

Wisconsin Department of Financial Institutions
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Madison, WI 53707-7879

Attorney General Josh Kaul
Wisconsin Department of Justice
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Dear Wisconsin Department of Financial Institutions and Attorney General Kaul —

The Wisconsin Foundation & Alumni Association (WFAA), as fiduciary of a non-profit educational institution, is bound by the laws of the State to promote the well-being of the University of Wisconsin-Madison's students and community and to further the university's commitment to "methods of instruction, research, extended training and public service designed to educate people and improve the human condition." Under the Wisconsin Uniform Prudent Management of Institutional Funds Act, the WFAA 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 WFAA has invested a portion of UW-Madison's 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 WFAA to cease its investments in fossil fuels.

Wisconsin law provides rules that charitable managers and investors must follow in managing institutional funds. As stewards of the UW-Madison endowment, the WFAA is required to act in good faith and with loyalty, taking care that its investments further the purposes of the university. The WFAA may not simply seek profit at any cost: the privileges that it and UW-Madison enjoys as non-profit institutions come with the responsibility to ensure that its resources are put to socially beneficial ends. By investing an estimated \$125 million in fossil fuel stocks, the WFAA has violated these duties to UW-Madison and the public.

The values that should guide the WFAA's investments are clear. The WFAA claims to "care about the environment, sustainability, and the future of our planet" and be "committed to encouraging behaviors and business practices that help decrease our organization's overall carbon footprint." Furthermore, the Wisconsin statute that defines the responsibilities of the University of Wisconsin Board of Regents explains that the system's methods are "designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth." The Wisconsin Governor's Task Force on Climate Change Report, published in 2020, advises the WFAA to divest in order to meet the state's climate goals, stating that "fossil fuel stocks or other interests should be removed from state of Wisconsin-owned investments." And yet, despite the demonstrable financial and social benefits of institutional fossil fuel

divestment, the WFAA 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 WFAA has repeatedly refused to apply UW-Madison'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. The industry's spread of scientific misinformation undermines the work of UW-Madison 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 claims to be concerned with sustainability and the future of our planet, and committed to encouraging decarbonization, the WFAA 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 WFAA's funding of climate degradation despite its duty to protect UW-Madison's physical property. In the coming decades, water level increases, higher temperatures, extreme rainfall, invasive pests, and many other environmental changes will pose serious threats to university land and buildings. For example, the isthmus bordering the UW-Madison campus is at risk of severe flooding caused by climate change. The community will be forced to retrofit facilities and manage infrastructure disruptions, even as air quality on campus deteriorates. Instead of facilitating such injuries, the WFAA should be doing everything in its power to prevent them.

The WFAA is bound by an additional legal duty: the requirement to manage UW-Madison'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. State Attorneys General have sued ExxonMobil over this practice, building on years of investigative reporting showing that fossil fuel companies' purported values are grossly inflated. The WFAA continues to invest in the sector despite its legal duty to exercise care and prudence in avoiding dangerous securities.

The WFAA cannot plead ignorance of its duty to divest. For years, UW-Madison students and faculty, as well as other members of the Wisconsin community, have pushed for investment practices that align with the university's mission. In recent years, the Associated Students of Madison have twice passed resolutions calling for fossil fuel divestment. The UW-Madison Faculty Senate and the Teaching Assistants Association of UW-Madison have similarly called for divestment. Rallies, reports, and requests for negotiation have alerted the WFAA to its fiduciary responsibility. Nonetheless, the WFAA 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 WFAA to deny the relation between its investments and climate change. Its obligations under Wisconsin 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 WFAA'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 pages that follow]:

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Tony Wilkin Gibart, *Executive Director, Midwest Environmental Advocates (UW-Madison '09)*

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Campus Leaders for Energy Action Now

College Climate Coalition

Environmental Law Society

Fossil Fuel Divest Harvard

Helios

Hooper Ambassadors

REthink Wisconsin

SEBA

Social and Environmental Business Advocates

Teaching Assistants' Association

UW Campus Food Shed

UW Divestment Coalition

Wisconsin EcoLatinos

Wisconsin Hoofers

Wisconsin Student Climate Action Coalition

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Prepared with assistance from attorneys at Climate Defense Project.

SUPPORTING DOCUMENTATION

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I. The Wisconsin Foundation & Alumni Association’s violation of Wisconsin law

The Wisconsin Foundation & Alumni Association (WFAA) is a 501(c)(3) private charitable corporation organized under Chapter 202, subchapter I and II of the Wisconsin Statutes. It was established in 2014 from a merger between the UW Foundation and the Wisconsin Alumni Association.¹ The WFAA “exists to promote the welfare of and advance the objectives of the University of Wisconsin–Madison by encouraging the interest, engagement, and financial support of alumni, donors, and friends in the life of the University and with each other.”²

The objectives and public duties of the University of Wisconsin-Madison are described in Chapter 36 of the Wisconsin Statutes: “The legislature finds it in the public interest to provide a system of higher education which enables students of all ages, backgrounds and levels of income to participate in the search for knowledge and individual development . . . which promotes service to the public; [and] which makes effective and efficient use of human and physical resources.”³ Under Wisconsin law, “[t]he mission of the system is to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in students heightened intellectual, cultural and humane sensitivities, scientific, professional and technological expertise and a sense of purpose. Inherent in this broad mission are methods of instruction, research, extended training and public service designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth.”⁴

The WFAA acts under the direction of the University of Wisconsin Board of Regents, which has “primary responsibility for governance of the system,”⁵ including investment of revenues.⁶ Under Wisconsin law, “[n]o investment of the funds of such gifts, grants, or bequests shall knowingly be made in any company, corporation, subsidiary, or affiliate that practices or condones through its actions discrimination on the basis of race, religion, color, creed, or sex.”⁷

- Continued investment in fossil fuels by the WFAA *violates the fiduciary duties spelled out in the Wisconsin Uniform Prudent Management of Institutional Funds Act (WUPMIFA)* and in Wisconsin common law.
 - WUPMIFA 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.”⁸ The model UPMIFA drafting committee describes consideration of “charitable purposes” as a “fundamental duty,”⁹ and this

¹ Wisconsin Foundation and Alumni Association, [History of WFAA](#) (2021).

² Wisconsin Foundation and Alumni Association, [Mission and Values](#) (2021).

³ Wisc. Stat. c. 36.01(1).

⁴ Wisc. Stat. c. 36.01(2).

⁵ Wisc. Stat. c. 36.09(1)(a).

⁶ Wisc. Stat. c. 36.11(11m).

⁷ Wisc. Stat. c. 36.29(1).

⁸ Wisc. Stat. c. 112.11(3)(a).

⁹ National Conference of Commissioners on Uniform State Laws, [Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments](#) (2006), 15.

requirement distinguishes charitable investors like the WFAA from other entities such as pension funds.

- WUPMIFA 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.”¹⁰
- WUPMIFA 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.”¹¹
- Although the directors of charitable institutions may delegate investment authority to an external agent, such delegation does not suspend the duty of each director to act “in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances,”¹² and the directors must ensure that this delegation is “consistent with the purposes of the institution and the institutional fund.”¹³ Furthermore, “[i]n performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.”¹⁴
- The WFAA 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 UW-Madison was established distinguishes the WFAA 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 WFAA’s fossil fuel investments are directly contrary to the UW-Madison’s mission to “discover, examine critically, preserve and transmit the knowledge, wisdom and values that will help ensure the survival of this and future generations and improve the quality of life for all.”¹⁵ The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene the University of Wisconsin system’s mission to use “methods of instruction, research, extended training and public service designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth.”¹⁶ As such, continued investment in fossil fuel holdings ***violates the WFAA’s duty to consider an asset’s special relationship or special value, if any, to the charitable purposes of the institution.***
- The WFAA has ***violated its duty of loyalty*** to the UW-Madison community by funding activity that directly imperils the lives and prospects of young people and that poses a

¹⁰ Wisc. Stat. c. 112.11(3)(b).

¹¹ Wisc. Stat. c. 112.11(3)(e)(1).

¹² Wisc. Stat. c. 112.11(5)(a).

¹³ Wisc. Stat. c. 112.11(5)(a)(2).

¹⁴ Wisc. Stat. c. 112.11(5)(b).

¹⁵ University of Wisconsin-Madison, [Mission](#) (revised statement adopted June 10, 1988).

¹⁶ Wisc. Stat. c. 36.01(2).

physical threat to UW-Madison property, thus failing to act in the best interests of the institution.

- The WFAA 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 legal experts that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus groups to push the university’s investment practices toward a more consistent and sustainable approach.
- The WFAA 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 WFAA’s failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.
- The Governor’s Task Force on Climate Change Report, published in 2020, advises the WFAA to divest in order to meet the state’s climate goals.
 - As one of its climate solutions for Wisconsin, the report states: “Fossil fuel stocks or other interests should be removed from state of Wisconsin-owned investments. In practice, this means the sale of any stocks or investments in the top 200 fossil fuel companies owned by the Wisconsin Retirement System and the UW System Foundations and the banning of any future investments in these stocks or other interests.”¹⁷
 - The report goes on to note that “[i]f Wisconsin aims to achieve 100 percent carbon-free energy by 2050, we need to invest in clean energy research, development, and deployment. Divestment from fossil fuels opens up resources for investment in these areas, particularly if at least some of the divested resources are invested in Wisconsin-based carbon-free energy research, development, and deployment.”¹⁸
 - The report states that continued investment in fossil fuels is financially imprudent: “As climate change accelerates and renewable energy continues to become increasingly cost competitive, a growing number of financial analysts argue that fossil fuels will prove to be a bad investment. Over the past few years, coal and oil stocks have shown great vulnerability . . . If this trend continues, especially as Americans continue to travel less due to the pandemic, removing fossil fuels from a stock portfolio becomes a more mainstream option. Enacting divestment legislation could accelerate this shift and move us further from economic reliance on fossil fuels. Multiple studies have demonstrated that divesting from fossil fuels does not have a statistically significant impact on overall portfolio performance and has only a marginal impact on the utility derived from such portfolios.”¹⁹
 - The report also recognizes that divestment can help to mitigate the climate change harms suffered by marginalized communities: “The fossil fuel divestment movement has long pointed out the disparate impacts on marginalized communities of burning fossil fuels and highlighted how decision-makers are not centering these people’s lived experiences, health, and well-being. Divesting from

¹⁷ State of Wisconsin, [Governor’s Task Force on Climate Change Report](#) at 93 (Dec. 2020).

