation recently released a plan that promises to "build on our past progress and use the campus to confront the difficult questions posed by climate change and test promising new solutions that move Harvard, and the world, away from fossil fuels."[22]
- The Harvard Corporation recognizes its duty to align these institutional values with Harvard's financial holdings.
    - Harvard is a signatory to the United Nations-supported Principles for Responsible Investment,[23] which commits signatories to "incorporat[ing] ESG [environmental, social, and governance] issues into investment analysis and decision-making processes.[24]
    - The mission of the Harvard Management Company, which invests Harvard's endowment under the direction of the Harvard Corporation, is "to help ensure

[18] The Harvard Management Company recently reported that approximately two percent of Harvard's $41.9 billion endowment is invested in fossil fuels. Climate Report, Harvard Management Company (Feb. 2021), at 2.
[19] Harvard Charter of 1650, Harvard Library (Dec. 1, 2020).
[20] Mission, Vision, & History, Harvard College (2021).
[21] Sustainability: Commitment, Harvard University (2020).
[22] Harvard's climate action plan, Harvard University (2020).
[23] Harvard to sign on to United Nations-supported Principles For Responsible Investment, The Harvard Gazette (Apr. 7, 2014).
[24] What are the Principles for Responsible Investment?, Principles for Responsible Investment (2021).

Harvard University has the financial resources to confidently maintain and expand its leadership in education and research for future generations."[25]
    - Harvard president Lawrence Bacow stated in 2020 that "Harvard's endowment should be a leader in shaping pathways to a sustainable future."[26]
- The Harvard Corporation has recognized that divestment is at times necessary to satisfy its legal obligation to invest in ways consistent with its charitable purposes.
    - In a report describing its approach to environmental, social, and governance [ESG] investing, the Harvard Management Company states that "the University recognizes that very rare occasions may arise when companies' activities are so deeply repugnant and ethically unjustifiable as to warrant the University's institutional dissociation from those activities."[27]
    - In 1986, in response to public presure to align its investment activity with its charitable mission, the Harvard Corporation divested over $150 million from companies doing business in apartheid South Africa. A report by the Corporation Committee on Shareholder Responsibility specifically cited these companies' business practices as the reason for divestment. [28]
    - In 1990, the Harvard Corporation divested from tobacco companies. The University president at the time, Derek Bok, stated that the Corporation was "motivated by a desire not to be associated as a shareholder with companies engaged in significant sales of products that create a substantial and unjustified risk of harm to other human beings."[29]
    - In 2006, in response to violence in Darfur, the Harvard Corporation divested from certain companies doing business with the Sudanese government. In a statement, the Harvard Corporation Committee on Shareholder Responsibility quoted former University President Derek Bok's position that "[a]lthough trustees have a legal and moral obligation to enhance and conserve the university's resources, there are rare occasions when the very nature of a company's business makes it inappropriate for a university to invest in the enterprise."[30]

III. The scientific reality and risks of climate change

The current and future effects of climate change jeopardize the physical integrity of Harvard's campus and the safety of its students, faculty, and staff, undermining the Harvard Corporation's *charitable purposes.* By investing in companies disproportionately responsible for the climate crisis, the Harvard Corporation is exposing the Harvard community and society at large to severe injury, thus failing to act in the best interests of the institution and violating its *duty of loyalty.*

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[25] A Singular Mission,"Harvard Management Company (2020).
[26] Lawrence Bacow, A message from the President on climate change, Harvard University Office of the President (Apr. 21, 2020).
[27] Sustainable Investing at HMC, Harvard Management Company (2020).
[28] Fox Butterfield, Harvard Cuts South Africa-Linked Holdings, The New York Times (Oct. 3, 1986).
[29] Tamar Lewin, Harvard and CUNY Shedding Stocks in Tobacco, The New York Times (May 24, 1990).
[30] Statement by Harvard Corporation Committee on Shareholder Responsibility (CCSR) Regarding Stock in PetroChina Company Limited, Harvard Corporation Committee on Shareholder Responsibility (Apr. 4, 2005).

- 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.[31]
- 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.[32]
    - 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.[33]
    - In order to have a fifty percent chance at keeping warming below 1.5 degrees Celsius, the IPCC calculates that emissions of carbon dioxide must decline 45 percent from 2010 levels by 2030 and reach net-zero by 2050. In order to have a greater probability of meeting this target, net-zero must be achieved by 2040.[34] 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."[35]
- 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."[36]
    - 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

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[31] U.S. Global Change Research Program, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States. D.R. Reidmiller, C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart, eds. (2018, revised 2020), 73.
[32] 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. World Meteorological Organization (2018), 4.
[33] *Id.* at 4-10.
[34] *Id.* at 6, 12.
[35] *Id.* at 15.
[36] U.S. Global Change Research Program, Fourth National Climate Assessment, Volume II, 25

the end of the century — more than the current gross domestic product (GDP) of many U.S. states."[37]

- The global mean water level in the ocean rose by 0.14 inches (3.6 millimeters) per year from 2006–2015, which was 2.5 times the average rate of 0.06 inches (1.4 millimeters) per year throughout most of the twentieth century. By the end of the century, global mean sea level is likely to rise at least one foot (0.3 meters) above 2000 levels, even if greenhouse gas emissions follow a relatively low pathway in coming decades.[38]
- According to the Environmental Protection Agency, climate change effects in Massachusetts will include: sea level rise; increased precipitation, especially from extreme weather events; erosion of wetlands; increased temperatures; disruptions in ecosystems and wildlife populations; and increased incidence of respiratory diseases such as asthma.[39]
- Climate change will continue to cause severe problems in Boston and Cambridge, where Harvard is located, with more severe impacts expected under the high-emissions scenarios that will result from the planned business activities of fossil fuel companies in which the Harvard Corporation invests. While many projections of harm extend only to 2100, Harvard, as a centuries-old institution, must consider the dramatic and unavoidable climate harms that will extend beyond this date.
    - 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.[40]
    - Over the past century, sea level rise in Boston has averaged 0.11 inches per year. By 2100, the sea level is expected to be 2.5 to 7.4 feet higher than in 2000, with the rate of rise strongly conditioned by emissions of carbon dioxide.[41]
    - According to the City of Cambridge Climate Change Vulnerability Assessment, climate change presents various challenges to human and environmental health whose severity will increase over the course of the coming century.
        - The Assessment notes that "[h]eat stress on human health is very likely to become much more severe. By 2030, annual days over 90 degrees Fahrenheit (90°F) may triple. By 2070, Cambridge may experience nearly three months over 90°F, compared with less than two weeks in the present day. The heat index, which represents the 'feels like' temperature for people, will also increase and exacerbate the likelihood of heat stress."[42]
        - The Assessment predicts that "[e]conomic losses from a flood event or an area-wide power loss would be significant. A citywide event shutting down Cambridge is estimated to cause at least forty-three million (in current dollars) in daily economic losses."[43]
        - Such flooding is extremely likely in the coming decades. Two dams that protect Cambridge, the Amelia Earhart Dam and the Charles River Dam,

[37] *Id.* at 26.
[38] Rebecca Lindsey, Climate Change: Global Sea Level, Climate.gov (Jan. 25, 2021).
[39] What Climate Change Means for Massachusetts, Environmental Protection Agency (Aug. 2016).
[40] Boston Research Advisory Group, Climate Change and Sea Level Rise Projections for Boston, Climate Ready Boston (June 1, 2016).
[41] *Id.*
[42] Climate Change Vulnerability Assessment, Part 1, City of Cambridge (Nov. 2015), 6.
[43] *Id.* at 7.

will both likely be surpassed by floodwaters by 2055. "By 2070," the Assessment concludes, "storm surge modeling shows that large swaths of the Alewife-Fresh Pond area could be subject to annual probabilities of flooding up to twenty percent or once every five years. The volume of flood water associated with a storm surge would be immense. Conventional flood management techniques, such as storage basins and tanks, would be insufficient to deal with the problem."[44]

- John Borduc, the environmental planner for the City of Cambridge, has noted that dams on the Charles River are not adequately equipped to deal with the challenges of sea level rise and increased storm activity: "The dams start to become compromised probably around the 2045 to 2055 timeframe, where a one-percent annual probability event, like a big hurricane or a big Nor'easter, could send a storm surge past the dams . . . By 2070, with 3.4 feet of sea level rise, what would happen is that storm surges would go around the dams before they go over the top."[45]
- Heather Henriksen, the chief sustainability officer for Harvard University, has stressed that Harvard's campus remains vulnerable to regional climate disruptions: "Our greatest risk is external factors—the electric grid, the MBTA . . . We have 1,400 employees, not even counting faculty. How do they get to work? . . . These are regional challenges that we need to solve together. Harvard alone is not going to be at risk for the Charles River Dam. Everyone is."[46]
- As documented in the Harvard Master Plan for its Allston Campus, the Charles River Dam will be overtopped whenever flood elevation reaches 7.5 feet above the mean high water mark — a 100-year flood scenario that, by 2050, is anticipated every two or three years and by 2100 every one to two years on the Allston campus.[47]
- According to climate scientist James Hansen of Columbia University, Harvard faces significant risks from rising sea levels, with the Allston campus, Soldiers Field complex, and other parts of the physical campus especially vulnerable.[48]
  - Hansen notes that Harvard's master building plans fail to properly account for this risk: "[T]he maximum sea level rise assessed by Harvard appears to have been lower than that estimated to result from the most optimistic emissions scenario considered by the Intergovernmental Panel on Climate Change in its most recent assessment report. It appears, then, that Harvard may have seriously underestimated the risk to the Harvard campus, the Harvard community and, of course, to future generations."[49]
  - Maps prepared by Hansen using publicly available climate forecasting data demonstrate the damage that will be done to Harvard's Cambridge

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[44] Climate Change Vulnerability Assessment, Part 2, City of Cambridge (Feb. 2017), 5.
[45] A. Motoy Kuno-Lewis & Phelan Yu, Climate Change Comes to Cambridge, The Harvard Crimson (Dec. 14, 2016).
[46] *Id.*
[47] Harvard University's Campus in Allston: Institutional Master Plan, Harvard University (July 2003, rev. Oct. 2003), 232, 235.
[48] Amicus Curiae Brief of Dr. James E. Hansen, Harvard Climate Justice Coalition v. President and Fellows of Harvard College, No. SUCV201403620H (Mass. Super. Mar. 17, 2015).
[49] *Id.* at 17-18

and Allston campuses. In Appendix A, the left-hand map "depicting the region including Harvard under 23 feet of water (the anticipated range is 14 to 33 feet) illustrates the reach of the sea at equilibrium as estimated, eventually, to result from the essentially unchecked pollution pathway that we have been following. Under it, most of Harvard — including Harvard Law, the Kennedy School, the Business School, and much of the Allston neighborhood — will also be submerged." The right-hand map shows the flooding that would result under the most optimistic emissions reduction scenario: a scenario which, according to Hansen, would still result in 7.9 feet of sea level rise and the flooding of the Allston campus.[50]

    ○ These estimates of risk to Harvard's campus are likely conservative. Boston could face comparatively more sea level rise than the global average through the twenty-first century due to the physical and gravitational effects associated with ice sheet melt.[51]

IV. The failure of fossil fuel companies to address climate risks

The fossil fuel industry remains resolutely committed to a business model that produces and exacerbates climate change, and to the suppression of nonviolent protest. Harvard's *charitable purposes* are directly contravened by investments that promote this activity.

- Fossil fuel companies knew about the connection between their products and climate change decades before the general public, "as early as the 1950s and no later than 1968."[52]
    - Coal industry publications suggested as early as 1966 that the release of fossil fuels could cause "vast changes in the climates of the earth."[53] By 1968, the American Petroleum Institute, an industry trade group, was familiar with a study concluding that the burning of fossil fuels was likely to create significant environmental consequences.[54]
    - As early as 1977, Exxon scientists had privately concluded that "there is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels."[55]

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[50] *Id.* at 16-17.
[51] Carling C. Hay, Eric Morrow,, Robert E. Kopp, and Jerry X. Mitrovica, Probabilistic reanalysis of twentieth-century sea-level rise, Nature (Jan. 14, 2015) (see maps on pages 9 and 10).
[52] Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, and Geoffrey Supran in Support of Appellees and Affirmance, County of San Mateo v. Chevron Corporation, et al., County of Imperial Beach v. Chevron Corporation, et al., County of Marin v. Chevron Corporation, et al., County of Santa Cruz, et al., v. Chevron Corporation, et al., Nos. 18-15499, 18-15502, 18-15503, 18-16376 at 2 (9th Cir. 2019).
[53] Elan Young, Exxon knew -- and so did coal, Grist (Nov. 29, 2019).
[54] Oliver Milman, Oil industry knew of 'serious' climate concerns more than 45 years ago, The Guardian (Apr. 13, 2016).
[55] Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, Sci. Am. (Oct. 26, 2015).

    - Shell internally reached similar conclusions by at least the 1980s,[56] as did Mobil (then separate from Exxon).[57] By the 1980s, major fossil fuel companies had "internally acknowledged that climate change was real, it was caused by fossil fuel consumption, and it would have significant impacts on the environment and human health."[58]
- A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all global greenhouse gas emissions since 1988 "can be traced to just 100 fossil fuel producers."[59]
- No major fossil fuel company has established itself as a willing participant in the transition to renewable energy.
    - In 2018, all fossil fuel majors approved projects that are noncompliant with the Paris Agreement goals.[60] That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.[61]
    - A study by the London School of Economics found that no fossil fuel major has carbon-reduction plans that are Paris-compliant as of October 2020.[62] A September 2020 report by climate research group Oil Change International concluded that "[n]one of the evaluated oil majors' climate strategies, plans, and pledges come close to alignment with the Paris Agreement."[63]
- Fossil fuel companies continue to bet on long-term fossil fuel reliance.
    - Approximately half of the oil under BP's financial control is excluded from the company's decarbonization commitments.[64] As recently as November 2020, BP was buying up Canadian offshore oil parcels.[65]
    - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.[66] 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 release an additional twenty-one 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

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[56] John H. Cushman Jr., Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show, Inside Climate News (Apr. 5, 2018).
[57] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[58] Brief of Amici Curiae Robert Brulle, *et al.*, *supra* note 52, at 15.
[59] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (Jul. 2017).
[60] Breaking the Habit - Why none of the large oil companies are "Paris-aligned", and what they need to do to get there, Carbon Tracker Initiative (Sept. 2019).
[61] Ron Bousso, Big Oil spent 1 percent on green energy in 2018, Reuters (Nov. 11, 2018).
[62] Anjli Raval, Big fossil fuel groups all failing climate goals, study shows, Financial Times (Oct. 6, 2020).
[63] Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans, Oil Change International (Sept. 2020).
[64] Kelly Trout, The Loopholes Lurking in BP's New Climate Aims, Oil Change International (Mar. 11, 2020) ("BP's accounting of its production excludes any oil and gas that it produces but does not sell . . . . BP also excludes the production related to its 20% stake in Russia-based oil company Rosneft. We estimate that these accounting loopholes exclude from BP's net zero aim 46% of the total carbon that the company invested in extracting in 2018 . . . .").
[65] Julianne Geiger, From Billions To Millions: Canada's Offshore Oil Disappointment, OilPrice.com (Nov. 5, 2020).
[66] Kevin Crowley & Akshat Rathi, Exxon Carbon Emissions and Climate: Leaked Plans Reveal Rising CO2 Output, Bloomberg Green (Oct. 5, 2020); Emily Pontecorvo, Exxon's 'emission reduction plan' doesn't call for reducing Exxon's emissions, Grist (Dec. 15, 2020).

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.[67]
    - Several leading executives from Shell's renewable energy sectors recently quit in response to the company's lackluster efforts to decarbonize.[68] In December 2020, the company was actively engaged in litigation in the Netherlands in which it argued that emissions reduction commitments should not be legally binding.[69] In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.[70]
    - Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.[71]
    - The American Petroleum Institute recently asserted that the oil industry remains essential to the American economy and promised to resist President Biden's climate agenda.[72]
- Shareholder engagement has not been an effective tactic for changing the industry's core business model, with recent attempts by shareholders to persuade fossil fuel companies to address climate risks going largely unheeded.
    - The Interfaith Center on Corporate Responsibility found that "150 requests from various responsible shareholders asking fossil fuel companies to evaluate financial risk from climate change regulation [between 1992 and 2015] were ignored or met with a dismissive reply," with leaders of companies including ExxonMobil and Shell explicitly stating their intentions to continue producing fossil fuels without interruption.[73]
    - Shareholder engagement group As You Sow noted in a 2018 report that, although oil and gas companies are disproportionate targets of shareholders' attempts to engage and intervene, the companies have been singularly unresponsive to requests to reduce greenhouse gas emissions.[74]
- In 2018, Harvard's Corporation Committee on Shareholder Responsibility voted to abstain on a shareholder proposal asking Chevron for a report on paths to decarbonization. The committee's reasoning was that "such a shift in strategy is properly

[67] Crowley & Rathi, *supra* note 66. ExxonMobil's growth strategy has since changed in light of the Covid-19 pandemic.
[68] Anjli Raval & Leslie Hook, Shell Executives Quit Amid Discord Over Green Push, Financial Times (Dec. 8, 2020).
[69] Laurel Wamsey, Climate Case Against Shell Begins In The Netherlands, NPR (Dec. 1, 2020).
[70] Jillian Ambrose, Shell to expand gas business despite pledge to speed up net zero carbon drive, The Guardian (Feb. 11, 2021).
[71] Carolyn Davis, Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities - Natural Gas, Natural Gas Intelligence (Dec. 3, 2020).
[72] Nicholas Kusnetz, American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy, Inside Climate News (Jan. 14, 2021).
[73] Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, Fossil fuel companies and climate change: the case for divestment, 350 Brit. Med. J. (Jun. 2015).
[74] As You Sow, 2020: A Clear Vision for Paris-Compliant Shareholder Engagement (Sept. 2018). The report urges fiduciaries to divest from the oil and gas sector so as to "protect their beneficiaries" if the companies do not adopt Paris-compliant plans by the close of the 2020 proxy season. *Id.* at 25. That deadline has now passed without any meaningful change of course by the industry. Raval, Big fossil fuel groups all failing, *supra* note 62.

a business decision for the company rather than a matter for shareholder input," and that "when considering company strategy on a core question of this kind, shareholders might prefer to invest in companies pursuing a strategy they favor (such as pursuing renewable energy opportunities), rather than pressuring one to move away from a core business in which it has long been involved."[75]

- The fossil fuel sector continues to undermine climate-friendly policymaking.
    - In the three years following the Paris Agreement, the five largest public fossil fuel companies "invested over $1 [billion] of shareholder funds on misleading climate-related branding and lobbying."[76]
    - Each year, "the world's five largest publicly owned oil and gas companies spend approximately $200 million on lobbying designed to control, delay or block binding climate-motivated policy."[77]
    - In 2018, the industry spent nearly $100 million to stymie three proposed climate initiatives in Western states: a carbon emissions fee in Washington, restrictions on hydraulic fracturing in Colorado, and improved renewable energy standards in Arizona.[78]
- As a 2013 article by environmental sociologists explained: "[a]lthough many factors have contributed to the failure to enact strong international and national climate change policies… a powerful and sustained effort to deny the reality and significance of human-induced climate change has been a key factor."[79]
- Finally, the fossil fuel industry has engaged in a sustained effort to silence climate protesters and increase the severity of criminal punishment for their activities.
    - Since 2017, the industry has pushed for the passage of numerous "critical infrastructure" bills in U.S. state legislatures, thirteen of which have become law.[80] Many of the bills are similar or identical to model legislation authored by the corporate lobbying group American Legislative Exchange Council, and at least three were accompanied by political contributions from oil and gas companies to the bills' sponsors.[81]
        - The majority of enacted "critical infrastructure" laws contain provisions for organizational as well as individual criminal liability.[82]

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[75] Annual Report 2017 - 2018 at 15, Harvard University Corporation Committee on Shareholder Responsibility (last visited Mar. 8, 2021).
[76] Big Oil's Real Agenda on Climate Change, InfluenceMap (Mar. 2019).
[77] Niall McCarthy, Oil and Gas Giants Spend Millions Lobbying to Block Climate Change Policies, Forbes (Mar. 25, 2019). BP spends approximately $53 million, Shell $49 million, and ExxonMobil $29 million per year. *Id.*
[78] Amy Harder, With deep pockets, energy industry notches big midterm wins, Axios (Nov. 7, 2018).
[79] Shaun W. Elsasser & Riley E. Dunlap, Leading Voices in the Conservative Choir: Conservative Columnists' Dismissal of Global Warming and Denigration of Climate Science, 57(6) Am. Behav. Scientist 754, 755 (2013).
[80] Institute for Policy Studies, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws (Oct. 2020). The states in which bills have passed into law are Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. US Protest Law Tracker, International Center for Not-for-Profit Law (last visited Feb. 10, 2021).
[81] New Report Details Impact of Secretive American Legislative Exchange Council on Communities of Color, Center for Constitutional Rights (Dec. 23, 2019); Gabrielle Cochette & Basav Sen, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws (Oct. 2020) at 8-9.
[82] Namely, those enacted in Kentucky, Mississippi, North Dakota, Ohio, Oklahoma, North Dakota, South Dakota, Tennessee, Texas, and West Virginia. US Protest Law Tracker, *supra* note 80.

        - A wide range of commentators have criticized "critical infrastructure" laws as unnecessary, vague, and overly punitive, and two of the laws face litigation challenging their constitutionality.[83]
    - The industry has also used lawsuits and subpoenas to accuse environmental advocates of defamation, racketeering, and other crimes, to label advocates as terrorists, and to chill advocacy targeting the industry's activities.[84]
    - There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing climate protest, and the use of heavy-handed tactics to suppress protest against fossil fuel infrastructure projects such as Energy Transfer Partners' Dakota Access pipeline.
        - In response to protests at the Standing Rock reservation in 2016 and 2017, Energy Transfer Partners hired TigerSwan, a military contractor with experience in Iraq and Afghanistan. In collaboration with local police, TigerSwan used legally questionable tactics against protesters, including digital surveillance.[85] Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.[86]
        - Energy Transfer Partners also retained TigerSwan to respond to vandalism targeting the Dakota Access pipeline in Iowa in 2017, using scare tactics, residential surveillance, and the hiring of locals to pursue suspects in a wide-ranging operation that swept in dozens of people.[87]
        - A multi-part reporting series by the investigative journalism publication The Intercept concluded that "[l]eaked documents and public records reveal a troubling fusion of private security, public law enforcement, and corporate money in the fight over the Dakota Access pipeline."[88]
        - In 2019, the Canadian pipeline company Enbridge used digital and aerial surveillance, along with embedded informants, against nonviolent protesters targeting the company's Line 3 pipeline in Minnesota, attempting to follow the same playbook used by law enforcement at Standing Rock.[89] Among the private security firms contracted by Enbridge

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[83] Nicholas Kusnetz, More States Crack Down on Pipeline Protesters, Including Supporters Who Aren't Even on the Scene, Inside Climate News (Mar. 28, 2019); Susie Cagle, 'Protesters as terrorists': growing number of states turn anti-pipeline activism into a crime, The Guardian (Jul. 8, 2019).
[84] *See, e.g.*, Amal Ahmed, Energy Transfer Partners Files Lawsuit Against Greenpeace, Texas Monthly (Dec. 15, 2017); Exxon's Campaign of Intimidation against Climate Defenders Ushers in a New McCarthy Era, EarthRights International (Dec. 21, 2016); Green Group Holdings v. Schaeffer: Defense of Environmental Protesters Against Defamation Lawsuit, American Civil Liberties Union (Feb. 7, 2017). A national coalition of civil rights organizations called Protect the Protest tracks and opposes these tactics.
[85] Antonia Juhasz, Paramilitary security tracked and targeted DAPL opponents as 'jihadists,' docs show, Grist (Jun. 1, 2017).
[86] Alleen Brown, Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons, The Intercept (Nov. 21, 2016).
[87] Alleen Brown, Will Parrish & Alice Speri, Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet, The Intercept (Aug. 26, 2017).
[88] *Id.*
[89] Will Parrish & Alleen Brown, How Police Are Preparing for a Standoff Over Enbridge Line 3, The Intercept (Jan. 30, 2019).

was Securitas — the same firm that provides security services to Harvard University.[90]

- The militarized response to climate protest by fossil fuel companies is at least a decade old. At a 2011 conference attended by members of the fossil fuel industry, an executive of Anadarko Petroleum recommended military-style tactics against citizen groups protesting hydraulic fracturing (also known as fracking): “I want you to download the US Army/Marine Corps counterinsurgency manual because we are dealing with an insurgency here.”[91]

V. 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 Harvard community, violating the Harvard Corporation’s duties to *consider the charitable purpose* of Harvard and to act with *loyalty* toward its community and property.

- Climate change has massive impacts on so-called frontline communities, including minority and Indigenous communities that disproportionately experience the effects of air pollution, sea level rise, drought, and other warming consequences.[92] 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.[93]
    - 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 from decreased job prospects in sectors such as agriculture and tourism as the climate crisis accelerates.[94]
    - 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

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[90] *Id.*; Cara J. Chang & Meimei Xu, Harvard Security Guards Ratify One-Year Contract With Securitas, The Harvard Crimson (Jan. 5, 2021) (noting that “Harvard contracts with Securitas North America, a division of a multinational Swedish company with 370,000 employees across the world, to handle most of its security guard operations”).
[91] Bill McKibben, Shake Harvard Free of Oil Stock, The Boston Globe (April 7, 2015).
[92] The Geography of Climate Justice, Mary Robinson Foundation (last visited Feb. 10, 2021).
[93] 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).
[94] 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).

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."[95]

    - Migration due to climate change has increased in recent years and is anticipated to grow exponentially as many areas of the globe become inhospitable to agriculture and human habitation, provoking political and social instability.[96]

- According to a recent study co-authored by Loretta J. Mickley, senior research fellow in chemistry-climate interactions at the Harvard John A. Paulson School of Engineering and Applied Sciences, fossil fuel emissions are directly responsible for nearly one-fifth of all deaths globally. Particulate matter spread by fossil fuel combustion killed eight million people in 2018, about eighteen percent of total deaths that year.[97]
- 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.[98]
- 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.[99]
- 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 Harvard owns property and causing the effects of climate change to be borne by the general public.[100]
- 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."[101] 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.[102]

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[95] United Nations Department of Economic and Social Affairs — Indigenous Peoples, Climate Change (2020).
[96] Michael Werz and Laura Conley, Climate Change, Migration, and Conflict, Center for American Progress (2012).
[97] K. Vohra, A. Vodonos, J. Schwartz, E. Marais, M.P. Sulprizio, & L.J. Mickley, Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem, Environmental Research (in press 2021).
[98] Massachusetts Department of Public Health, Climate and Health Profiles (Sep. 24 2020).
[99] Kathryn Wright, Jeremy Koo, and Andy Belden, Enhancing Resilience in Boston: A Guide for Large Buildings and Institutions, A Better City (Feb. 2015).
[100] City of Newton Climate Change Vulnerability Assessment and Action Plan, City of Newton (Dec. 2018).
[101] Intergovernmental Platform on Biodiversity and Ecosystem Services, IPBES Workshop on Biodiversity and Pandemics: Workshop Report (Oct. 29, 2020).
[102] 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).