¹⁸ *Id.* at 94.

¹⁹ *Id.*

fossil fuels and investing in clean energy will have financial implications for the viability of these companies and will be a public demonstration of our values. Furthermore, divestment would have positive downstream impacts on environmental health for marginalized communities affected by GHG emissions and fossil fuel use. Those impacts could be expanded with targeted reinvestment of divested resources in projects benefiting marginalized communities.”²⁰

- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the model 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.”²¹
- 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.”²²
 - 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

²⁰ *Id.*

²¹ Bevis Longstreth, [Outline of Possible Interpretative Release by States’ Attorneys General Under The Uniform Prudent Management of Institutional Funds Act](#) (Jan. 26, 2016).

²² [Trillion Dollar Transformation](#), Center for International Environmental Law (Dec. 2016), 1-2.

or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings.”²³

- WFAA’s fossil fuel holdings are estimated at \$125 million.²⁴

II. The WFAA’s social and environmental commitments

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

- The WFAA’s charitable mission is explicitly aligned to that of UW-Madison. According to its website, the WFAA “exists to promote the welfare of and advance the objectives of the University of Wisconsin-Madison by encouraging the interest, engagement, and financial support of alumni, donors, and friends in the life of the University and with each other.”²⁵
- The WFAA states that “we care about the environment, sustainability, and the future of our planet. We are committed to encouraging behaviors and business practices that help decrease our organization’s overall carbon footprint.” The WFAA claims that, in furtherance of this mission it has committed “to the purchase, use, and disposal of products and materials in a manner that will best conserve natural resources and minimize negative impacts on the environment.”²⁶
- The purposes of the University of Wisconsin system and the responsibilities of the Board of Regents are defined by statute. Chapter 36 of the Wisconsin Statutes states that “[t]he mission of the system is to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in students heightened intellectual, cultural and humane sensitivities, scientific, professional and technological expertise and a sense of purpose. Inherent in this broad mission are methods of instruction, research, extended training and public service designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth.”²⁷
- According to the Board of Regents, “[t]he primary purpose of the University of Wisconsin–Madison is to provide a learning environment in which faculty, staff and students can discover, examine critically, preserve and transmit the knowledge, wisdom and values that will help ensure the survival of this and future generations and improve the quality of life for all. The university seeks to help students to develop an understanding and appreciation for the complex cultural and physical worlds in which they live and to realize their highest potential of intellectual, physical and human development.” This includes the need to “[g]enerate new knowledge through a broad

²³ *Id.* at 5-7, 12-17, 19.

²⁴ University of Wisconsin Foundation, [Consolidated Financial Statements and Report of Independent Certified Public Accountants](#) (Jun. 30, 2018).

²⁵ WFAA, [Mission and Values](#) (2021).

²⁶ WFAA, [Sustainability](#) (2021).

²⁷ Wisc. Stat. c. 36.01(2).

array of scholarly, research and creative endeavors, which provide a foundation for dealing with the immediate and long-range needs of society.”²⁸

- Under state law, the Board of Regents is given responsibility for conserving the natural resources of Wisconsin, ensuring the sustainability of the state’s agricultural economy, and promoting environmental and public health. Among other mandates,
 - the Board of Regents is required to “maintain . . . a solid and hazardous waste education center to promote pollution prevention” which “shall conduct an education and technical assistance program to promote pollution prevention in this state.”²⁹
 - through the College of Agricultural and Life Sciences as the University of Wisconsin-Madison, the Board of Regents is empowered to establish agricultural research stations “for the purpose of aiding in agricultural development.”³⁰
 - the Board of Regents is also “responsible for research and educational programs regarding soil and water conservation” and for research on the state’s water resources.³¹
- The mission of the Wisconsin Initiative on Climate Change Impacts, a joint project of UW-Madison’s Nelson Institute for Environmental Studies and the Wisconsin Department of Natural Resources, “is to generate and share information that can foster solutions to climate change in Wisconsin.”³² The Initiative notes that “[t]o find effective solutions for the climate crisis, two simultaneous and complementary courses of action are needed. We must reduce atmospheric concentrations of carbon dioxide and other heat-trapping gases to reduce global warming, and we need to prepare for the societal impacts of whatever climate change is unavoidable.”³³
- The “Sustainability” section of the UW-Madison website states that “[t]he University of Wisconsin–Madison will be a living model for sustainability, exemplifying values and actions that demonstrate our commitment to stewardship of resources, respect for place, and the health and well-being of the broader community, now and for the future.”³⁴
- In 2019, Chancellor Rebecca Blank of UW-Madison signed a “Resilience Commitment” encouraging sustainability efforts at universities, and stated that “[w]e are facing a global crisis, and we recognize that higher education has a major role to play in addressing it.”³⁵
- The WFAA manages funds for the University of Wisconsin Hospitals and Clinics,³⁶ whose mission states that “healthy environments support healthy people” and which touts a “commitment prioritizing environmental health, safety, and social equity in an effort to help achieve the triple aim of better health, better care, and reduced cost for the communities we serve.”³⁷

²⁸ University of Wisconsin-Madison, [Mission](#) (revised statement adopted June 10, 1988).

²⁹ Wisc. Stat. c. 36.25(30).

³⁰ Wisc. Stat. c. 36.25(3)(a).

³¹ Wisc. Stat. c. 36.25(7) and (8).

³² Wisconsin Initiative on Climate Change Impacts, [Mission](#) (2021).

³³ Wisconsin Initiative on Climate Change Impacts, [Solutions Strategies](#) (2021).

³⁴ UW-Madison [Office of Sustainability, Mission & Vision](#) (2021).

³⁵ Nathan Jandl, [“UW–Madison signs Second Nature Resilience Commitment.”](#) University of Wisconsin-Madison News (Nov. 8, 2019).

³⁶ WFAA, [All Ways Forward: 2018-2019 Annual Report](#) (2019), 25.

³⁷ UW Health, [“Healthy Environments Support Healthy People”](#) (Jul. 17, 2018).

- UW-Madison sits on the land of the Ho-Chunk Nation. A recently placed plaque near South Hall states: “The University of Wisconsin–Madison occupies ancestral Ho-Chunk land, a place their nation has called Teejop (day-JOPE) since time immemorial. In an 1832 treaty, the Ho-Chunk were forced to cede this territory. Decades of ethnic cleansing followed when both the federal and state government repeatedly, but unsuccessfully, sought to forcibly remove the Ho-Chunk from Wisconsin. This history of colonization informs our shared future of collaboration and innovation. Today, UW–Madison respects the inherent sovereignty of the Ho-Chunk Nation, along with the eleven other First Nations of Wisconsin.”³⁸ As detailed below, the extraction, transportation, and combustion of fossil fuels has a disproportionate effect on Indigenous communities, making a “shared future of collaboration and innovation” inconsistent with WFAA’s continued investments in fossil fuel companies.
- In 1978, the Board of Regents voted to divest from companies doing business in apartheid South Africa, selling off eight million dollars’ worth of stocks in sixteen companies.³⁹ That decision evinced the Board of Regents’ understanding that investment decisions must not be made solely in pursuit of profit but are constrained by state law and the mission of the university. The 1978 divestment decision was made following a judgment by then-Attorney General Bronson LaFollette that continued investment in such companies would violate state law prohibiting the Board from investing in companies that discriminate “on the basis of race, religion, color, creed, or sex.”⁴⁰

III. The scientific reality and risks of climate change

The current and future effects of climate change jeopardize the physical integrity of the UW-Madison campus and the safety of its students, faculty, and staff, undermining the WFAA’s *charitable purposes*. By investing in companies disproportionately responsible for the climate crisis, the WFAA is exposing the UW-Madison 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*.

- 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.⁴¹
- 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,

³⁸ Doug Erickson, [“UW–Madison heritage marker honors Ho-Chunk, recognizes land as ancestral home.”](#) University of Wisconsin-Madison News (Jun. 24, 2019).

³⁹ Edward B. Fiske, [South Africa Is New Social Issue for College Activists](#), N.Y. Times (Mar. 15, 1978).

⁴⁰ Wisc. Stat. c. 36.29(1); Paul Lansing, [The Divestment of United States Companies in South Africa and Apartheid](#), 60 Nebraska L. Rev. 2, 304-326, 307 n. 24 (1981).

⁴¹ 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.

temperatures will likely reach 1.5 degrees Celsius above pre-industrial levels between 2030 and 2052.⁴²

- 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.⁴³
- 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 forty-five 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 2040.⁴⁴ 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.”⁴⁵
- 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.”⁴⁶
 - The USGCRP report concluded that, as a result of climate change, “annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states.”⁴⁷
- 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.⁴⁸
- According to the Environmental Protection Agency, climate change effects in Wisconsin will include: increased temperatures, increased heavy precipitation events and flooding,

⁴² 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.

⁴³ *Id.* at 4-10.

⁴⁴ *Id.* at 6, 12.

⁴⁵ *Id.* at 15.

⁴⁶ U.S. Global Change Research Program, [Fourth National Climate Assessment, Volume II](#), 25.

⁴⁷ *Id.* at 26.