VI. The financial risk of fossil fuel investments

As an asset manager, the Harvard Corporation has violated its *duty of care* by failing to adequately consider the risk of continued investment in 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 that "strive[s] toward a more just, fair, and promising world," Harvard 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 Harvard Corporation's fiduciary duties oblige it 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 ten years. While the S&P 500 has gained approximately 189 percent in value since 2011, the S&P Oil and Gas Exploration and Production Index has lost approximately 58 percent of its value and the S&P Oil and Gas Equipment Select Industry Index has lost approximately eight-five percent of its value.[103] 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.[104]
    - From the fourth quarter of 2019 to August 2020, seven of the world's largest oil companies lost eighty-seven billion in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.[105]
    - In January 2021, the S&P rating agency warned leading fossil fuel companies that they were at risk of imminent credit downgrades due to economic pressures resulting from the energy transition.[106]
- In August 2020, 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.[107]
- In February 2021, ExxonMobil reported quarterly losses of $20.1 billion.[108]
- Since 2010, 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

[103] Data from S&P Dow Jones Indices, S&P Global (Mar. 5, 2020).
[104] Kevin Stankiewicz, There's no more money to be made in oil and gas stocks, Jim Cramer says, CNBC (Feb. 3, 2020).
[105] Jillian Ambrose, Seven top oil firms downgrade $87bn in nine months, The Guardian (Aug. 14, 2020).
[106] Ben Butler, Rating agency S&P warns 13 oil and gas companies they risk downgrades as renewables pick up steam, The Guardian (Jan. 27, 2021).
[107] Avi Salzman, Why Exxon Is Being Dropped From the Dow, Barron's (Aug. 25, 2020).
[108] ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans, ExxonMobil (Feb. 2, 2021).

they have earned from business operations ($340 billion), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.[109]

- The coal industry, especially in the United States, is collapsing: the share of U.S. electricity produced by coal has declined from forty-five percent in 2008 to twenty-four percent in 2020, while eight coal companies, including the largest private coal firm, declared bankruptcy in 2019.[110]
- 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, and coal will continue to grow and that companies' extensive untapped reserves represent a sure source of future profits — are no longer tenable.[111]
    - 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."[112]
    - 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."[113]
    - 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."[114]
- The Carbon Tracker Initiative calculates the remaining amount of carbon dioxide that may be released into the atmosphere if international warming limits are to be met. As of

[109] 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).
[110] Fred Pearce, As Investors and Insurers Back Away, the Economics of Coal Turn Toxic, Yale Environment 360 (Mar. 10, 2020).
[111] 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)
[112] *Id.* at 4.
[113] *Id.* at 1.
[114] *Id.* at 38.

November 2019, the world could continue to release carbon dioxide at current rates for only thirteen more years in order to have a fifty percent chance of meeting the 1.5 degree Celsius target. Under this limited "carbon budget," fossil fuel majors would have to reduce emissions from oil and gas production forty percent below 2019 levels by 2040. Such reductions — which represent only a moderate chance at avoiding catastrophe — would render the majority of oil and gas reserves unexploitable and unprofitable.[115]

- 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 two degrees Celsius — the target set by the 2015 Paris Agreement and one which will still result in widespread harm — 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 percentage points by 2030 and 100 percentage points by 2050, while assets in oil and gas will suffer cumulative impacts of 42.1 and 95.1 percentage points, respectively.[116] Other studies have concluded that major energy companies who continue to rely on fossil fuels would lose between thirty and sixty percent of their value.[117]
- 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."[118]
- 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 & 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."[119]
- 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.[120]
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz, former Secretary of Labor Robert Reich, and Harvard faculty Dani Rodrik, Richard Parker, Stephen Marglin, and John Womack, identified the

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[115] Carbon Tracker Initiative, Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink (Nov. 1, 2019).
[116] Mercer LLC, Investing in a Time of Climate Change: The Sequel 2019 (2019), 34
[117] European Green Party, The Carbon Bubble: The financial risk of fossil fuels and need for divestment (2020), 7.
[118] Board of Governors of the Federal Reserve System, Financial Stability Report (Nov. 2020), 58
[119] Clyde & Co LLP, Climate change: Liability risks (Mar. 2019), 37.
[120] Michael Slezak, Rest super fund commits to net-zero emission investments after Brisbane man sues, ABC News (Nov. 2, 2020).

continued existence of the fossil fuel economy as "fundamentally incompatible" with long-term social and economic well-being and cited divestment as an essential tactic for bringing about systemic change: "When our largest banks, most influential investors and most prestigious universities place bets on the success of the fossil fuel industry, they provide it with the economic and social capital necessary to maintain the dangerous status quo. Instead, these institutions should divest from fossil fuel companies and end financing of their continued operations while reinvesting those resources in a just and stable future."[121]

VII. Industry fraud and the fiduciary duty to avoid fraudulent investments

Despite well-known facts regarding the fossil fuel industry's alleged efforts to defraud investors, the Harvard Corporation has persisted in buying industry securities, violating its *duty of care*.

- Fossil fuel companies have allegedly long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This alleged fraud has been a matter of public record since at least 2015[122] 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 . . . 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."[123]
        - 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.[124]

[121] Jeffrey Sachs, Joseph Stiglitz, Mariana Mazzucato, Clair Brown, Indivar Dutta-Gupta, Robert Reich, Gabriel Zucman, et al, Letter from economists: to rebuild our world, we must end the carbon economy, The Guardian (Aug. 4, 2020).
[122] 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).
[123] Second Amended Complaint, Massachusetts v. ExxonMobil, No. 1984-CV-03333-BLS1(Mass. Sup. Ct. June 5, 2020) at 1.
[124] *Id.* at 5.

- 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.[125]
- 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."[126]
- According to the Complaint, "[t]he 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."[127]
- The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the Harvard Corporation 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."[128]

- A former senior accounting analyst for ExxonMobil has alleged in a whistleblower complaint to the Securities and Exchange Commission that the company has repeatedly overstated the value of its U.S. oil and gas assets — which will likely prove unprofitable due to the collapse of the fracking boom — fraudulently inflating the company's worth to investors by as much as fifty-six billion dollars.[129]

- Despite the revelation of this alleged 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

[125] *Id.* at 9, 50-51.
[126] *Id.* at 8.
[127] *Id.* at 65, 80-81.
[128] *Id.* at 138.
[129] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).

describe how they will adjust their operations to satisfy the warming targets established under the Paris Agreement.[130]

VIII. The financial prudence of fossil fuel divestment

Despite the frequent claim that removing an asset class like fossil fuels from an endowment would violate the fiduciary duty to maintain a diverse portfolio, fossil fuel divestment poses no risk to a portfolio's diversity and flexibility, nor does it impact returns. The Harvard Corporation has violated its *duty of care* and its *duty of loyalty* by failing to embrace a divestment strategy that would both improve the endowment's performance and cure the fiduciary violations created by fossil fuel investment.

- A 2018 London School of Economics analysis led by Jeremy Grantham, one of the world's leading asset managers, concluded that removing any one of ten major asset classes such as technology or utilities from a portfolio produced no discernible impact on overall long-term returns. The analysis states that the purported financial peril of fossil fuel divestment was "mythical," and that "[i]nvestors with long-term horizons should avoid oil . . . on investment grounds."[131]
- 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.[132] Other research indicates that fossil fuel divestment does not significantly limit portfolio diversification opportunities, allowing investors to satisfy their fiduciary duty to maintain balanced holdings even as they avoid the risks posed by stranded assets and the energy transition.[133]
    - 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."[134]

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[130] Dana Drugman, Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk, The Climate Docket (Jan. 29, 2020).
[131] Jeremy Grantham, The mythical peril of divesting from fossil fuels, London School of Economics (June 13, 2018).
[132] 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).
[133] Auke Plantinga and Bert Scholtens, The financial impact of fossil fuel divestment, 21 Climate Policy 1 (2020).
[134] 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.

- 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 financial return" — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.
- A 2018 analysis concluded that the New York State Common Retirement Fund would have earned an additional $22.2 billion ($137 billion versus $114.8 billion) from 2008 to 2018 had it divested from fossil fuels.[135]

IX. Divestment by peer institutions

Hundreds of large institutional investors have opted in recent years to divest from fossil fuel producers, including many universities situated similarly to Harvard. Their reasoning applies to Harvard's circumstances as well as their own, and thus the Harvard Corporation has failed to *invest with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.*

- Institutional divestment from the fossil fuel industry has become increasingly common. Many institutions have pointed to the moral and financial imperative of abandoning holdings in oil, gas, and coal, and there is broad consensus that fossil fuel divestment is both necessary and effective as a means of mitigating climate disaster.[136]
  - Institutional investment in fossil fuel firms "provid[es] [them] with the capital to continue oil and gas production, to persuade members of Congress to provide industry-specific tax breaks and other favors, and to thwart carbon taxes and new public-transportation projects and other policies — actions that ultimately delay the transition from the greenhouse gas-emitting fuels."[137]
  - In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is effective in reducing the fossil fuel industry's harmful effects on the climate: "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."[138]

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[135] Toby A.A. Heaps, Divestment would have made NY pension fund $22B richer, Corporate Knights (Oct. 4, 2018).
[136] *See, e.g.*, How falling demand for oil is set to transform international relations, World Economic Forum (Aug. 20, 2019) (citing the "global campaign in support of divestment from fossil fuels" as one of the key factors in the ongoing energy transition worldwide); Gunther Thallinger, The zero that every investment portfolio needs, World Economic Forum (Jan. 14, 2021) ("To address climate change effectively, investors must steer their entire portfolios towards climate neutrality. . . . [I]t could become necessary to reduce assets with a non-satisfactory sustainability approach. In the extreme case of non-existence of such approaches, divestment is the ultima ratio.").
[137] Prem Thakkar, Reading the Fine Print of University Fossil Fuel Divestment Pledges, The American Prospect (Mar. 1, 2021).
[138] Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* note 123, at 108-109.

        - The Attorney General was referencing an investor disclosure by Shell, in which the company stated that the divestment movement "could have a material adverse effect on the price of our securities and our ability to access equity capital markets . . . other financial institutions also appear to be considering limiting their exposure to certain fossil fuel projects. Accordingly, our ability to use financing for future projects may be adversely impacted."[139]
        - Other fossil fuel companies have likewise acknowledged the effects of investors' decisions to pull their funds: Prior to its bankruptcy declaration, for example, Peabody Energy stated in SEC filings that "[t]here have also been efforts in recent years affecting the investment community, including investment advisors, sovereign wealth funds, public pension funds, universities and other groups, promoting the divestment of fossil fuel equities and also pressuring lenders to limit funding to companies engaged in the extraction of fossil fuel reserves. The impact of such efforts may adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets."[140]
    - In addition to "hasten[ing] the [fossil fuel] industry's decline," divestment commitments from large institutions create pressure on governments to take action and make political space for the shift away from fossil fuels."[141]
- Harvard's peer institutions in the Ivy League and elsewhere have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. Such institutions have often chosen divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals. Many of Harvard's peer institutions have also committed to meaningful climate action on a much more rapid timescale.
    - In March 2020, Brown University made public that it had begun selling its investments in fossil fuel extraction companies in October 2017, arguing that the climate crisis called for serious action beyond teaching and research. "The urgency of the situation calls for additional action," Brown's president Christina Paxson wrote in a letter to the Brown community.[142]
        - Paxson explained the move as aligning with "the view that, as the world shifts to sustainable energy sources, investments in fossil fuels carry too much long-term financial risk."[143]

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[139] Royal Dutch Shell PLC, Annual Report and Form 20-F 2017 — Strategic Report (2017), 13.
[140] Peabody Energy Corporation, Form 10-K: Annual Report, Securities and Exchange Commission (2014), 30.
[141] Emma Howard, A beginner's guide to fossil fuel divestment, The Guardian (Jun. 23, 2015) (quoting Jamie Henn, of 350.org, who explains that institutional divestment commitments "hasten the [fossil fuel] industry's decline and help push governments to take action," while also serving to stigmatise fossil fuel companies in order to "make the space for progress" and reduce those companies' corrupting influence on politics).
[142] Christina Paxson, Letter from President Paxson: Brown's actions on climate change, Brown University, (Mar. 4, 2020).
[143] *Id.*

- On May 22, 2020, the Cornell University Board of Trustees announced a moratorium on new private investments focused on fossil fuels and a phase-out of existing investments in that area, effectively divesting the endowment from the fossil fuel industry.[144]
    - Like many investors, when Cornell's Trustees announced their moratorium on fossil fuel investments, they cited the financial imperative behind their actions: "We're doing the right thing from an investment perspective, particularly for an endowment with a perpetual time horizon" said Ken Miranda, the university's chief investment officer, in a Cornell press release.[145]
- On October 1, 2020, the University of Cambridge announced plans to divest all direct and indirect holdings from the fossil fuel industry and to achieve net-zero greenhouse gas emissions by 2038 — commitments that are more ambitious than Harvard's in both their scope and timescale.[146]
    - As of December 2020, the university had already withdrawn investments in "conventional energy-focused public equity measures," and planned to divest from "all meaningful exposure in fossil fuels" by 2030. It now aims to achieve net-zero greenhouse gas emissions across its entire investment portfolio by 2038 — twelve years before Harvard's 2050 deadline.[147]
    - Cambridge's announcement was justified on moral grounds. "The University is responding comprehensively to a pressing environmental and moral need for action with an historic announcement that demonstrates our determination to seek solutions to the climate crisis," said Stephen Toope, the university's vice-chancellor.[148]
    - In addition to leveraging the university's endowment, Cambridge also made clear its continued commitment to research and teaching, emphasizing that all research funding and donations will now be scrutinized against the university's goal of reducing greenhouse gas emissions "before any funding is accepted."[149]
- In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.[150]
    - Oxford's divestment decision was made in accordance with its Oxford Martin Principles for Climate-Conscious Investment, a set of guidelines that led the university to determine that fossil fuel investments "hinder" worldwide efforts to (1) bring CO2 emissions to zero and (2) limit global warming to 1.5 degrees C.[151]

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[144] Kathryn Stamm, Cornell to Effectively Divest from Fossil Fuels, Trustees Vote, Cornell Daily Sun (May 22, 2020).
[145] James Dean, Cornell announces moratorium on fossil fuel investments, Cornell Chronicle (May 22, 2020).
[146] Matthew Taylor, Cambridge University to divest from fossil fuels by 2030, The Guardian (Oct. 1, 2020).
[147] *Id.*
[148] Cambridge to divest from fossil fuels with 'net zero' plan, University of Cambridge (Oct. 1, 2020).
[149] *Id.*
[150] University of Oxford cuts ties to fossil fuels industry, BBC News (Apr. 28, 2020).
[151] Oxford Martin Principles for Climate-Conscious Investment, Oxford Martin Net Zero Carbon Investment Initiative (Feb. 2018) (adapted from R.J. Millar, C. Hepburn, J. Beddington, J. and M.R. Allen, Principles to guide investment towards a stable climate, Nature Climate Change 8, (2018), 2-4).

        - While Harvard has insisted on "shareholder engagement" *instead of* divestment, Oxford has chosen to pursue both strategies, divesting from fossil fuel companies while also pledging to work with companies around the world, "helping them assess whether investments are compatible with transition to a more stable climate and the goals of the Paris Agreement on climate change." Oxford also plans to engage with fund managers "to request evidence of net-zero carbon business plans across their portfolios."[152]
        - Oxford's divestment pledge was seen as consistent with the university's academic and teaching mission, and administrators did not see divestment as precluding climate- and sustainability-related research or efforts to promote sustainable campus operations. In fall 2020, months after announcing its divestment pledge, Oxford released drafts of a sustainability plan to achieve net-zero carbon and biodiversity net gain by 2035[153] — fifteen years before Harvard committed to neutralize its greenhouse gas emissions.
    - In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.[154]
        - In its announcement, Georgetown stressed the financial risk of continued investment, with Michael Barry, Georgetown's chief investment officer, noting 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."[155]
        - Georgetown President John J. DeGioia also identified moral concerns as important to the decision, nothing that "caring for our environment is one of the most urgent moral and practical concerns of our time."[156]
    - In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.[157]
        - In an op-ed in the Los Angeles Times, fund managers cited their fiduciary duty to the long-term financial wellbeing of the institution, writing that "[t]he reason we sold some $150 million in fossil fuel assets from our endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC's diversified portfolios."[158]
        - The fund managers also pledged to take the opportunity to reinvest in climate change solutions, writing that "[w]e have been looking years, decades and centuries ahead as we place our bets that clean energy will

[152] Oxford announces historic commitment to fossil fuel divestment, University of Oxford (Apr. 27, 2020).
[153] Aiming for zero carbon and biodiversity net gain by 2035, University of Oxford (Nov. 20, 2020).
[154] Fossil Fuels Divestment Continues Georgetown's Commitment to Sustainability, Georgetown University (Feb. 6, 2020).
[155] *Id.*
[156] *Id.*
[157] Jagdeep Singh Baccher and Richard Sherman, Opinion: UC investments are going fossil free. But not exactly for the reasons you may think, Los Angeles Times (Sep. 17, 2019).
[158] *Id.*

fuel the world's future. That means we believe there is money to be made."[159]

- In May 2016, the University of Massachusetts system announced the divestment of its endowment from all fossil fuel assets.[160]
    - University of Massachusetts President Marty Meehan stressed the need to align their investments with institutional values, writing that the move "reflects our commitment to take on the environmental challenges that confront us all."[161]
    - Fund managers also stressed the compatibility of moral and fiduciary duties in divesting, with UMass Foundation Treasurer and Investment Committee Chairman Edward H. D'Alelio stating that the fact "we took this step reflects not just our comfort as fiduciaries but the seriousness with which we see climate change."[162]

- Aside from peer universities, many other large-scale charitable funds with analogous fiduciary duties have divested.
    - 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 System of the City of New York, and the City of Providence, Rhode Island (partial).[163]
    - Other major funds that have divested include the five-billion-dollar Rockefeller Foundation,[164] Norway's $1.1 trillion sovereign wealth fund (oil and gas exploration and production)[165] and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).[166]

X. Harvard's ties to the fossil fuel industry and conflicts of interest

Harvard Corporation members maintain significant financial ties to the fossil fuel industry. These apparent conflicts of interest violate the Corporation's *duty of loyalty* because fossil fuel companies' business models are in fundamental tension with Harvard's espoused values and commitment to decarbonization. Financial ties by individual faculty members also present apparent conflicts insofar as the administration invokes those individuals to justify its decision not to divest from fossil fuels.

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[159] *Id.*
[160] UMass Becomes First Major Public University to Divest from Direct Fossil Fuel Holdings., University of Massachusetts (May 25, 2016).
[161] *Id.*
[162] *Id.*
[163] 1000+ Divestment Commitments, GoFossilFree.org (updated Dec. 9, 2020).
[164] *Id.*
[165] Terje Solsvik, Norway sovereign wealth fund to divest oil explorers, keep refiners, Reuters (Oct. 1, 2019).
[166] Jillian Ambrose, Major investment firm dumps Exxon, Chevron and Rio Tinto stock, The Guardian (Aug. 24, 2020).

- Three members of the Harvard Corporation maintain or have recently maintained financial ties to the fossil fuel industry.
    - Theodore Wells, first elected to the Harvard Corporation in 2012,[167] has represented ExxonMobil in matters related to alleged climate change disinformation and the misleading of investors and the public.
        - In 2019, Wells defended ExxonMobil against claims by the Attorney General for the State of New York that the company misled investors and the public about climate change, spread disinformation about the risks of burning fossil fuels, and concealed research conducted by its own scientists.[168]
        - Wells currently represents ExxonMobil in a similar case brought by this office.[169] In defending itself, ExxonMobil has engaged in litigation tactics described by the Massachusetts Attorney General's office as "blatantly obstructionist."[170]
        - Wells previously represented ExxonMobil in other instances, including a 2003 federal corruption case,[171] a 2009 pollution case case brought by the New Jersey Department of Environmental Protection,[172] and a 2011 case concerning human rights abuses by ExxonMobil's private security forces.[173]
    - Harvard Corporation member David Rubenstein, who was first elected to the Harvard Corporation in 2017,[174] maintains significant fossil fuel ties through his firm, the Carlyle Group, where he is co-founder and co-executive chair.[175]
        - The Carlyle Group has invested at least $2.5 billion in fossil fuels[176] and purchased a forty-eight percent stake in Natural Gas Partners, a private equity firm which exclusively invests in oil and gas.[177]
        - The Carlyle Group has supported oil exploration in areas uncovered by melting Alaskan glaciers,[178] perpetuating the cycle of environmental harm that caused the glaciers to retreat in the first place.

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[167] Matthews and Wells Elected to Harvard Corporation, The Harvard Gazette (Sept. 23, 2012).
[168] Exxon Mobil Scores Win in New York Climate Change Lawsuit, Reuters (Dec. 10, 2019).
[169] Brendan Pierson and Sebastien Malo, Exxon, New York Prosecutors Face Off in Climate Change Fraud Trial, Reuters (Oct. 22, 2019).
[170] Commonwealth's Opposition to ExxonMobil's So-Called Emergency Motion to Extend Time o Meet and Confer Under G.L.c. 93A, §4, Commonwealth of Massachusetts v. Exxon Mobil Corporation, Superior Court Civil Action No. 16-1888 at 2 (Oct. 18, 2019).
[171] Kenneth Gilpin, Former Mobil Oil Executive Pleads Guilty to Tax Evasion, The New York Times (June 13, 2003).
[172] Benjamin Weiser, Chunk of New Jersey's Money from Exxon Settlement is to Go to Legal Fees, The New York Times(Mar. 9. 2015).
[173] Petition for Rehearing En Banc, John Doe VIII, *et. al.* v. ExxonMobil Corporation *et. al.*, No. 09-7125 (D.C. Cir. Aug. 8, 2011).
[174] President and Fellows (Harvard Corporation), Harvard University (last visited Feb. 16, 2021).
[175] David M. Rubenstein, Carlyle (last visited Feb. 16, 2021).
[176] International Energy Partners, Carlyle (last visited Feb. 16, 2021).
[177] The Oil Tanks, Public Accountability Initiative (last visited Feb. 16, 2021).
[178] David Sirota, Journalists celebrate purchase of staid local newspaper by plucky rival. (Overlook plucky rival's ties to Carlyle Group), Pando (Apr. 16, 2014).

        - Rubenstein has appeared on CNBC urging investors to buy stock in oil companies, casting their low share prices due to the climate crisis as an opportunity to make "great fortunes."[179]
    - Harvard Corporation member Paul Finnegan — who was first elected to the Corporation in 2012, was named treasurer in 2014,[180] and is a member of the four-person Corporation Committee on Shareholder Responsibility, the sub-group of the Corporation that first evaluates cases for divestment[181] — is the co-founder and co-CEO of Madison Dearborn Partners (MDP), a Chicago-based private equity firm. A page on MDP's website active between 2007 and 2012 described the firm's energy and power portfolio as "focus[ing] on investment opportunities in" oil and gas exploration, coal production and gasification, oilfield services, pipelines and storage terminals, and refining, among other activities related to the fossil fuel sector.[182]
- In defending the decision not to divest from fossil fuels, the Harvard Corporation and school administrators have referenced anti-divestment perspectives from Harvard faculty with financial connections to the fossil fuel industry.[183]
    - In a December 2020 meeting with students, Harvard Corporation members repeatedly invoked economics professor John Campbell.[184] Campbell is a founding partner of Arrowstreet Capital Limited Partnership, an asset manager with millions of dollars in oil and gas producers such as Enerplus[185], Parsley Energy,[186] and Murphy Oil Corporation.[187] Other holdings include Northern Oil & Gas Inc., Imperial Oil Ltd., Cabot Oil & Gas Corp., Liberty Oilfield Services, Contango Oil & Gas Company, Magnolia Oil & Gas Corp., Marathon Oil Corp., Vista Oil & Gas, NexTier Oilfield Solutions, Oil States International, Statoil, Southwest Gas Corp., Western Gas Partners, China Petroleum & Chemical Corp., Whiting Petroleum Corp., Laredo Petroleum Inc., Abraxas Petroleum Corp.,

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179 Tom DiChristopher, Why I'm not waiting for the oil bottom: Rubenstein, CNBC (Mar. 3, 2015).
180 *Supra* note 174. (The citation is to President and Fellows (Harvard Corporation)
181 Shareholder Responsibility Committees, Harvard University (last visited Feb. 16, 2021).
182 Energy & Power, Madison Dearborn Partners (last visited Feb. 16, 2021). This page was found using Internet Archive's Wayback Machine.
183 Conversely, the fossil fuel industry has cited Harvard's refusal to divest in its own anti-divestment advocacy. In 2017, the Massachusetts Petroleum Council quoted Harvard's then-President Drew Faust in its testimony against a bill that would have divested the state's pension fund from fossil fuels. Letter to Senator Cindy Friedman, Massachusetts Petroleum Council (Oct. 10, 2017). The Independent Petroleum Association of America maintains an anti-divestment website that quotes Harvard President Lawrence Bacow and Professor of Environmental Policy John P. Holdren. Many Paths to Support Sustainability, Divestment is Not One, Divestmentfacts.com (last visited Feb. 24, 2021).
184 Campbell's anti-divestment stance was made clear during a series of faculty meetings on divestment between the fall of 2019 and the spring of 2020. *See* John S. Rosenberg, A Faculty Motion on Divesting Fossil Fuel Investments, Harvard Magazine (Dec. 4, 2019). In December 2019, Campbell called a Faculty of Arts and Sciences motion for divestment "too rigid," adding that it "focuses too narrowly on fossil-fuel producers and pays too little attention to the sources of demand for fossil fuels." *Id.*
185 Arrowstreet Capital Limited Partnership Has $5.64 Million Holdings in Enerplus Co. (NYSE:ERF), Dispatch Tribunal (Dec. 8, 2020).
186 Arrowstreet Capital Limited Partnership Has $4.70 Million Stake in Parsley Energy, Inc. (NYSE:PE), Dispatch Tribunal (Dec. 9, 2020).
187 Arrowstreet Capital, Limited Partnership reports 91.60% increase in ownership of MUR / Murphy Oil Corp. - 13F, 13D, 13G Filings, Fintel (last visited Feb. 10, 2021).