⁴⁸ Rebecca Lindsey, [Climate Change: Global Sea Level](#), Climate.gov (Jan. 25, 2021).

reduced water quality in the Great Lakes, changing composition and disruption in ecosystems and wildlife populations, disruption to agriculture, and reduced air quality and human health, including through an increase in some disease-carrying insects.⁴⁹

- The Governor’s Task Force on Climate Change Report notes that “[s]ince the 1950s, Wisconsin has warmed 2.1°F and its annual precipitation has increased by 15 percent (4.5 inches). While winters have warmed faster than summers, the number of extremely hot days (days with temperatures exceeding 90°F) and hot nights is expected to triple and quadruple, respectively, by 2050, assuming GHG emissions continue to rise. These broader increases in precipitation and warming are likely to drive more extreme weather events, such as floods and heatwaves, which will affect Wisconsin’s communities and industries in unequal ways.”⁵⁰
 - The report goes on to state that “[i]ncreased warming is leading to decreased snowpack and warmer winters, and threatening Wisconsin’s iconic coldwater fisheries by shifting the range of temperature tolerance beyond many species’ survivability. Extreme heat is also leading to harmful algal blooms in lakes, the proliferation of infectious diseases and pests, and increased storm surge along beaches and marinas.”⁵¹
- In a report to the Governor’s Task Force on Climate Change that was co-authored by dozens of UW-Madison faculty and staff, the Wisconsin Initiative on Climate Change Impacts — a partnership between the UW-Madison Nelson Institute for Environmental Studies and the Wisconsin Department of Natural Resources — details a wide array of climate change effects in the state. The report states:
 - “[S]ince 2011], all nine of Wisconsin’s climate divisions have reported their wettest decade in recorded history. Since 1950, Wisconsin’s annual precipitation has increased by about 4.5 inches, or about 15%. Winter precipitation has increased by over 20% since 1950, which is consistent with statistically significant increases in snowfall over the state since 1950.”⁵²
 - “[P]rojections show that under the low-end emissions scenario Wisconsin is expected to warm by 2.5°-7.5°F by mid-century, with maximum warming during winter (3°-8°F) and minimum warming during summer (1.5°-7.5°) . . . For mid-century, projections for the high-end emissions scenario are very similar to the low-end scenario, with annual mean warming of about 3°F-9°F by mid-century. By late century (2081-2100) projections of annual mean temperature for the low-end and high-end emissions scenarios differ substantially with the low-end emissions scenario projecting annual mean changes of 3°-10°F, and the high-end emissions scenario projecting change of 7°-16°F. These drastic warming rates for the high-end emissions scenario indicate the importance of mitigation for reducing impacts of climate change.”⁵³
 - “It is likely that extreme precipitation will increase in Wisconsin, with the very extreme values seeing the largest change. For example, a daily 4” precipitation event typically occurs 6-10 times per 100 year (once every 10-15 years) in

⁴⁹ [What Climate Change Means for Wisconsin](#), Environmental Protection Agency (Aug. 2016).

⁵⁰ Governor’s Task Force on Climate Change Report, *supra* note 17 at 14.

⁵¹ *Id.* at 16.

⁵² Wisconsin Initiative on Climate Change Impacts, [“Report to the Governor’s Task Force on Climate Change”](#) (July 31, 2020), 5.

⁵³ *Id.* at 8.

Southern Wisconsin. These events are likely to increase in frequency to 10-15 events per 100 year (once every 6-10 years). These changes are even more pronounced for the late-century, high-emissions scenario, which projects 18-22 daily 4” precipitation events every 100 years (approximately once every 5 years). These extreme precipitation events have immense impacts across the state, especially to agricultural communities.”⁵⁴

- “Species extinction rates are accelerating and more species may be added to Wisconsin's list of threatened and endangered species, potentially increasing regulatory burdens. Certain iconic and biologically important tree species such as oak and pine will continue to suffer, impacting both the large number of wildlife species that use them and the timber industry. Sustainable harvests of culturally important species, such as wild rice, ginseng, and blueberries, will become limited. Pollinators will diminish, which can have untold impacts on our native habitats, agricultural production, forestry, and food systems. Finally, hunting, fishing, hiking, bird watching, and other outdoor recreational opportunities will diminish as habitats degrade.”⁵⁵

IV. The societal 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 Wisconsin residents, including those in the UW-Madison community, violating the WFAA’s duties to *consider the charitable purpose* of the WFAA and to act with *loyalty* toward its community and property. The disproportionate effects of climate change — a direct result of the fossil fuel industry’s business activity — also point to a potential violation of the state law forbidding university assets to be knowingly invested “in any company, corporation, subsidiary, or affiliate that practices or condones through its actions discrimination on the basis of race, religion, color, creed, or sex.”⁵⁶

- Climate change has significant 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.⁵⁷ 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

⁵⁴ *Id.* at 9-10.

⁵⁵ *Id.* at 43.

⁵⁶ Wisc. Stat. c. 36.29(1).

⁵⁷ [The Geography of Climate Justice](#), Mary Robinson Foundation (last visited Feb. 10, 2021).

- 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.⁵⁸
- 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.⁵⁹
 - The spread of fossil fuel infrastructure — business activity which lies at the source of the climate crisis — has had a particularly harmful effect on Indigenous peoples, whose communities are often invaded and polluted by private companies working in concert with state actors. According to the United Nations Department of Economic and Social Affairs, “[c]limate change exacerbates the difficulties already faced by Indigenous communities including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.”⁶⁰
 - 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.⁶¹
 - The Governor’s Task Force on Climate Change Report highlights several harms related to climate change that disproportionately affect Wisconsin’s marginalized communities. The Report notes that “[w]hile study after study has proven that [Black, Indigenous, and other communities of color] and low-income communities have been adversely affected by environmental policies, the stories and voices of these communities have also affirmed that environmental racism exists and is harming their communities.”⁶² The Report’s findings include:
 - “In the case of extreme heat, southern Wisconsin will be hit particularly hard if it experiences 80 to 90 extremely hot days per year, as is currently projected for mid-century. In this scenario, communities of color, the elderly, individuals with existing health conditions, and economically disadvantaged communities who lack sufficient cooling capabilities will face disproportionate impacts.”⁶³
 - “Black, Indigenous, other communities of color, and low-income communities within Wisconsin are already disproportionately impacted by air pollution and flooding. Wisconsin is home to 11 federally recognized Native Nations and one non-state or federally recognized Nation, which hold strong cultural, spiritual, health, and economic ties to fisheries, native habitats, and wild species and cultivars that are strained by increased warming and precipitation. Some under-represented coastal communities may have lower tax bases, so they are less able

⁵⁸ 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).

⁵⁹ 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).

⁶⁰ United Nations Department of Economic and Social Affairs — Indigenous Peoples, [Climate Change](#) (2020).

⁶¹ Michael Werz and Laura Conley, [Climate Change, Migration, and Conflict](#), Center for American Progress (2012).

⁶² Governor’s Task Force on Climate Change Report, *supra* note 17 at 12.

⁶³ *Id.* at 14-16.

to respond to and rebuild from extreme storm and contamination events. Increased global warming will further exacerbate these socio-economic inequities and potentially bring others to light without ambitious, state-led climate action.”⁶⁴

- “According to new research, areas with growing numbers of hot school days demonstrate decreased student learning rates and teaching quality, impacts that are disproportionately borne by lower-income school districts and students of color.”⁶⁵
- “In economic costs, Wisconsin communities have already suffered tens to hundreds of millions of dollars of damage over the past decade due to extreme precipitation. Increased precipitation is leading to increased flooding and storm surge, which impact communities and industries along the Mississippi River and the Great Lakes as well as tourism along Wisconsin’s waterways and beachfronts. A wetter, warmer climate also increases precipitation and temperature variability. These swings in extremes are already negatively impacting Wisconsin’s agriculture and livestock sectors, which depend on predictable weather patterns.”⁶⁶
- “Transportation infrastructure (e.g., roads, highways, bridges, railways) are susceptible to climate impacts such as rising temperatures and more frequent and intense rainfall.”⁶⁷
- “Climate change has negatively affected agricultural producers through increased frequency and severity of extreme weather events, and these events are projected to intensify in the future. Farmers are experiencing first-hand these negative impacts. For example, unpredictable weather patterns and extreme weather events continue to create challenging growing seasons and negatively impact crop production and animal health, further contributing to financial stress already persistent throughout agricultural communities due to low commodity markets.”⁶⁸
- The Wisconsin Initiative on Climate Change Impacts has documented many of the social effects of climate change in the state, including particular harms to marginalized communities. Examples include:
 - “In communities across the Midwest, climate change is harming our health now. These harms include heat-related illness, worsening chronic illnesses, injuries and deaths from dangerous weather events, infectious diseases spread by mosquitoes and ticks, illnesses from contaminated food and water, and mental health problems. As flooding is becoming more common in our state, our communities are at risk from contaminated drinking water that can trigger outbreaks of water-borne illnesses. When houses flood, there are also serious concerns of respiratory health risks, including asthma, which can be irritated by mold growth. Wisconsinites who rely on well water are some of the most likely to be harmed by water contamination due to flooding. Unless we take concerted action, these harms to our health are going to get much worse . . . The health of anyone can be harmed by climate change, but some of us face greater risk than others. Children,

⁶⁴ *Id.* at 16.

⁶⁵ *Id.* at 76.

⁶⁶ *Id.* at 14.

⁶⁷ *Id.* at 46.