Petroleo Brasileiro, Berry Petroleum Co., Callon Petroleum Co., and Oasis Petroleum Inc.[188]

- ○ Harvard administrators and Gazette journalists have cited Professor Robert Stavins's critical stance toward fossil fuel divestment and his work to address climate change by other means.[189] Stavins, who teaches at the Kennedy School and directs the Harvard Environmental Economics Program (HEEP), along with the Harvard Project on Climate Agreements (HPCA), has consulted for Chevron, Duke Energy Corporation, Exelon, Enel (an Italian energy company), and the Western States Petroleum Association.[190] HEEP and HPCA receive significant financial support from a number of fossil fuel companies and groups linked to the fossil fuel industry.[191]
- ○ Daniel Schrag, who holds joint appointments in geology and environmental science and engineering, directs the Harvard University Center for the Environment, and co-directs the Science, Technology, and Public Policy Program at the Harvard Kennedy School, has also been invoked by Harvard administrators in meetings with students, and has voiced opposition to fossil fuel divestment in language similar to that of former President Drew Faust.[192] Schrag previously served as Chairman of the Scientific Advisory Board for C12 Energy,[193] a company whose business strategy focuses on "enhanced oil recovery" (EOR), a method of pumping carbon dioxide or other materials into oil wells to dredge up the last of the oil.[194] He has also done consulting work for SCS Energy LLC, a coal and gas company.[195] Schrag was reportedly paid to promote a coal gasification plant near Bakersfield, California which proposed to capture its carbon emissions for use in EOR.[196]

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[188] Arrowstreet Capital, Limited Partnership - 13F Holdings, Fintel (last visited Feb. 10, 2021).

[189] *See, e.g.*, Colleen Walsh, Q&A with Harvard President Drew Faust, The Harvard Gazette (Sept. 17, 2015) (quoting former President Drew Faust in stating that Stavins was "deeply involved in preparing for the Paris talks on climate change," in response to a question about what role the University has in addressing climate change and why it continues to oppose fossil fuel divestment); Alvin Powell, Climate change on world stage, The Harvard Gazette (Dec. 19, 2012) (quoting Stavins in saying that "you have to weigh symbolic actions against truly meaningful actions" and suggesting that divestment is merely symbolic). Harvard administrators have also mentioned Stavins in meetings with students about fossil fuel divestment.

[190] Outside Activities of Robert N. Stavins (last updated Jan. 1, 2020).

[191] *See infra* at Section XI.

[192] *See* Jahred Liddie, Has the conversation on climate changed?, Harvard Office for Sustainability (Apr. 24, 2015) (summarizing 2015 panel in which Schrag argued against divestment). *See also* Harvard Political Review, A Semester with Divest (Sept. 2, 2014) (describing Schrag as an "informal advisor" to President Faust).

[193] Our Team, C12 Energy (last visited Mar. 6, 2021). This page was found using Internet Archive's Wayback Machine.

[194] C12 Energy, LLC, LinkedIn (last visited Mar. 6, 2021); Enhanced Oil Recovery, U.S. Department of Energy (last visited Mar. 6, 2021).

[195] Louis Sahagún, Kern County farmers question just how 'clean' new coal plant would be, Los Angeles Times (May 24, 2014).

[196] Tom Frantz, Clearing the Air: Victory in Kern County, Community Alliance (Apr. 3, 2016). *See also* Sahagún, Kern County farmers question, *supra* note 195 (identifying Schrag as a consultant for SCS Energy, the project's owner at the time, and quoting him in declaring, "[w]e need this technology").

XI. The fossil fuel industry's scientific misinformation campaigns and attacks on academia

Harvard's *charitable purposes* are contravened by the decades-long efforts of fossil fuel companies to obscure scientific reality and undermine academic research. These anti-academic activities have been undertaken in bad faith and cannot be attributed to intellectual disagreement. By funding this activity, the Harvard Corporation exposes the Harvard community and society at large to injury, violating its *duty of loyalty.*

- Beginning in the 1980s, and in response to mounting evidence of climate risks,[197] fossil fuel companies halted their climate research and "began a campaign to discredit climate science and delay actions perceived as contrary to their business interests."[198] This campaign was multi-pronged, consisting of the development of internal policies to suppress the companies' own knowledge, public communications to sow doubt about the dangers of fossil fuels, and the funding of organizations and research to undermine climate science.[199]
    - In 2007 testimony to the U.S. House of Representatives Committee on Science and Technology, Harvard's Dr. James McCarthy described a network of forty-three organizations funded by ExxonMobil whose goal was to "distort, manipulate and suppress climate science, so as to confuse the American public about the reality and urgency of the global warming problem, and thus forestall a strong policy response."[200]
    - Between 1998 and 2005, ExxonMobil alone spent nearly sixteen million dollars funding groups that promote climate denial, according to a report by the Union of Concerned Scientists.[201]
    - Over about the last three decades, "five major U.S. oil companies have spent a total of at least $3.6 [billion] on advertisements."[202] These ads, along with other public communications, have promoted narratives the companies know to be false: In the case of ExxonMobil, for example, between 1977 and 2014, only twelve percent of ads acknowledged that anthropogenic climate change is real, compared to eighty percent of internal documents.[203]
- These activities were summarized in an amicus brief by academics and researchers as part of the ongoing tort litigation by California counties against fossil fuel companies,[204]

[197] *See supra* at Section 3.
[198] Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, and Geoffrey Supran in Support of Appellees and Affirmance at 17, County of San Mateo v. Chevron Corporation, et al., County of Imperial Beach v. Chevron Corporation, et al., County of Marin v. Chevron Corporation, et al., County of Santa Cruz, et al., v. Chevron Corporation, et al., Nos. 18-15499, 18-15502, 18-15503, 18-16376 (9th Cir. 2019).
[199] *Id.*
[200] Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* note 123, at ¶195.
[201] Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to "Manufacture Uncertainty" on Climate Change (Jul. 16, 2007).
[202] Emily Holden, How the oil industry has spent billions to control the climate change conversation, The Guardian (Jan. 8, 2020).
[203] Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications (1977–2014), 12(8) Envtl. Res. Letters (Aug. 2017).
[204] *See* Brief of Amici Curiae Robert Brulle, et al., *supra* note 52.

and by this office's complaint against ExxonMobil in its deceptive advertising litigation.[205]

- Academic research has confirmed that the fossil fuel industry's "major tactic was and continues to be manufacturing uncertainty . . . [and] constantly asserting that the evidence is not sufficient to warrant regulatory action. Historically these efforts focused on specific problems such as secondhand smoke, acid rain, and ozone depletion, but in the case of [climate change] they have ballooned into a full-scale assault on the multifaceted field of climate science, the IPCC, scientific organizations endorsing [climate change], and even individual scientists."[206]
- Undermining the work of academics and scholars has been another key tactic of the fossil fuel industry, and Harvard researchers have been among those targeted.
    - Following publication of his famous "hockey stick graph," climate scientist Michael E. Mann faced years of efforts to discredit him and his work, and "many [of these] attacks . . . trace directly to involvement by the fossil fuel industry."[207]
    - ExxonMobil has repeatedly sought to portray the Intergovernmental Panel on Climate Change — a coordinating body of respected scientists and academics, including Harvard scholars, who publish periodic reports on climate science to aid policymakers — as biased and untrustworthy.[208]
    - In 2013, the Harvard Law School Environmental Law Program Policy Initiative released a report suggesting that existing disclosure regulations were insufficient to regulate the fracking industry's behavior.[209] An industry-funded website accused the study of being "fundamentally and transparently flawed."[210]
    - In 2014, Harvard professor Naomi Oreskes participated in a documentary film based on the 2010 book she authored with Erik Conway, *Merchants of Doubt*. Climate denialists associated with the fossil fuel industry coordinated an effort to file complaints with her employer and alma mater and discussed ways to block screenings of the film.[211]
    - In 2015, an industry-funded group sought to win access to the private correspondence of University of Arizona climate scientists in order to cast doubt on their work.[212]
    - In 2017, Harvard researcher Geoffrey Supran and professor Naomi Oreskes published a peer-reviewed study analyzing ExxonMobil's climate communications.[213] Exxon's response included commissioning and paying for a

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[205] *See* Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* note 123, at Part IV.B.
[206] Riley E. Dunlap & Peter J. Jacques, Climate Change Denial Books and Conservative Think Tanks: Exploring the Connection, 57(6) Am. Behav. Scientist 699, 700 (2013) (internal citations omitted).
[207] Union of Concerned Scientists, How the Fossil Fuel Industry Harassed Climate Scientist Michael Mann (Oct. 12, 2017).
[208] David Hasemyer & John H. Cushman Jr., Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty, Inside Climate News (Oct. 22, 2015).
[209] Legal Fractures in Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool (Apr. 23, 2013).
[210] John Krohn, Four Things to Know about the Harvard FracFocus Study, Energy in Depth (April 25, 2013).
[211] Email from Marc Morano Regarding the New Warmist Film, UCSF Library Fossil Fuel Industry Documents (Jun. 24, 2019).
[212] Michael Halpern, Arizona Superior Court Protects Academic Freedom in Climate Email Disclosure Case, Union of Concerned Scientists (Mar. 30, 2015).
[213] Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications, *supra* note 203.

(non-peer-reviewed) academic analysis that accused Supran and Oreskes of bias,[214] running a Twitter ad calling its conclusions "manufactured,"[215] urging the European Parliament to ignore the study's conclusions,[216] and suggesting on a website known to take editorial direction from Exxon[217] that the study was written for the purpose of "suppressing free speech."[218]
    - In 2018, Former EPA secretary Scott Pruitt moved to adopt rules on public access to data that would, in the view of then-president Drew Faust, adversely impact the Harvard community.[219] The rules had long been sought by the fossil fuel industry.[220]
    - In 2020, Harvard doctoral student Xiao Wu, professors Rachel Nethery and Francesca Dominici, and others released a study suggesting a correlation between exposure to air pollution and incidence of COVID-19.[221] The American Petroleum Institute lobbied the EPA to reject the study's conclusions, arguing that it could not "be used to draw policy inferences."[222]
- The fossil fuel industry has also sought to legitimize its policy positions by funding research and programs at Harvard, calling into question the intellectual independence of those activities and the balance of perspectives within the academy.[223]
    - The Kennedy School, Harvard's professional school of public policy, has received millions of dollars in funding from Shell and appears to have subsequently made programming decisions favorable to the company.[224]
    - The Harvard Environmental Economics Program was founded in 2007 with a five-million-dollar gift from Italian energy company Enel.[225] The program receives funding from the Enel Endowment for Environmental Economics, the Enel Foundation, British Petroleum, and Shell. The program has previously received funding from Castleton Commodities International LLC (a fossil fuel-heavy investment firm), Chevron Services Company, Duke Energy Corporation, the International Emissions Trading Association (a coalition of businesses,

[214] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[215] Just today, @exxonmobil ran Twitter ads, Fossil Fuel Divest Harvard (Jun. 16, 2020).
[216] ExxonMobil refused to attend a hearing, Food & Water Action Europe (Mar. 21, 2019).
[217] Hiroko Tabuchi, How One Firm Drove Influence Campaigns Nationwide for Big Oil, The New York Times (Nov. 11, 2020).
[218] Spencer Walrath, Activists Admit Climate Campaign Is About Attacking Free Speech, Energy In Depth (Aug. 22, 2017).
[219] Letter to EPA Administrator Scott Pruitt regarding proposed "Strengthening Transparency in Regulatory Science" rule, Harvard University Office of the President (Jun. 4, 2018).
[220] Marianne Lavelle, Pruitt's Own Scientist Appointees Challenge EPA Science Restrictions, Inside Climate News (May 17, 2018).
[221] X. Wiu, R. C. Nethery, M. B. Sabath, D. Braun & F. Dominici, Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, 6(45) Sci. Advances (Nov. 2020).
[222] Kelsey Tamborrino, Inside carbon capture tax credit claims, Politico (Apr. 30, 2020).
[223] These funding relationships are not unique to Harvard. *See* Benjamin Franta & Geoffrey Supran, The fossil fuel industry's invisible colonization of academia, The Guardian (Mar. 13, 2017).
[224] *Id.*; Donation from Shell Exploration & Production Company to Fund Harvard Energy Policy Research, Harvard Kennedy School (last visited Mar. 8, 2021). The latter page was found using Internet Archive's Wayback Machine.
[225] Enel makes $5 million gift to Environmental Economics Program, The Harvard Gazette (Feb. 8, 2007).

including many fossil fuel companies, that lobbies to create an industry-friendly international emissions trading framework), and Shell.[226]
    - Resources for the Future, an energy policy think tank headed by Robert Stavins, has received funding from Exxon, Duke Energy, Anadarko, BP, Chevron, Shell, ConocoPhillips, the American Gas Association, and others.[227]
    - The Harvard Project on Climate Agreements, also directed by Professor Stavins, receives funding from the Enel Foundation, BP, Chevron Services Company, and the International Emissions Trading Association (IETA).[228] In the run-up to the December 2015 United Nations climate talks in Paris, Stavins co-published a paper recommending "linkage" of emissions reduction systems between nations.[229] The paper received financial support from a number of IETA members (Chevron, GDF-Suez, Global CCS Institute, Rio Tinto, Shell, and TransCanada),[230] and it recommended that the diplomats in Paris incorporate language explicitly allowing countries to trade emissions reduction credits to meet their national reduction goals — language that would be highly favorable for IETA's aim of creating an industry-friendly international emissions trading framework.
    - The Geopolitics of Energy Project, housed at Harvard Kennedy School's Belfer Center for Science and International Affairs, is funded by BP.[231]
    - Between 2005 and 2015, Dr. Wei-Hock Soon of the Harvard-Smithsonian Center for Astrophysics "accepted more than $1.2 million in money from the fossil-fuel industry . . . while failing to disclose that conflict of interest in most of his scientific papers."[232] Investigative reporting has shown that Soon, "in correspondence with his corporate funders, described many of his scientific papers as 'deliverables' that he completed in exchange for their money."[233]
- According to Robert Brulle, a sociologist at Drexel University, "[T]he financial steering of intellectual inquiry is a big issue. . . . The academy is really dependent on external funding sources, and it drives a certain research agenda. I'm not saying that the people they fund are dishonest or illegitimate. But this has a systematic effect, in that it heightens certain voices and leaves others invisible, or reduces their staying power, within the academy. And so you end up with a biased system."[234]
- Harvard's Office for Sponsored Programs (OSP), which administers industry-sponsored research funding, publishes very little information about its activities even as non-federal

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[226] Sponsors, Harvard Environmental Economics Program (last visited Mar. 6, 2021); Daniel Bodansky, Seth Hoedl, Gilbert Metcalf, & Robert Stavins, Facilitating Linkage of Heterogeneous Regional, National, and Sub-National Climate Policies Through a Future International Agreement, Harvard Project on Climate Agreements (Sept. 2014), Acknowledgements section (listing funders of Harvard Environmental Economics Program).
[227] Annual Report 2013, Resources for the Future (Mar. 23, 2014).
[228] Funding & Partnerships, Harvard Project on Climate Agreements (last visited Mar. 6, 2021).
[229] *See* Bodansky, Hoedl, Metcalf, & Stavins, *supra* note 226.
[230] *See id.* at Acknowledgements section.
[231] Funding & Partnerships, Geopolitics of Energy Project (last visited Mar. 2, 2021).
[232] Justin Gillis & John Schwartz, Deeper Ties to Corporate Cash for Doubtful Climate Researcher, The New York Times (Feb. 21, 2015). "At least 11 papers he has published since 2008 omitted such a disclosure, and in at least eight of those cases, he appears to have violated ethical guidelines of the journals that published his work." *Id.*
[233] *Id.*
[234] Wen Stephenson, Other Universities Are Divesting From Fossil Fuels—but Harvard Is Doubling Down on Them, The Nation (May 4, 2016).

sponsorship of Harvard research has increased steadily since 2011 (and possibly before).[235]

- At least one fossil fuel company has sought to influence the outcome of ongoing litigation by funding academic research, again undermining the institutional integrity of universities.
    - In 1989, the Exxon Valdez oil spill led to a $5.3 billion verdict against the oil giant by an Alaskan jury in *In re Exxon Valdez*. By the 1980s Exxon had embraced an aggressive form of philanthropy known as "venture philanthropy,"[236] and rather than simply appeal the award, the company undertook to fund academic research that might undermine the verdict. As one Exxon official opined, "With the judges, there's at least a reasonably good chance that they'll be able to see things as they ought to be . . . ."[237]
    - The upshot of the research was that juries' punitive damage awards in cases that involve "normative judgments" are "arbitrary," "unpredictable," "erratic," and "incoherent," and ought to be replaced with a schedule-based system of fines.[238] One professor called for the total abolishment of punitive damages.[239]
    - A comparison of industry-funded law review articles on punitive damages with those supported by universities "found that the former were uniformly critical of punitive damages and jury awards, while the latter overwhelmingly defended

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[235] Annual Report Fiscal Year 2015, Harvard University Office for Sponsored Programs (Nov. 2015). OSP's 2012 and 2013 annual reports showed funding from fossil fuel companies of over 1.5 million and 2.5 million, respectively, according to Divest Harvard research, but the reports are no longer available online. In February 2014, OSP declined a request from an undergraduate student for a more detailed and complete list of companies sponsoring research at Harvard, stating that "we can only give out publicly available information which we already have in the form of the Annual Report." The next annual report from OSP (for FY2014) was significantly less detailed than previous reports, containing only aggregate figures for non-federal research expenditures and no company or foundation names. The 2015 report was similarly barebones, marked "for internal use only," and was accessible only with a Harvard login name and password. Subsequent reports have likewise been accessible only with a Harvard login.

[236] Lee Smith, The Unsentimental Corporate Giver, Fortune (Sept. 21, 1981). ("With relatively few employees and correspondingly little need to support local institutions that employees depend upon, Exxon [could] concentrate its charity on projects remote from immediate concerns, such as interdisciplinary studies at universities.") Exxon's charity program director at the time was Stephen Stamas, who was also on the Harvard Board of Overseers. *Id.*

[237] Stephanie Mencimer, Blocking the Courthouse Door: How the Republican Party and its Corporate Allies Are Taking Away Your Right to Sue 231 (2006) (quoting Freudenberg notes from conversation with Exxon official). "The authors of the studies have insisted they were given complete autonomy in pursuing their work. One academic who took Exxon money, however, was fired after he produced an article that conflicted with the company's political agenda." *Id.* at 230. Harvard Law School professor Cass Sunstein was among those who contributed to the research.

[238] Mencimer at 230; Thomas O. McGarity, A Movement, A Lawsuit, and the Integrity of Sponsored Law and Economics Research, 21(1) Stan. L. & Pol'y Rev. 51, 52, 55-56 (2010); Cass Sunstein, Daniel Kahneman, & David Schkade, Assessing Punitive Damages (With Notes on Cognition and Valuation in Law), 107 Yale L.J. 2071 (1998); Cass Sunstein, Daniel Kahneman, et al, Predictably Incoherent Judgments, 54 Stanford L. Rev. 1153 (2002); Cass R. Sunstein, Reid Hastie, John W. Payne, David A. Schkade, & W. Kip Viscusi, Punitive Damages: How Juries Decide (University of Chicago Press 2002).

In Exxon Shipping Co. v. Baker, the U.S. Supreme Court substantially reduced the damage award against Exxon, holding that punitive damages may not exceed actual damages in maritime cases. 554 U.S. 471, 513 (2008). The Court declined to rely on the funded studies but was aware of their existence. *Id.* at 501 n. 17.

[239] McGarity, *supra* note 238, at 55-56 (citing W. Kip Viscusi, The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts, 87 Geo. L.J. 285 (1998)).

them."[240] The same study found that courts cited industry-funded studies more often.[241]

- Harvard College's mission is "to educate the citizens and citizen-leaders for our society."[242] Its charter tasks it with "the advancement and education of youth in all manner of good literature arts and sciences."[243] Continued investment in an industry that undermines scientific knowledge, compromises the integrity of Harvard's own research, and threatens young people's future runs directly contrary to this mission.

XII. The Harvard Corporation's refusal to consider divestment from fossil fuels

The Harvard Corporation has failed to act in *good faith* or with *due care* by ignoring repeated efforts by Harvard students and faculty to align the university's investment practices with its charitable mission.

- Members of the Harvard Community have consistently argued that investment in fossil fuels is inconsistent with the university's values and with its mission as a public charity, a research center, and an institute of higher education.
    - In fall 2012, Divest Harvard was founded by Harvard students. That semester, an overwhelming majority (seventy-two percent) of Harvard College students voting in the Undergraduate Council elections voted in favor of fossil fuel divestment.[244]
    - On April 11, 2013, Divest Harvard held its first major rally, presenting a petition with 1,300 signatures supporting fossil fuel divestment to the Harvard administration.
    - On April 15, 2013, following President Faust's refusal to meet with students to discuss divestment, Divest Harvard members published an open letter to President Faust.[245]
    - On May 8, 2013, Harvard Law School students passed a referendum on fossil fuel divestment, with sixty-seven percent of voters in support.[246]
    - In April 2014, Harvard Faculty for Divestment published an open letter, signed by ninety-three Harvard faculty members, urging President Faust and members of the Harvard Corporation to divest from fossil fuels as "an act of ethical responsibility." The letter now has 1,128 signatures, with signatories from all of Harvard's schools.[247]

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[240] McGarity, *supra* note 238, at 56 (citing Shireen A. Barday, Note, Punitive Damages, Remunerated Research, and the Legal Profession, 61 Stan. L. Rev. 711, 713 n. 9, app. A (2008)). Beyond power to control research, sponsorship can compromise research integrity by coloring peer evaluation and through the implicit threat of funding termination. *Id.* at 53. McGarity writes, "Since it is normally impossible to know whether a sponsor has in fact determined the outcome of research . . . it may be appropriate to conclude that sponsorship undermines the integrity of sponsored research when the researchers behave as if the sponsor controlled the research." *Id.*
[241] *Id.* at 56.
[242] Mission, Vision, & History, Harvard College (last visited Mar. 8, 2021).
[243] Harvard Charter of 1650, Harvard Library (last visited Mar. 8, 2021).
[244] Quinn Hatoff, Raghuveer-Zhu Win UC Presidency, The Harvard Crimson (Nov. 17, 2012).
[245] An Open Letter to Harvard President Drew Faust, The Nation (Apr. 15, 2013).
[246] Steven Lee, Law School Students Vote for Divestment, The Harvard Crimson (May 8, 2013).
[247] Faculty Petition for Fossil Fuel Divestment, Harvard Faculty for Divestment (last visited Feb. 16, 2021).

- In May 2014, a group of alumni held banners calling for divestment at a reunion speech by President Faust. Harvard Police removed the alumni from the event and informed them that they would be subject to arrest should they return to campus.[248]
- In October 2014, Divest Harvard held a weeklong fast in which roughly 160 people signed up to participate.
- On November 19, 2014, the Harvard Climate Justice Coalition and seven student plaintiffs filed a lawsuit to compel the university to divest from fossil fuels.[249] On December 10, 2014, the Harvard Corporation and Harvard Management Company responded by filing a motion for the lawsuit's dismissal.[250]
- In February 2015, over thirty students calling for divestment occupied an administration building, with students remaining for twenty-four hours despite police pressure to depart.[251]
- Following the occupation, Divest Harvard activists rallied outside of Massachusetts Hall for Global Divestment Day and collected signatures from supporters.
- In March 2015, the Harvard Climate Justice Coalition's lawsuit was dismissed.[252]
- In March 2015, former Harvard Overseer Archbishop Desmond Tutu, who was previously a leader in efforts to push Harvard to divest from South African apartheid, called on Harvard to divest from fossil fuels.[253]
- In April 2015, Divest Harvard held a week-long series of actions called "Harvard Heat Week."[254] The events drew hundreds of supporters to campus including prominent alumni Bill McKibben and Cornel West. Alumni supporters of the campaign staged an occupation of the Harvard Alumni Association offices, while students blockaded the entrances to two administration buildings.
- In October 2015, the Harvard Climate Justice Coalition and student plaintiffs appealed the dismissal of their divestment lawsuit.[255]
- In April 2016, members of Divest Harvard demonstrated at the office of the Harvard Management Company in Boston. Four members staged a sit-in that resulted in their being arrested for civil disobedience[256] and charged with trespassing.

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[248] Wen Stephenson, I'm Banned From Harvard. Here's Why I'm Going Back, The Nation (Oct. 24, 2014).
[249] Complaint for Declaratory and Injunctive Relief, Harvard Climate Justice Coalition, et al., v. President and Fellows of Harvard College, et al., No. 2015-P-0905 (Mass. App. Ct. 2015).
[250] Defendants President and Fellows of Harvard College and Harvard Management Company, Inc's Motion to Dismiss, Harvard Climate Justice Coalition, et al., v. President and Fellows of Harvard College, et al., No. 2015-P-0905 (Mass. App. Ct. 2015).
[251] Theodore R. Delwiche and Mariel A. Klein, After 24-Hour Sit-In, Divest Harvard Protesters Leave Mass. Hall, The Harvard Crimson (Feb. 14, 2015).
[252] Memorandum of Decision and Order on Defendants' Motion to Dismiss, Harvard Climate Justice Coalition, et al., v. President and Fellows of Harvard College, et al., No. 2015-P-0905 (Mass. App. Ct. 2015).
[253] Desmond Tutu Endorses 'Harvard Heat Week' Call to Action, Common Dreams (Mar. 3, 2015).
[254] Theodore R. Delwiche and Mariel A. Klein Divest Harvard Ends 'Heat Week' Protests The Harvard Crimson (Apr. 18, 2015).
[255] Appellants' Brief, Harvard Climate Justice Coalition, et al., v. President and Fellows of Harvard College, et al., No. 2015-P-0905 (Mass. App. Ct. 2015).
[256] Luca Schroeder, Divest Harvard Protesters Arrested At HMC Building, The Harvard Crimson (Apr. 13, 2016).