⁶⁸ *Id.* at 50.

student athletes, pregnant women, the elderly, people with chronic illnesses and allergies, and the poor are more likely to be harmed. Low-income families are especially vulnerable. They spend more of their income on transportation, have more exposure to vehicle pollution, and are at higher risk of injury and death due to collisions. Low-income families are also the most vulnerable to heat related illness worsened by urban heat island effect and may not have access to cool places or air conditioning.⁶⁹

- “Increases in extreme precipitation since the 2011 report have taken a significant toll on Wisconsin communities, inflicting tens to hundreds of millions of dollars of damage over the last decade . . . [N]umerous communities have experienced 100 year or greater rainfall events over the last decade and [] the 2010s was Wisconsin’s wettest decade in recorded history. Flooding related to these events has led to significant damage to business and residential infrastructure, agricultural communities, and human health and well-being.”⁷⁰
- “By mid-century, the number of extremely hot days in Wisconsin is likely to triple (defined as the number of days where temperature exceeds 90°F), and the number of extremely hot nights is likely to quadruple (defined as the number of nights when daily temperature does not drop below 70°F). It is noteworthy that by the late century under the high-emissions scenario, southern Wisconsin may experience 80 to 90 days per year — nearly an entire summer — with high temperatures exceeding 90°F. These extreme changes have disproportionate impacts on communities of color, elderly, individuals with existing health conditions, and economically disadvantaged communities who lack cooling capabilities.”⁷¹
- “The impact of these changes will increase vulnerabilities of our roads and rail systems in Wisconsin, create public and environmental safety risks due to flooding, cause a higher likelihood of bridge and dam failure, and result in damage to and inaccessibility of commercial ports and other coastal facilities. More roadway damage may lead to a reduction in commerce as communities face the possibilities of more weight limit restrictions on non-arterial roadways for a greater fraction of the year, difficulty completing construction projects, and impacts to the traveling public and emergency vehicles.”⁷²
- “[T]he Mississippi River and communities in Wisconsin are at risk due to the increasing variability in river flows caused by changes in precipitation, snow melt, storm intensity, and land-use. The amount of water that flowed in the Mississippi River in 2019 was about double the historical average. Extended high water and fall flooding have occurred in seven of the last 10 years. Due in large part to flooding, growth in tourism along the Great River Road was down by 77% in 2019. In high-water years the excessive volume of water causes damage to infrastructure and thus significantly reduces the reliability of river transportation, resulting in delays in deliveries of agricultural chemicals and shipments of

⁶⁹ *Id.* at 25.

⁷⁰ Wisconsin Initiative on Climate Change Impacts, [“Report to the Governor’s Task Force on Climate Change.”](#) *supra* note 52 at 6.

⁷¹ *Id.* at 8-9.

⁷² *Id.* at 14.

commodities. This is particularly impactful to the agricultural sector, which represents a \$25 billion annual economic return to the Upper Mississippi River states, including Wisconsin. Natural resources like aquatic plant populations, a critical food source for hundreds of thousands of migrating waterfowl, and floodplain forests have suffered. Delivery of sediment and nutrients increases the prevalence of harmful algal blooms and contributes to the expansion of the Gulf hypoxic zone.⁷³

- “Climate impacts to Great Lakes natural areas include warmer weather, less extreme cold, wetter overall climate, and extreme precipitation events. These climate impacts are increasing the likelihood of introduction and impact from invasive species, changing species distribution and composition in high value areas such as coastal wetlands and forests, degrading coldwater fisheries in Great Lakes tributaries, increasing inputs of nutrients and sediment, and increasing harmful algal blooms, especially in Green Bay and the south shore of Lake Superior. Intense storm events are leading to losses in dune and swale systems that are unique to Great Lakes shorelines. Great Lake nearshore and coastal beaches that provide access to the public for recreation are being closed due to human health concerns from algal blooms and high E. coli levels. Coastal wetlands are high-priority areas that provide habitat for fish, wildlife, and wild rice that support Great Lakes communities and Tribal Nations economically. They also improve water quality and provide protection from storms and floods. More extreme high and low water levels on the Great Lakes are leading to coastal wetland and beach loss. Protecting these important habitats will have ecosystem-wide impacts across the Great Lakes.⁷⁴
- Enbridge, Inc., a Canadian energy company, is currently seeking to update its Line 5 oil pipeline, which runs from Canada through Wisconsin to Michigan. Line 5 has repeatedly malfunctioned, spilling 1.1 million gallons of oil in Wisconsin and Michigan, and current work on the pipeline threatens the sensitive waters in and around the Straits of Mackinac.⁷⁵ In response to plans to rebuild the pipeline in northern Wisconsin, members of the Anishinaabe people have pointed to the severe risks that Line 5 poses to the region’s fresh water and wetlands, as well as its harmful effects on the climate.⁷⁶
- In and around Madison, climate change effects include depleted oxygen in Lake Mendota⁷⁷ and increased risks of floods. In 2018, a severe storm caused \$154 million in damage in Dane County, harming 1,600 homes and businesses, flooding streets, and displacing residents. The City of Madison has spent millions of dollars for flooding mitigation measures as similar storms will become more frequent thanks to rising carbon dioxide emissions.⁷⁸

⁷³ *Id.* at 18.

⁷⁴ *Id.* at 41.

⁷⁵ For Love of Water, “[Key Facts: Line 5 & the Proposed Oil Tunnel](#)” (Feb 5, 2021).

⁷⁶ Chris Hubbuch, “[Northern Wisconsin oil pipeline reroute panned in public hearing: opponents say risk to water, climate too great.](#)” Wisconsin State Journal (Jul. 2, 2020).

⁷⁷ Robert Ladwig, Paul C. Hanson, Hilary A. Dugan, Cayelan C. Carey, Yu Zhang, Lele Shu, Christopher J. Duffy, and Kelly M. Cobourn, “[Lake thermal structure drives interannual variability in summer anoxia dynamics in a eutrophic lake over 37 years.](#)” *Hydrol. Earth Syst. Sci.* 25, 1009–1032 (2021).

⁷⁸ Chris Hubbuch, “[Another deluge like 2018 would bring 'deep trouble' to area.](#)” Wisconsin State Journal (Aug. 18, 2019).

- Increased water levels in Lake Monona and increased volume in the Yahara River pose a severe flooding risk to the isthmus bordering the University of Wisconsin-Madison campus.⁷⁹
- The effects of climate change in and around Madison will be particularly harmful for low-income communities and communities of color, which for the past century have suffered from the “Madison Compromise” that shifted industrial development — and its resulting pollution, including from the use of fossil fuels — to the city’s poorer east side.⁸⁰
- Densely populated areas of Madison suffer from the “urban heat island” effect: in the summer of 2012, for example, the city’s urban areas experienced up to twice as many hours above ninety degrees Celsius and a minimum daily July temperature 5.3 degrees Celsius higher than surrounding rural areas.⁸¹
- 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.”⁸² 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.⁸³
- Governor Evers recently declared a state of emergency in response to 320 wildfires that had burned 1,400 acres across the state. Caused by drought and earlier snowmelt dates, wildfires are expected to increase in intensity and frequency in the state as climate change worsens.⁸⁴

V. The failure of fossil fuel companies to address climate and environmental 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. WFAA’s *charitable purposes* are directly contravened by investments that promote these activities.

⁷⁹ Steven Verbug, [“Climate, policy changes pose risk of major flooding on Madison's Isthmus.”](#) Wisconsin State Journal (Aug. 5, 2018).

⁸⁰ Maria Powell, [“Maria Powell: Madison's long history of racist planning and development.”](#) The Cap Times (Oct. 8, 2020).

⁸¹ Jason Schatz and Christopher J Kucharik, [“Urban climate effects on extreme temperatures in Madison, Wisconsin, USA.”](#) Environ. Res. Lett. 10, 094024 (Sep. 24, 2015).

⁸² Intergovernmental Platform on Biodiversity and Ecosystem Services, [IPBES Workshop on Biodiversity and Pandemics: Workshop Report](#) (Oct. 29, 2020).

⁸³ 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).

⁸⁴ Emily Beyer, [“Wisconsin governor declares state of emergency due to high risk of wildfires.”](#) The Badger Herald (Apr. 12, 2021).

- 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.”⁸⁵
 - Coal industry publications suggested as early as 1966 that the release of fossil fuels could cause “vast changes in the climates of the earth.”⁸⁶ 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.⁸⁷
 - 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.”⁸⁸
 - Shell internally reached similar conclusions by at least the 1980s,⁸⁹ as did Mobil (then separate from Exxon).⁹⁰ 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.”⁹¹
- 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.”⁹²
- 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.⁹³ That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.⁹⁴
 - 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 2020.⁹⁵ A September 2020 report by climate research group Oil Change International

⁸⁵ 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).

⁸⁶ Elan Young, [Exxon knew -- and so did coal](#), Grist (Nov. 29, 2019).

⁸⁷ Oliver Milman, [Oil industry knew of ‘serious’ climate concerns more than 45 years ago](#), The Guardian (Apr. 13, 2016).

⁸⁸ Shannon Hall, [Exxon Knew about Climate Change almost 40 years ago](#), Sci. Am. (Oct. 26, 2015).

⁸⁹ John H. Cushman Jr., [Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show](#), Inside Climate News (Apr. 5, 2018).

⁹⁰ Nicholas Kusnetz, [Exxon Turns to Academia to Try to Discredit Harvard Research](#), Inside Climate News (Oct. 20, 2020).

⁹¹ Brief of Amici Curiae Robert Brulle, *et al.*, *supra* note 85, at 15.

⁹² [New report shows just 100 companies are source of over 70% of emissions](#), Carbon Disclosure Project (Jul. 2017).

⁹³ [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).

⁹⁴ Ron Bousso, [Big Oil spent 1 percent on green energy in 2018](#), Reuters (Nov. 11, 2018).

⁹⁵ Anjali Raval, [Big fossil fuel groups all failing climate goals, study shows](#), Financial Times (Oct. 6, 2020).

concluded that “[n]one of the evaluated oil majors’ climate strategies, plans, and pledges come close to alignment with the Paris Agreement.”⁹⁶

- 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.⁹⁷ As recently as November 2020, BP was buying up Canadian offshore oil parcels.⁹⁸
 - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.⁹⁹ 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 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.¹⁰⁰
 - Several leading executives from Shell’s renewable energy sectors recently quit in response to the company’s lackluster efforts to decarbonize.¹⁰¹ 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.¹⁰² In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.¹⁰³
 - Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.¹⁰⁴
 - 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.¹⁰⁵

⁹⁶ [Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans](#), Oil Change International (Sept. 2020).

⁹⁷ 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 . . .”).

⁹⁸ Julianne Geiger, [From Billions To Millions: Canada’s Offshore Oil Disappointment](#), OilPrice.com (Nov. 5, 2020).

⁹⁹ 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).

¹⁰⁰ Crowley & Rathi, *supra* note 99. ExxonMobil’s growth strategy has since changed in light of the Covid-19 pandemic.

¹⁰¹ Anjali Raval & Leslie Hook, [Shell Executives Quit Amid Discord Over Green Push](#), Financial Times (Dec. 8, 2020).