- In March 2017, Divest Harvard members blockaded University Hall to protest the University's refusal to divest from the coal industry.[257]
- In April 2017, internationally renowned environmental author, journalist, and activist Naomi Klein criticized Harvard's fossil fuel investments during a talk in Cambridge.[258]
- In March 2018, Harvard alumna Kat Taylor resigned from the Harvard Board of Overseers and published an op-ed calling on the university to display moral leadership by divesting from fossil fuels, and asking President Bacow to give a fair hearing to supporters of the divestment movement.[259]
- In September 2018, the Ad Hoc Committee on Harvard Divestment was formed, composed of alumni including former U.S. Senator and Board of Overseers member Timothy Wirth, former Board of Overseers chair Joan Hutchins, former Board of Overseers member Kat Taylor, leading climate scientist Gina McCarthy, and former SEC Commissioner Bevis Longstreth.[260]
- In October 2018, the student-led campaign relaunched as Fossil Fuel Divestment Harvard (FFDH) amid growing demands for fossil fuel divestment and climate justice.
- In October 2018, Harvard Undergraduates for Environmental Justice sent a letter to President Bacow calling for divestment from the fossil fuel industry and seeking open dialogue on the issue with the Harvard Corporation.
- In November 2018, 71.5 percent of undergraduate students voting in the Undergraduate Council elections voted in support of fossil fuel divestment.[261] This number, consistent with the 2012 result, shows ongoing support for divestment.
- In January 2019, the Ad Hoc Committee on Harvard Divestment sent the first of a series of letters to President Bacow and Senior Fellow William Lee calling for divestment.[262]
- In April 2019, FFDH hosted a week's worth of climate justice-themed events as part of a second Harvard Heat Week. The events included a press conference featuring former Senator Timothy Wirth, former EPA Administrator Gina McCarthy, and Justin Rockefeller of the Rockefeller Brothers Fund and a Flood Harvard rally that garnered 200 participants and featured Cambridge Mayor Marc McGovern and climate activist Jamie Margolin as keynote speakers.[263]
- In April 2019, the Cambridge City Council called on Harvard to divest from fossil fuels.[264]

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[257] Brandon Dixon, Divest Harvard Blockades University Hall, The Harvard Crimson (Mar. 29, 2017).
[258] Ike Park, Activist Calls White House 'Subsidiary of Exxon Mobil' at Cambridge Church, The Harvard Crimson (Apr. 20, 2017).
[259] Kathryn Taylor, It's Time for Harvard to Stop Funding Climate Change, The Harvard Crimson (Mar. 28, 2018).
[260] Alexandra Chaidez, Harvard Alumni Reiterate Divestment Demands in Letter to Bacow, The Harvard Crimson (Nov. 1, 2019).
[261] Jonah Berger, Palaniappan and Huesa Win UC Presidential Election The Harvard Crimson (Nov. 16, 2018).
[262] Ad Hoc Group on Harvard Divestment, Letter to President Bacow (Jan. 11, 2019).
[263] Alexandra Chaidez, Cambridge Mayor McGovern, Harvard Student Activists Rally for Heat Week The Harvard Crimson (Apr. 29, 2019), *see also* Alexandra Chaidez, Heat Week Kicks Off With Demands From Students, Faculty, and Alumni, The Harvard Crimson (Apr. 23, 2019).
[264] Alexandra Chaidez, Cambridge City Council Endorses Fossil Fuel Divestment The Harvard Crimson (Apr. 30, 2019).

- In May 2019, former Vice President and Harvard Overseer Al Gore called on Harvard to divest from fossil fuels at Commencement Day proceedings.[265]
- In May 2019, the Harvard Graduate Student Council voted unanimously in favor of divestment.[266]
- In May 2019, the Harvard Crimson endorsed fossil fuel divestment.[267]
- In September 2019, as part of the global youth climate strike, FFDH staged a demonstration of approximately 1,000 participants.[268] An FFDH organizer spoke on behalf of the FFDH campaign at the 7,000-person strong Boston Climate Strike.
- In November 2019, FFDH (in collaboration with Extinction Rebellion organizers) staged a mock oil spill outside of the Smith Campus Center to represent the cost of fossil fuel investments to young people and future generations.[269]
- In November 2019, approximately 500 Harvard and Yale students and alumni stormed the field at the annual football game between the two universities to call for divestment. Their actions delayed the game for approximately 50 minutes, made international headlines, and drew support from prominent elected officials and public figures.[270]
- In January 2020, Harvard Law School students allied with FFDH protested at a recruitment event for Paul Weiss, the law firm of Harvard Corporation member Ted Wells, calling on the elite firm to drop ExxonMobil as a client and on Harvard to cut ties with the fossil fuel industry.[271]
- In February 2020, FFDH staged a mock oil spill inside the Smith Campus Center during Junior Parents' Weekend and organized parents to write to President Bacow expressing their support for fossil fuel divestment.[272]
- In February 2020, the Harvard Faculty of Arts and Sciences voted 179-20 in favor of fossil fuel divestment.[273]
- In February 2020, the Harvard Medical School Faculty Council voted 23-5 in favor of fossil fuel divestment.[274]

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[265] Shera S. Avi-Yonah and Delano R. Franklin, Al Gore Calls for Fossil Fuel Divestment at Harvard College Class Day, The Harvard Crimson (May 30, 2019).
[266] Luke Williams, Harvard Graduate Student Council Appoints First Liaison to Graduate Student Union The Harvard Crimson (May 2, 2019).
[267] The Crimson Editorial Board, In Support of Fossil Fuel Divestment The Harvard Crimson (May 8, 2019).
[268] Camille Caldera *et. al.*, Harvard Students Join Global Climate Strike The Harvard Crimson (September 23, 2019).
[269] Jasper Goodman, Divest Harvard Stages Mock Oil Spill at Demonstration, The Harvard Crimson (Nov. 18, 2019).
[270] Britton O'Daly, Climate Change Protesters Disrupt Yale-Harvard Football Game The New York Times (Nov. 23, 2019).
[271] Umair Irfan, The Surprising Protest of Exxon's Law Firm at Harvard Law, Vox (Jan. 16, 2020).
[272] Camille Caldera, Student Activists Demonstrate During Junior Family Weekend, The Harvard Crimson (Feb. 24, 2020).
[273] James Bikales and Kevin Chen, Harvard Faculty Vote in Favor of Divestment 179-20, The Harvard Crimson (Feb. 5, 2020).
[274] James Bikales and Michelle Kurilla, Harvard Medical School Council Joins Chorus of Faculty Favoring Divestment, The Harvard Crimson (Feb. 14, 2020).

- In April 2020, FFDH hosted a virtual Earth Day rally in which representatives of the student body, alumni body, and Cambridge community spoke in favor of fossil fuel divestment.[275]
- In August 2020, alumni elected three pro-divestment candidates to the Harvard Board of Overseers.[276] To date, 4,782 alumni have signed the petition for fossil fuel divestment.[277]
- In November 2020, first-year students staged a socially distanced rally in support of fossil fuel divestment.[278]
- In February 2021, Harvard College's student government unanimously called for fossil fuel divestment across the Ivy League.[279]

- Despite the strong support for fossil fuel divestment among members of the Harvard community, Harvard Corporation members have refused to engage with the question in good faith.
  - In October 2013, President Faust released a public statement rejecting fossil fuel divestment on the grounds that the endowment should not be used to achieve social ends.[280]
  - In early 2014, members of university governance agreed to a series of private meetings with students. At the meetings, they declined to engage in meaningful conversation about divestment, suggesting that concerned students should write thank-you letters to the "good" oil companies instead.[281]
  - In March 2014, following a public appearance by President Drew Faust, members of Divest Harvard attempted to draw her attention to the need for divestment. Faust responded by saying that it was "not the case" that fossil fuel companies were hindering climate action.[282]
  - In May 2014, following student protests, President Faust stated that she would not grant Divest Harvard's request for an open meeting with the Harvard Corporation.
  - In July 2014, Senior Fellow William Lee wrote a letter to faculty stating that the Harvard Corporation continued to reject divestment, on the grounds that it wanted to retain the ability to act as engaged shareholders, and that divestment would be hypocritical while the university still used fossil fuels.[283]
  - In April 2015, leaders of the Harvard Alumni Association refused to meet with alumni calling for divestment.[284]

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[275] Divest Harvard, On Earth Day's 50th Anniversary, Harvard Community Rallies for Climate Justice and Divestment, Medium (Apr. 22, 2020).
[276] Divest Harvard, Pro-divestment Candidates Elected to Harvard Board, Medium (Aug. 21, 2020).
[277] Fossil Fuel Divest Harvard Alumni (last visited Mar. 2, 2021).
[278] Claire Guo, Freshmen Rally for Divest Harvard Movement, The Harvard Crimson (Nov. 17, 2020).
[279] Mayesha Soshi and Lucas Walsh, UC Endorses All-Ivy Statement Demanding Fossil Fuel Divestment, The Harvard Crimson (Feb. 22, 2021).
[280] Fossil Fuel Divestment Statement, Harvard University Office of the President (Oct. 3, 2020).
[281] Alli Welton and Student Nation, Harvard Vice President Reluctantly Accepts Signatures for Fossil Fuel Divestment, The Nation (Apr. 12, 2013).
[282] Divest Harvard, This is the Case, Vimeo (last visited Mar. 2, 2021).
[283] William Lee, Letter in Reply to Correspondence from Harvard Faculty for Divestment, Harvard University (Jul. 10, 2014). The letter's reasoning appears to be inconsistent with the 2018 vote by the Corporation Committee on Shareholder Responsibility to abstain from asking Chevron for a decarbonization report. *See supra* at Part IV.
[284] Mariel Klein, In Blockade's Second Day, Divest Expands Protest to HAA, The Harvard Crimson (Apr. 14, 2015).

- In April 2017, the Harvard Management Company reaffirmed that even while initiating a "pause" in some natural resource investments, the university planned to continue investing in fossil fuels through its various portfolios.[285]
- In January through April 2019, members of Fossil Fuel Divest Harvard made repeated efforts to organize a formal meeting with members of the Harvard Corporation, all of which were rebuffed.
- In April 2019, President Bacow made a surprise appearance at a fossil fuel divestment forum hosted by the student campaign in partnership with the Harvard Political Union. During the forum professors Cornel West, James Anderson, and James Engell, along with Boston financial advisor and Harvard alumnus Karen Shapiro, argued strongly in favor of fossil fuel divestment. Bacow warned about the danger of "mak[ing] broad moral judgments" when it comes to the fossil fuel industry.[286]
- In October 2019, FFDH members met with President Bacow and Senior Fellow William Lee, who stressed Harvard's belief in the power of shareholder engagement with fossil fuel companies.[287] Lee and Bacow professed interest in further dialogue at the meeting's conclusion, but did not respond to several subsequent efforts to schedule follow-up conversations.
- In April 2020, President Bacow rejected the Faculty of Arts and Sciences' divestment motion, announcing instead a commitment to a net-zero endowment by 2050[288] without consulting students or faculty. Bacow again rejected divestment as an action that would risk "alienating and demonizing possible partners."[289]
- In May 2020, students, faculty, and alumni responded to the Harvard Corporation's net-zero announcement in a letter detailing the inadequacies of the commitment and pointing out seven ways in which the commitment could be strengthened.[290] The Corporation did not meaningfully respond to or acknowledge the letter for approximately ten months.
- In September 2020, following the election of three pro-divestment petition candidates to the Board of Overseers, Harvard announced election rule changes designed to make it harder for non-university-endorsed candidates to win seats. In a report recommending the changes, university leaders expressed concern that the elections were being used by alumni to "advocat[e] positions on specific policy issues."[291] In another letter, key figures in the Harvard Alumni Association, the

[285] Brandon Dixon, Despite Divest Cheers, Harvard Maintains Investment Approach, The Harvard Crimson (Apr. 28, 2017).
[286] Harvard Undergraduates for Environmental Justice, Harvard Divestment Public Forum, YouTube.com (Apr. 13, 2019).
[287] Divest Harvard, Divest Meets with Pres. Bacow, Senior Fellow Lee to Discuss Earth Day 2020 Demands, Medium (Oct. 24, 2019).
[288] Harvard Endowment Net-Zero Portfolio Commitment, Harvard Management Company (Apr. 2020).
[289] Lawrence Bacow, "A message from the President on climate change" (Harvard University Office of the President, Apr. 21, 2020).
[290] Divest Harvard, Letter to Harvard Corporation on its 2050 Net-Zero Pledge, Medium (May 6, 2020).
[291] Susan Carney et. al., Report to the Harvard Governing Boards on Aspects of the Board of Overseers, Harvard University (Jul. 31, 2020). This webpage was found using Internet Archive's Wayback Machine.

university division that runs the elections, referred to climate concerns as "special interests."[292]

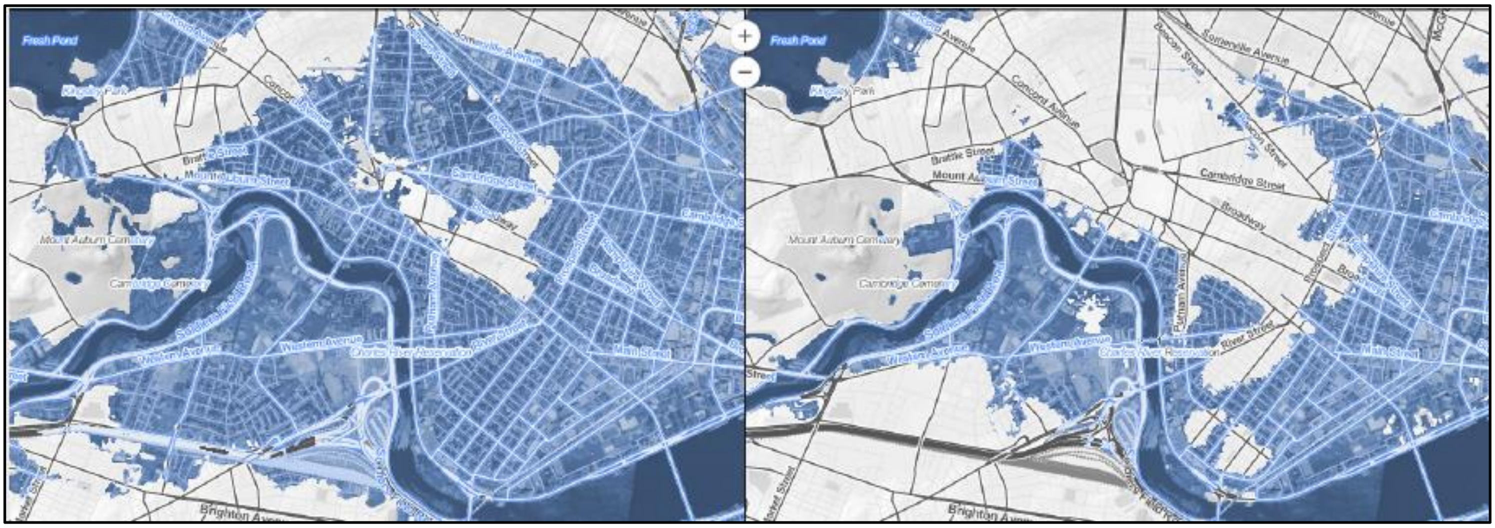
- In December 2020, FFDH met with the full Corporation Committee for Shareholder Responsibility to discuss divestment and FFDH's proposals for strengthening Harvard's net-zero commitments. To date, no member of the Corporation has taken action to correct the identified deficiencies or put FFDH's recommendations for bolstering the commitment into practice.