¹⁰² Laurel Wamsey, [Climate Case Against Shell Begins In The Netherlands](#), NPR (Dec. 1, 2020).

¹⁰³ Jillian Ambrose, [Shell to expand gas business despite pledge to speed up net zero carbon drive](#), The Guardian (Feb. 11, 2021).

¹⁰⁴ Carolyn Davis, [Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities - Natural Gas](#), Natural Gas Intelligence (Dec. 3, 2020).

¹⁰⁵ Nicholas Kusnetz, [American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy](#), Inside Climate News (Jan. 14, 2021).

- 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.¹⁰⁶
 - 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.¹⁰⁷
- 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.”¹⁰⁸
 - 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.”¹⁰⁹
 - 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.¹¹⁰
- 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.”¹¹¹
- The fossil fuel industry’s poor record of preventing, abating, and reporting pipeline leaks and accidents, and its political maneuvering to gain access to private property, have negatively affected Wisconsin and neighboring states.
 - A log of oil and gas pipeline accidents maintained by the Pipeline and Hazardous Materials Safety Administration documents 5,747 “significant incidents” nationwide between 2001 and 2020, resulting in 1,142 injuries and 256 fatalities.¹¹²

¹⁰⁶ Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, [Fossil fuel companies and climate change: the case for divestment](#), 350 Brit. Med. J. (Jun. 2015).

¹⁰⁷ 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 95.

¹⁰⁸ [Big Oil’s Real Agenda on Climate Change](#), InfluenceMap (Mar. 2019).

¹⁰⁹ 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.*

¹¹⁰ Amy Harder, [With deep pockets, energy industry notches big midterm wins](#), Axios (Nov. 7, 2018).

¹¹¹ 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).

¹¹² Pipeline and Hazardous Materials Safety Administration, [Pipeline Significant Incident 20 Year Trend](#)

- A 2007 oil pipeline explosion near Clearbrook, Minnesota killed two people and resulted in a \$2.4 million fine.¹¹³ In proposing the fine, federal regulators noted that Enbridge had failed to follow procedural requirements for ensuring the structural integrity of the pipeline.¹¹⁴
- In 2010, an Enbridge pipeline spilled 316,000 gallons of crude oil near Romeoville, Illinois.¹¹⁵
- Also in 2010, an Enbridge pipeline spilled more than a million gallons of crude oil near Marshall, Michigan, contaminating nearby wetlands.¹¹⁶ The spill resulted in a \$177 million settlement and years-long cleanup effort overseen by federal regulators.¹¹⁷ The spill has been described as the worst inland oil spill in United States history.¹¹⁸
- Lobbying by Enbridge in 2015 resulted in changes to Wisconsin’s eminent domain laws, making it easier for the government to force private property owners to allow pipeline construction on their land.¹¹⁹
- A 2017 report by the National Wildlife Federation estimated that Enbridge Inc.’s aging Line 5 pipeline spilled more than a million gallons of oil over a fifty-year time period.¹²⁰ In 2019, Michigan sued Enbridge to shut down Line 5, and in 2020 Michigan Governor Gretchen Whitmer ordered the closure of the pipeline.¹²¹ The Bad River Band, an Indigenous tribe in northern Wisconsin, also filed a 2019 lawsuit against Enbridge to compel the closure of Line 5, which traverses the tribe’s reservation.¹²²
- A 2019 leak at an Enbridge pipeline in south-central Wisconsin went unreported for over a year despite causing concern among local residents.¹²³
- 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 to criminalize protest at oil and gas infrastructure sites, thirteen of which have become law.¹²⁴ Many of the bills are

(run date May 7, 2021).

¹¹³ John P. Myers, [Enbridge fine for deadly explosion stands at \\$2.4 million](#), Superior Telegram (Aug. 18, 2010).

¹¹⁴ *Id.*

¹¹⁵ [Top 20 onshore U.S. oil and gas spills since 2010](#), Associated Press (Nov. 17, 2017).

¹¹⁶ [EPA Response to Enbridge Spill in Michigan](#), U.S. Env’tl. Protection Agency (last visited May 7, 2021).

¹¹⁷ *Id.*

¹¹⁸ Maria Gallucci, [Enbridge Oil Spill: Five Years Later, Michigan Residents Struggle To Move On](#), International Business Times (Jul. 24, 2015); see also Nat’l Transp. Safety Bd., [Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release](#) (last visited May 7, 2021) (noting that the leak continued for seventeen hours before Enbridge officials discovered it).

¹¹⁹ Dan Egan, [Greasing oil’s path](#), Milwaukee Journal Sentinel (Nov. 9, 2017).

¹²⁰ Garrett Ellison, [Enbridge Line 5 has spilled at least 1.1M gallons in past 50 years](#), MLive (Apr. 26, 2017).

¹²¹ Cheyna Roth, [Enbridge Line 5 ordered shut down by Michigan Gov. Whitmer](#), MLive (Nov. 13, 2020).

¹²² Danielle Kaeding, [Bad River Tribe Files Federal Lawsuit Against Enbridge](#), Wisconsin Public Radio (Jul. 23, 2019).

¹²³ Laura Schulte, [Enbridge Energy 2019 Wisconsin spill went unreported to DNR over year](#), Milwaukee Journal Sentinel (Mar. 29, 2021).

¹²⁴ [Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws](#), Institute for Policy Studies (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. [U.S. Protest Law Tracker](#), International Center for Not-for-Profit Law (last visited Feb. 10, 2021).

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.¹²⁵

- The majority of enacted critical infrastructure laws contain provisions for organizational as well as individual criminal liability.¹²⁶
- 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.¹²⁷
- 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.¹²⁸
- There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing protest against fossil fuel infrastructure projects, most notoriously 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.¹²⁹ Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.¹³⁰
 - 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.¹³¹
 - 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."¹³²

¹²⁵ [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.

¹²⁶ 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 124.

¹²⁷ 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).

¹²⁸ *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.

¹²⁹ Antonia Juhasz, [Paramilitary security tracked and targeted DAPL opponents as 'jihadists,' docs show](#), Grist (Jun. 1, 2017).

¹³⁰ Alleen Brown, [Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons](#), The Intercept (Nov. 21, 2016).

¹³¹ Alleen Brown, Will Parrish & Alice Sperti, [Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet](#), The Intercept (Aug. 26, 2017).

¹³² *Id.*

- 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.¹³³
- 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.”¹³⁴

VI. The financial risk of fossil fuel investments

As an asset manager, the WFAA 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. In fact, the WFAA has lost money in recent years due to its commitment to fossil fuel assets over renewable energy securities. The untenable value thesis of fossil fuel investments is especially concerning for investors at charitable institutions. As a public charity that exists to support UW-Madison, whose mission is to “discover, examine critically, preserve and transmit the knowledge, wisdom and values that will help ensure the survival of this and future generations and improve the quality of life for all,”¹³⁵ the WFAA 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 WFAA’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.

- According to an analysis by the Wisconsin Student Climate Action Coalition, “[i]f the WFAA had divested from fossil fuels and reinvested in renewable energy in 2015, as students demanded, their energy portfolio could have yielded \$69,994,829 in returns over the next five years, leaving UW with an energy portfolio worth around \$176,694,264 today rather than \$124,785,961 — its most recently disclosed value in 2018.”¹³⁶
- 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 215 percent in value

¹³³ Will Parrish & Alleen Brown, [How Police Are Preparing for a Standoff Over Enbridge Line 3](#), The Intercept (Jan. 30, 2019).

¹³⁴ Bill McKibben, [Shake Harvard Free of Oil Stock](#), The Boston Globe (April 7, 2015).

¹³⁵ University of Wisconsin-Madison, [Mission](#) (revised statement adopted June 10, 1988).

¹³⁶ Wisconsin Student Climate Action Coalition, [“Letter to the Editor: Climate change proudly sponsored by UW alumni donations.”](#) The Badger Herald (Apr. 13, 2021).

since 2011, the S&P Oil and Gas Exploration and Production Select Industry Index has lost approximately sixty-eight percent of its value and the S&P Oil and Gas Equipment Select Industry Index has lost approximately eight-eight percent of its value.¹³⁷ 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.¹³⁸

- 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.¹³⁹
- 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.¹⁴⁰
- In the past five years, fossil fuel assets in U.S. portfolios have lost 9.6 percent of their value, while renewable energy assets have gained 65.6 percent in value over the same period.¹⁴¹
- 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.¹⁴²
- In February 2021, ExxonMobil reported quarterly losses of \$20.1 billion.¹⁴³
- 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 they have earned from business operations (\$340 billion), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.¹⁴⁴
- 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 2019.¹⁴⁵
- The Governor’s Task Force on Climate Change advises divestment given the fossil fuel industry’s financial precarity: “As climate change accelerates and renewable energy continues to become increasingly cost competitive, a growing number of financial analysts argue that fossil fuels will prove to be a bad investment. Over the past few years, coal and oil stocks have shown great vulnerability . . . If this trend continues, especially as Americans continue to travel less due to the pandemic, removing fossil fuels from a

¹³⁷ Data from [S&P Dow Jones Indices](#), S&P Global (Apr. 30, 2021).

¹³⁸ Kevin Stankiewicz, [There’s no more money to be made in oil and gas stocks, Jim Cramer says](#), CNBC (Feb. 3, 2020).

¹³⁹ Jillian Ambrose, [Seven top oil firms downgrade \\$87bn in nine months](#), The Guardian (Aug. 14, 2020).

¹⁴⁰ 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).

¹⁴¹ International Energy Agency and the Centre for Climate Finance and Investment, [“Energy Investing: Exploring Risk and Return in the Capital Markets”](#) (June 2020), 10.

¹⁴² Avi Salzman, [Why Exxon Is Being Dropped From the Dow](#), Barron’s (Aug. 25, 2020).

¹⁴³ [ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans](#), ExxonMobil (Feb. 2, 2021).

¹⁴⁴ 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).