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 Harvard Corporation no longer harms the Harvard community, the Commonwealth, and the public.

[292] John Rosenberg, Board of Overseers Campaign Hotly Contested, Harvard Magazine (Aug. 10, 2020).

Appendix A



Simulated map of Harvard University and environs with 23 feet (left) and 10 feet (right) of sea level rise. Source: [Amicus Curiae Brief of Dr. James E. Hansen](), Harvard Climate Justice Coalition v. President and Fellows of Harvard College, No. SUCV201403620H (Mass. Super. Mar. 17, 2015), App. at 17-18.

Appendix B

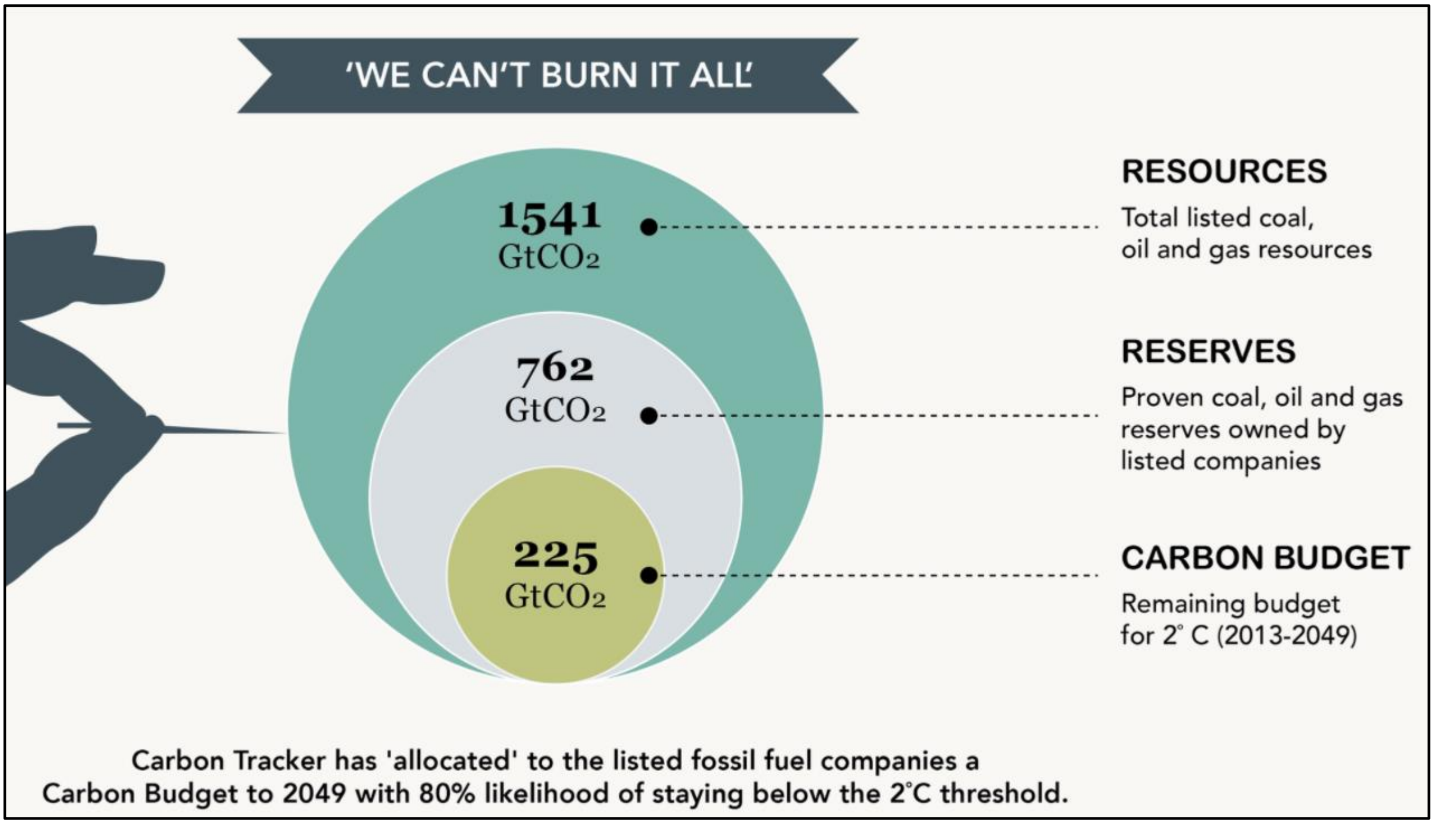


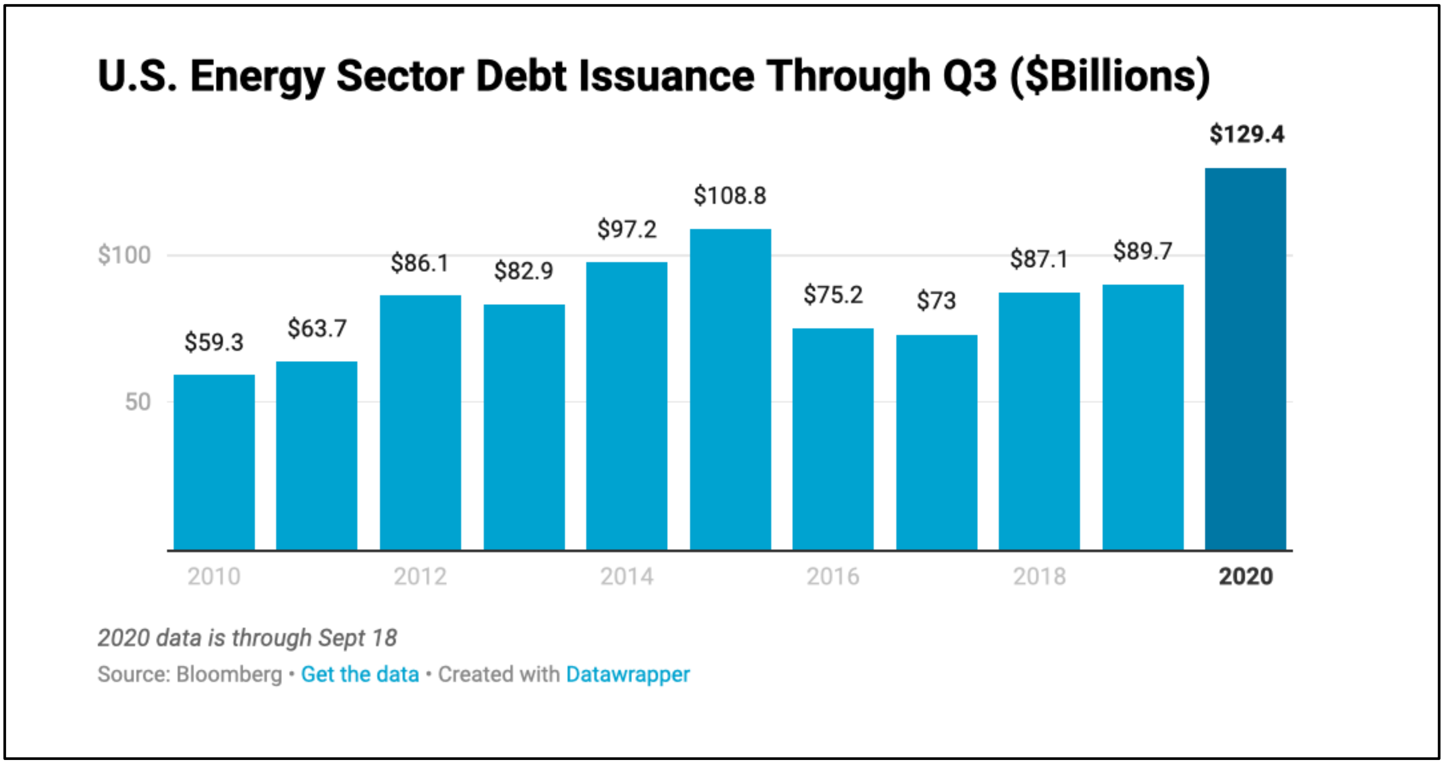
Illustration of Carbon Bubble, as reprinted in Katharine Earley, Carbon Tracker measures oil and coal risk for investors, The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix C

Comparison of ten-year performance of S&P 500 Energy Index[293] (white) with S&P 500 Index (blue).[294] Created using comparison tool at S&P 500 Dow Jones Indices (last visited Mar. 6, 2021).

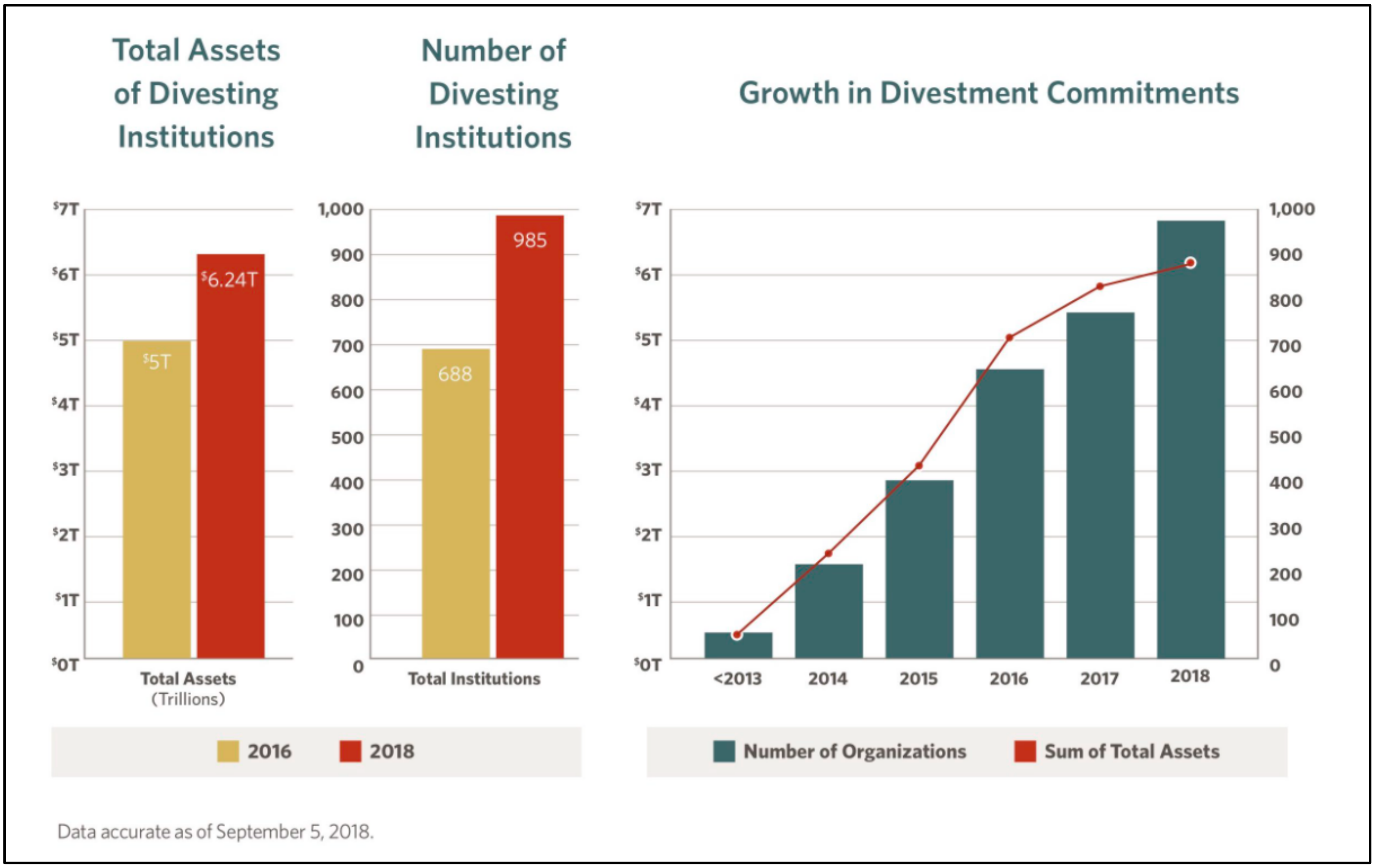
[293] The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.
[294] The energy sector's recovery in late 2020 came in part thanks to a large bailout of corporate debt markets by the federal government. *See* Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke, Big Oil's $100 Billion Bender, Public Citizen (Sept. 30, 2020).

Appendix D



U.S. Energy Sector Debt Issuance Through Q3 ($Billions), as reprinted in Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke, Big Oil's $100 Billion Bender, Public Citizen (Sept. 30, 2020). Source: Bloomberg.

Appendix E



Institutional Divestment Pledges as of 2018. Source: The Global Fossil Fuel Divestment and Clean Energy Investment Movement (2018 Report), Arabella Advisors.