¹⁴⁵ Fred Pearce, [As Investors and Insurers Back Away, the Economics of Coal Turn Toxic](#), Yale Environment 360 (Mar. 10, 2020).

stock portfolio becomes a more mainstream option. Enacting divestment legislation could accelerate this shift and move us further from economic reliance on fossil fuels. Multiple studies have demonstrated that divesting from fossil fuels does not have a statistically significant impact on overall portfolio performance and has only a marginal impact on the utility derived from such portfolios.”¹⁴⁶

- 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.¹⁴⁷
 - 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.”¹⁴⁸
 - 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.”¹⁴⁹
 - 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.”¹⁵⁰
- 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 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.

¹⁴⁶ Governor’s Task Force on Climate Change Report, *supra* note 17 at 94.

¹⁴⁷ 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)

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.* at 1.

¹⁵⁰ *Id.* at 38.

Such reductions — which represent only a moderate chance at avoiding catastrophe — would render the majority of oil and gas reserves unexploitable and unprofitable.¹⁵¹

- 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.¹⁵² 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.¹⁵³
- 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.”¹⁵⁴
- 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.”¹⁵⁵
- 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.¹⁵⁶
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz, former Secretary of Labor Robert Reich, identified the 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.

¹⁵¹ Carbon Tracker Initiative, [Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink](#) (Nov. 1, 2019).

¹⁵² Mercer LLC, [Investing in a Time of Climate Change: The Sequel 2019](#) (2019), 34

¹⁵³ European Green Party, [The Carbon Bubble: The financial risk of fossil fuels and need for divestment](#) (2020), 7.

¹⁵⁴ Board of Governors of the Federal Reserve System, [Financial Stability Report](#) (Nov. 2020), 58

¹⁵⁵ Clyde & Co LLP, [Climate change: Liability risks](#) (Mar. 2019), 37.

¹⁵⁶ Michael Slezak, [Rest super fund commits to net-zero emission investments after Brisbane man sues](#), ABC News (Nov. 2, 2020).

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.”¹⁵⁷

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 WFAA 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 2015¹⁵⁸ and a matter of common knowledge for investors since at least 2019, when the Massachusetts 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 Wisconsin 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.”¹⁵⁹
 - 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.¹⁶⁰
 - 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

¹⁵⁷ 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).

¹⁵⁸ 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).

¹⁵⁹ Second Amended Complaint, [Wisconsin v. ExxonMobil](#), No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5, 2020) at 1.

¹⁶⁰ *Id.* at 5.

the scientific consensus that rising atmospheric carbon dioxide levels produce catastrophic warming.¹⁶¹

- 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.”¹⁶²
- 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.”¹⁶³
- The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the WFAA in danger of serious financial damage: “ExxonMobil’s omissions and misrepresentations put its . . . 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.”¹⁶⁴
- 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.¹⁶⁵
- 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 describe how they will adjust their operations to satisfy the warming targets established under the Paris Agreement.¹⁶⁶

¹⁶¹ *Id.* at 9, 50-51.

¹⁶² *Id.* at 8.

¹⁶³ *Id.* at 65, 80-81.

¹⁶⁴ *Id.* at 138.

¹⁶⁵ Nick Cuningham, [Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years](#), *Desmog Blog* (Feb. 2, 2021).

¹⁶⁶ Dana Drugman, [Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk](#), *The Climate Docket* (Jan. 29, 2020).

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 WFAA 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.”¹⁶⁷
- 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.¹⁶⁸ 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.¹⁶⁹
 - 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.”¹⁷⁰
 - 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” —

¹⁶⁷ Jeremy Grantham, [The mythical peril of divesting from fossil fuels](#), London School of Economics (June 13, 2018).

¹⁶⁸ 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).

¹⁶⁹ Auke Plantinga and Bert Scholtens, [The financial impact of fossil fuel divestment](#), 21 Climate Policy 1 (2020).

¹⁷⁰ 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.

- had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.
- Separate 2021 studies by the investment firms BlackRock and Meketa found “evidence of modest improvement in fund return” after divestment from fossil fuels, and specifically noted that fiduciaries do not violate their duty of prudence when they divest from the risky fossil fuel sector.¹⁷¹
- 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.¹⁷²
- The Governor’s Task Force on Climate Change recognizes that divestment produces no adverse financial effects for institutions. As one of its climate solutions for Wisconsin, the report states: “Multiple studies have demonstrated that divesting from fossil fuels does not have a statistically significant impact on overall portfolio performance and has only a marginal impact on the utility derived from such portfolios.”¹⁷³

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 UW-Madison. Their reasoning applies to UW-Madison’s circumstances as well as their own, and thus the WFAA 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.¹⁷⁴
 - 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.”¹⁷⁵
 - In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is effective in reducing the fossil fuel industry’s

¹⁷¹ Tom Sanzillo, [“IEEFA: Major investment advisors BlackRock and Meketa provide a fiduciary path through the energy transition.”](#) Institute for Energy Economics and Financial Analysis (Mar. 22, 2021).

¹⁷² Toby A.A. Heaps, [Divestment would have made NY pension fund \\$22B richer](#), Corporate Knights (Oct. 4, 2018).

¹⁷³ Governor’s Task Force on Climate Change Report, *supra* note 17 at 94.

¹⁷⁴ 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.”).

¹⁷⁵ Prem Thakkar, [Reading the Fine Print of University Fossil Fuel Divestment Pledges](#), The American Prospect (Mar. 1, 2021).

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.”¹⁷⁶

- 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.”¹⁷⁷
- 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.”¹⁷⁸
- Christiana Figures, the former Executive Secretary of the United Nations Framework Convention on Climate Change and the lead negotiator at the talks leading to the Paris Agreement, recently stated in reference to the refusal of the Harvard Corporation and the Harvard Management company to divest from fossil fuels: “My sense is that the Harvard Management Company is at the point of breaching its true fiduciary responsibility. My conclusion on this is a university that is so on the forefront of academia cannot continue to ignore the very science that it teaches its students. Those two things cannot go hand in hand.”¹⁷⁹
- 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.”¹⁸⁰
- Leading educational institutions 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

¹⁷⁶ Second Amended Complaint, *Massachusetts v. ExxonMobil*, *supra* note 159, at 108-109.

¹⁷⁷ Royal Dutch Shell PLC, [Annual Report and Form 20-F 2017 — Strategic Report](#) (2017), 13.

¹⁷⁸ Peabody Energy Corporation, [Form 10-K: Annual Report](#), Securities and Exchange Commission (2014), 30.

¹⁷⁹ Fossil Free Divest Harvard, [“Christiana Figueres on Divestment”](#) (Apr. 23, 2021). Figueres’s remarks were made at an April 22, 2021 Harvard Kennedy School Institute of Politics event entitled [“The Decisive Decade for Climate Action.”](#)

¹⁸⁰ 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 stigmatize fossil fuel companies in order to “make the space for progress” and reduce those companies’ corrupting influence on politics).

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 leading educational 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.¹⁸¹
 - 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.”¹⁸²
- 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.¹⁸³
 - 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.¹⁸⁴
- 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 2038.¹⁸⁵
 - 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 2038.¹⁸⁶
 - 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.¹⁸⁷

¹⁸¹ Christina Paxson, [Letter from President Paxson: Brown’s actions on climate change](#), Brown University, (Mar. 4, 2020).

¹⁸² *Id.*

¹⁸³ Kathryn Stamm, [Cornell to Effectively Divest from Fossil Fuels, Trustees Vote](#), Cornell Daily Sun (May 22, 2020).

¹⁸⁴ James Dean, [Cornell announces moratorium on fossil fuel investments](#), Cornell Chronicle (May 22, 2020).

¹⁸⁵ Matthew Taylor, [Cambridge University to divest from fossil fuels by 2030](#), The Guardian (Oct. 1, 2020).

¹⁸⁶ *Id.*

¹⁸⁷ [Cambridge to divest from fossil fuels with ‘net zero’ plan](#), University of Cambridge (Oct. 1, 2020).

- 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.”¹⁸⁸
 - In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.¹⁸⁹
 - 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.¹⁹⁰
 - 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 2035.¹⁹¹
 - In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.¹⁹²
 - 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.”¹⁹³
 - Georgetown President John J. DeGioia also identified moral concerns as important to the decision, noting that “caring for our environment is one of the most urgent moral and practical concerns of our time.”¹⁹⁴
 - In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.¹⁹⁵
 - 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

¹⁸⁸ *Id.*

¹⁸⁹ [University of Oxford cuts ties to fossil fuels industry](#), BBC News (Apr. 28, 2020).

¹⁹⁰ [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).

¹⁹¹ [Aiming for zero carbon and biodiversity net gain by 2035](#), University of Oxford (Nov. 20, 2020).

¹⁹² [Fossil Fuels Divestment Continues Georgetown’s Commitment to Sustainability](#), Georgetown University (Feb. 6, 2020).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ 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).

- endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC’s diversified portfolios.”¹⁹⁶
- 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 fuel the world’s future. That means we believe there is money to be made.”¹⁹⁷
- In recent months, several Big Ten universities have divested from fossil fuels.
 - In October 2020, the University of Illinois divested its endowment from fossil fuels.¹⁹⁸
 - The University of Illinois Sustainability Programs Coordinator noted that the Illinois Climate Action Plan, of which the divestment decision is a part, was formed with input from students, faculty, and staff, and that it is “a strategic plan to expand a culture of sustainability.”¹⁹⁹
 - The plan includes specific benchmarks, including the edict to “fully divest University of Illinois system endowment from all companies involved in extraction, manufacturing, production, and transportation of fossil fuels” by the end of fiscal year 2020.²⁰⁰
 - In March 2021, the University of Michigan Board of Regents voted to divest from fossil fuels.²⁰¹
 - University President Mark Schlissel explained that the university’s divestment “is informed by the growing risk of investments in fossil fuels during the essential transition to a lower carbon economy.”²⁰²
 - According to Regent Mark Bernstein, the vote reflected the fact that climate change “is a big and complicated problem, and the University of Michigan is in the business of solving big complicated consequential problems; leaders don’t shy away from hard challenges.”²⁰³
 - In March 2021, Rutgers University Board of Governors and Board of Trustees voted to divest from fossil fuels.²⁰⁴
 - Rutgers University faculty member and climate scholar Naomi Klein said that the decision “sends an unequivocal market message that the era of fossil fuels is finally coming to an end and that our collective future rests with clean, renewable energy.”²⁰⁵
 - Rutgers University President Jonathan Holloway explained that “This decision aligns with Rutgers’ mission to advance public health and social

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Ben Zigerman, [UI’s New Climate Plan Include Divestment from Fossil Fuels](#), The News-Gazette (Oct. 14, 2020).

¹⁹⁹ *Id.*

²⁰⁰ Institute for Sustainability, Energy, and Environment, [Illinois Climate Action Plan 2020](#), Appendix D: Formal Procedures at 210.

²⁰¹ Calder Lewis et. al., [Regents disinvest from holdings related to fossil fuels, commit to net-zero endowment by 2050 and invest \\$140 million into renewable energy](#) (Mar. 25, 2021).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Zach Budryk, [Rutgers to divest from fossil fuel industry](#), The Hill (Mar. 9, 2021).

²⁰⁵ *Id.*

justice. While the university has taken steps recently to limit investments in this area, approving a policy of divestment from fossil fuels is a significant expression of the values of our institution and our broader community.”²⁰⁶

- In addition to 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).²⁰⁷
 - Other major funds that have divested include the five-billion-dollar Rockefeller Foundation,²⁰⁸ Norway’s \$1.1 trillion sovereign wealth fund (oil and gas exploration and production)²⁰⁹ and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).²¹⁰

X. The fossil fuel industry’s scientific misinformation campaigns and attacks on academia

The WFAA’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 WFAA exposes the UW-Madison 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,²¹¹ 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.”²¹² 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.²¹³

²⁰⁶ Rutgers University, [Rutgers to Divest from Fossil Fuels](#) (Mar. 9, 2021).

²⁰⁷ [1000+ Divestment Commitments](#), GoFossilFree.org (updated Dec. 9, 2020).

²⁰⁸ *Id.*

²⁰⁹ Terje Solsvik, [Norway sovereign wealth fund to divest oil explorers, keep refiners](#), Reuters (Oct. 1, 2019).

²¹⁰ Jillian Ambrose, [Major investment firm dumps Exxon, Chevron and Rio Tinto stock](#), The Guardian (Aug. 24, 2020).

²¹¹ *See supra* at Section III.

²¹² 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).

²¹³ *Id.*

- 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.”²¹⁴
- 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.²¹⁵
- Over about the last three decades, “five major U.S. oil companies have spent a total of at least \$3.6 [billion] on advertisements.”²¹⁶ 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.²¹⁷
- 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,²¹⁸ and by this office’s complaint against ExxonMobil in its deceptive advertising litigation.²¹⁹
- 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.”²²⁰
- Undermining the work of academics and scholars has been another key tactic of the fossil fuel industry. These activities affect researchers everywhere, including at UW-Madison, insofar as they raise the professional and reputational costs of doing climate change research and muddy scientific consensus on the subject.
 - ExxonMobil has repeatedly sought to portray the Intergovernmental Panel on Climate Change — a coordinating body of respected scientists and academics that publishes periodic reports on climate science to aid policymakers — as biased and untrustworthy.²²¹

²¹⁴ Second Amended Complaint, *Massachusetts v. ExxonMobil*, *supra* note 159, at ¶195.

²¹⁵ [Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to “Manufacture Uncertainty” on Climate Change](#) (Jul. 16, 2007).

²¹⁶ Emily Holden, [How the oil industry has spent billions to control the climate change conversation](#), *The Guardian* (Jan. 8, 2020).

²¹⁷ Geoffrey Supran & Naomi Oreskes, [Assessing ExxonMobil’s climate change communications \(1977–2014\)](#), 12(8) *Envtl. Res. Letters* (Aug. 2017).

²¹⁸ *See* Brief of Amici Curiae Robert Brulle, et al., *supra* note 212.

²¹⁹ *See* Second Amended Complaint, *Massachusetts v. ExxonMobil*, *supra* note 159, at Part IV.B.

²²⁰ 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).

²²¹ David Hasemyer & John H. Cushman Jr., [Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty](#), *Inside Climate News* (Oct. 22, 2015).

- 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.”²²²
- 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.²²³
- In 2018, Former EPA secretary Scott Pruitt moved to adopt rules on public access to data that were widely seen as harmful to academic researchers.²²⁴ These rules had long been sought by the fossil fuel industry.²²⁵
- A number of climate change researchers at Harvard University have faced criticism and in some cases personal attacks from the fossil fuel industry.
 - In 2013, the Law School’s Environmental Law Program Policy Initiative released a report suggesting that existing disclosure regulations were insufficient to regulate the fracking industry’s behavior.²²⁶ An industry-funded website accused the study of being “fundamentally and transparently flawed.”²²⁷
 - In 2014, 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.²²⁸
 - In 2017, researcher Geoffrey Supran and professor Oreskes published a peer-reviewed study analyzing ExxonMobil’s climate communications.²²⁹ Exxon’s response included commissioning and paying for a (non-peer-reviewed) academic analysis that accused Supran and Oreskes of bias,²³⁰ running a Twitter ad calling its conclusions “manufactured,”²³¹ urging the European Parliament to ignore the study’s conclusions,²³² and suggesting

²²² Union of Concerned Scientists, [How the Fossil Fuel Industry Harassed Climate Scientist Michael Mann](#) (Oct. 12, 2017).

²²³ Michael Halpern, [Arizona Superior Court Protects Academic Freedom in Climate Email Disclosure Case](#), Union of Concerned Scientists (Mar. 30, 2015).

²²⁴ [Letter to EPA Administrator Scott Pruitt regarding proposed “Strengthening Transparency in Regulatory Science” rule](#), Harvard University Office of the President (Jun. 4, 2018).

²²⁵ Marianne Lavelle, [Pruitt’s Own Scientist Appointees Challenge EPA Science Restrictions](#), Inside Climate News (May 17, 2018).

²²⁶ [Legal Fractures in Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool](#) (Apr. 23, 2013).

²²⁷ John Krohn, [Four Things to Know about the Harvard FracFocus Study](#), Energy in Depth (April 25, 2013).

²²⁸ [Email from Marc Morano Regarding the New Warmist Film](#), UCSF Library Fossil Fuel Industry Documents (Jun. 24, 2019).

²²⁹ Geoffrey Supran & Naomi Oreskes, [Assessing ExxonMobil’s climate change communications](#), *supra* note 217.

²³⁰ Nicholas Kusnetz, [Exxon Turns to Academia to Try to Discredit Harvard Research](#), Inside Climate News (Oct. 20, 2020).

²³¹ [Just today, @exxonmobil ran Twitter ads](#), Fossil Fuel Divest Harvard (Jun. 16, 2020).

²³² [ExxonMobil refused to attend a hearing](#), Food & Water Action Europe (Mar. 21, 2019).

on a website known to take editorial direction from Exxon²³³ that the study was written for the purpose of “suppressing free speech.”²³⁴

- In 2020, 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-19.²³⁵ The American Petroleum Institute lobbied the EPA to reject the study’s conclusions, arguing that it could not “be used to draw policy inferences.”²³⁶
- The fossil fuel industry has also sought to legitimize its policy positions by funding climate and energy research at flagship academic institutions, calling into question the intellectual independence of those activities and the balance of perspectives within the academy.²³⁷ These funding streams have shaped leading climate and energy research for years, with potentially far-reaching effects for academic researchers at both the targeted institutions and elsewhere.
 - ExxonMobil has touted its collaborations with Princeton, the Massachusetts Institute of Technology, the University of Texas at Austin, and other institutions on research into alternative energy sources.²³⁸ Columbia University’s Center on Global Energy Policy has also received significant funding from ExxonMobil.²³⁹
 - The Energy Initiative at the Massachusetts Institute of Technology has received funding from Shell and Chevron, in addition to ExxonMobil.²⁴⁰
 - Stanford’s Global Climate and Energy Project receives funding from ExxonMobil and Schlumberger.²⁴¹
 - A number of important research centers and schools at Harvard University currently receive or have recently received fossil fuel funding, including the Harvard Kennedy School,²⁴² the Harvard Environmental Economics Program,²⁴³

²³³ Hiroko Tabuchi, [How One Firm Drove Influence Campaigns Nationwide for Big Oil](#), The New York Times (Nov. 11, 2020).

²³⁴ Spencer Walrath, [Activists Admit Climate Campaign Is About Attacking Free Speech](#), Energy In Depth (Aug. 22, 2017).

²³⁵ 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).

²³⁶ Kelsey Tamborrino, [Inside carbon capture tax credit claims](#), Politico (Apr. 30, 2020).

²³⁷ See Benjamin Franta & Geoffrey Supran, [The fossil fuel industry’s invisible colonization of academia](#), The Guardian (Mar. 13, 2017).

²³⁸ [Collaborating with leading universities to meet global energy demand](#), ExxonMobil (Nov. 16, 2020).

²³⁹ Steve Horn, [Exposed: ExxonMobil Funding Influential Columbia University Center on Global Energy Policy](#), Desmog (Dec. 1, 2015).

²⁴⁰ Franta & Supran, [The fossil fuel industry's invisible colonization](#), *supra* note 237.

²⁴¹ *Id.*

²⁴² *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.

²⁴³ [Enel makes \\$5 million gift to Environmental Economics Program](#), The Harvard Gazette (Feb. 8, 2007); [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).

the Harvard Project on Climate Agreements,²⁴⁴ Resources for the Future,²⁴⁵ and the Geopolitics of Energy Project.²⁴⁶

- 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.”²⁴⁷
- 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,”²⁴⁸ 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”²⁴⁹
 - 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.²⁵⁰ One professor called for the total abolishment of punitive damages.²⁵¹
 - 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

²⁴⁴ [Funding & Partnerships](#), Harvard Project on Climate Agreements (last visited Mar. 6, 2021).

²⁴⁵ [Annual Report 2013](#), Resources for the Future (Mar. 23, 2014).

²⁴⁶ [Funding & Partnerships](#), Geopolitics of Energy Project (last visited Mar. 2, 2021).

²⁴⁷ Wen Stephenson, [Other Universities Are Divesting From Fossil Fuels—but Harvard Is Doubling Down on Them](#), *The Nation* (May 4, 2016).

²⁴⁸ 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.*

²⁴⁹ 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.

²⁵⁰ 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.

²⁵¹ McGarity, *supra* note 250, 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.”²⁵² The same study found that courts cited industry-funded studies more often.²⁵³

XI. The WFAA’s refusal to consider divestment from fossil fuels

The WFAA has failed to act in *good faith* or with *due care* by ignoring repeated efforts by UW-Madison students and faculty to align the university’s investment practices with its charitable mission.

- Members of the UW-Madison 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 December 2012, Climate Action 350-UW and 350 Madison delivered a petition calling for divestment with 1,200 signatures to University of Wisconsin Foundation President Michael Knetter.²⁵⁴
 - In March 2013, the Teaching Assistants Association of UW-Madison called on the university to divest from fossil fuels.²⁵⁵
 - In February 2014, the UW Madison Ad Hoc Committee on Fossil Fuel Use and Climate Change formally recommended that the university promote non-fossil fuel investment opportunities.²⁵⁶
 - In February 2015, 350 Madison added UW-Madison to the Multi School Fossil Free Divestment Fund, a donor-advised divestment fund created to put pressure on colleges/universities to divest. When UW-Madison failed to divest by the deadline, all donations made in its name went to the single school that did divest, which was Salem State University.²⁵⁷
 - In 2016, representatives from 350 Madison met with University of Wisconsin Foundation officers to discuss the financial risks of investments in fossil fuel companies.²⁵⁸
 - In April 2017, the Associated Students of Madison adopted its first resolution calling for UW-Madison to divest from corporations involved in fossil fuels.²⁵⁹

²⁵² 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.*

²⁵³ *Id.* at 56.

²⁵⁴ Climate Action 350-UW and 350 Madison, [Letter to Michael Knetter](#) (Dec. 3, 2012).

²⁵⁵ Teaching Assistants Association, [The TAA Calls On the University of Wisconsin-Madison to Divest from Fossil Fuel Interests and Pursue Alternatives](#) (Mar. 2013).

²⁵⁶ Ad Hoc Committee on Fossil Fuel Use and Climate Change, [Report of the Ad Hoc Committee on Fossil Fuel Use and Climate Change](#) (Feb. 3, 2014).

²⁵⁷ Peter Nightingale, [Multi-school fossil fuel divestment fund releases \\$57,000 to Salem State University](#) (Apr. 8, 2019).

²⁵⁸ 350 Madison, [350 Madison & Divestment](#) (last visited May 3, 2021).

²⁵⁹ Pat Schneider, [UW-Madison student council calls for divestment; officials say they won’t change practices](#) (Apr. 27, 2017).

- In January 2020, Big Ten Student Body Presidents unanimously passed a resolution calling for divestment from fossil fuels.²⁶⁰
- In December 2020, the Associated Students of Madison passed a second resolution calling for fossil fuel divestment.²⁶¹
- In February 2020, WSCAC held a die-in protesting the university’s continued investments in fossil fuels.²⁶²
- In 2020 and 2021, fossil fuel divestment advocates published numerous op-eds and letters to the editor making the case for fossil fuel divestment.²⁶³
- In March 2021, the UW Madison Faculty Senate voted 149-13 in favor of divestment, calling on the WFAA to disclose its fossil fuel investments, make a plan to fully divest, and find fossil-free alternatives for alumni donors.²⁶⁴
- Despite the strong support for fossil fuel divestment among members of the UW-Madison community, WFAA members have refused to engage with the question in good faith.
 - In April 2017, university administrators quickly dismissed the Associated Students of Madison’s first resolution for fossil fuel divestment. The administrators claimed that the WFAA is “driven by its obligation to maximize the impact of a donor's gift on the intended program in the university.”²⁶⁵
 - At a March 2021 UW Madison Sustainability Advisory Council, WFAA Director of Communications Jessica Arp explained WFAA’s position that “excluding certain assets at the demand of folks who are not the folks who are giving the money would — could be viewed as a violation of that fiduciary responsibility to say we need to follow the markets and we need to make sure we are ensuring the highest return possible.”²⁶⁶ Arp also stated that “[o]ur responsibility as a fiduciary is to make the best decisions for the long-term value of those investments.”²⁶⁷
 - At the same meeting, Arp argued that UW-Madison “can play a key part in solving these problems we face in sustainability and climate change” through research, which is supported by donations to the university.²⁶⁸

Conclusion

Under Chapter 202, §§ 17 and 18 of the Wisconsin Statutes, the Department of Financial Institutions is responsible for ensuring that charitable assets are allocated appropriately and for

²⁶⁰ Wendy Guzman, [Big Ten students call for fossil fuel divestment](#), The State News (Feb. 6, 2020).

²⁶¹ Associated Students of Madison, [Student Council Passes Four New Pieces of Legislation](#) (Dec. 3, 2020).

²⁶² Yvonne Kim, [UW climate activists join nationwide demands for fossil fuel divestment with Bascom Hall “die-in.”](#) The Cap Times (Feb. 14, 2020).

²⁶³ See UW Divestment Coalition, [End climate profiteering](#), The Daily Cardinal (Oct. 5, 2020); University of Wisconsin Divestment Coalition, [UWDC urges UW to divest from fossil fuel use](#), The Badger Herald (Oct. 12, 2020); Leah Woodward, et. al., [UW Saving the Planet? Not yet](#), The Spectator (Apr. 12, 2021); Wisconsin Student Climate Action Coalition, [Climate change proudly sponsored by UW alumni donations](#), The Badger Herald (Apr. 13, 2021).

²⁶⁴ Office of the Secretary of the Faculty, [UW Faculty Senate Approves Climate Divestment and Procurement Resolution](#), (Mar. 2, 2021).

²⁶⁵ Schneider, *supra* note 259.

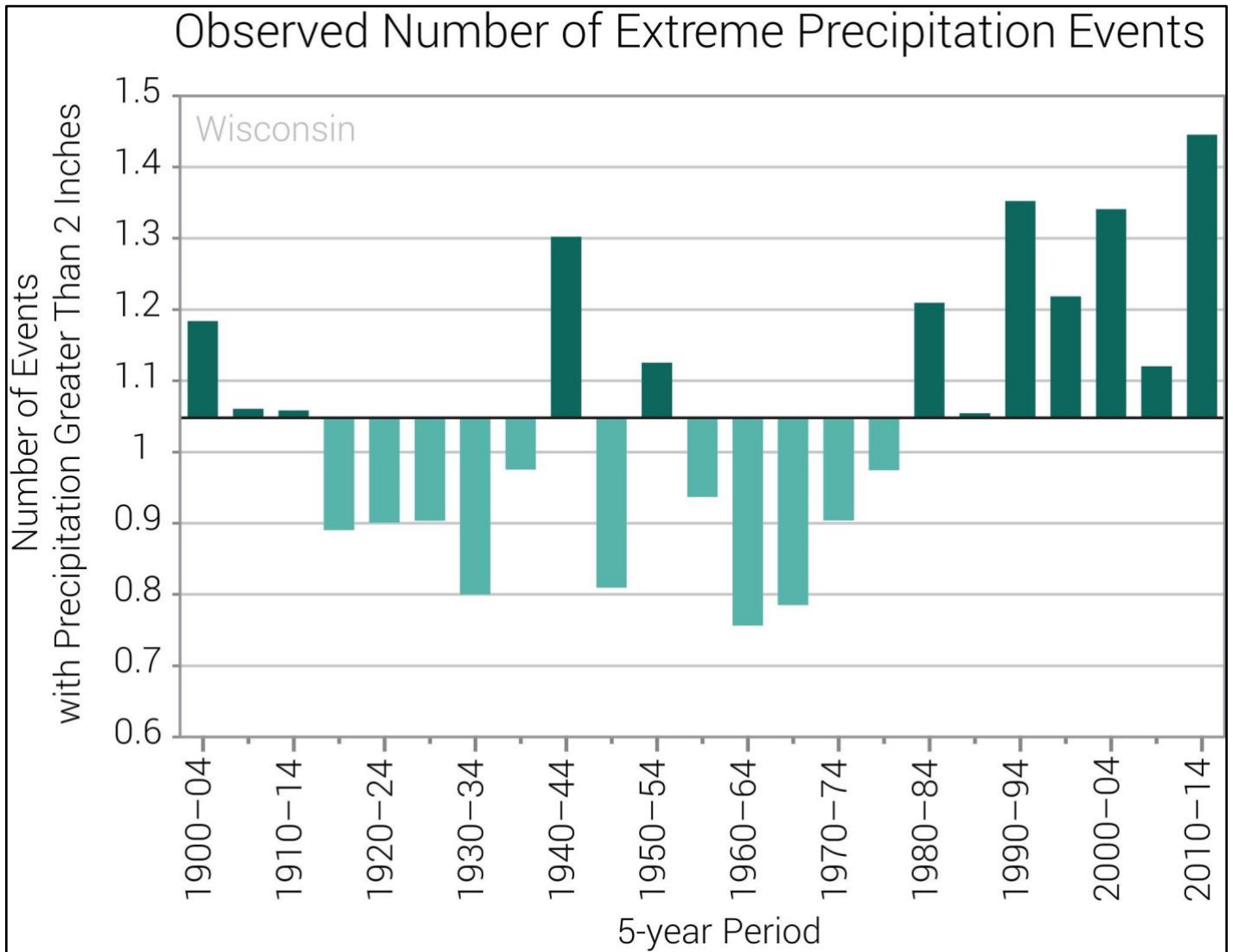
²⁶⁶ UW-Madison Office of Sustainability, [Sustainability Advisory Council Meeting #6: Planning and Administration](#) (2021) (last visited May 4, 2021).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

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 WFAA no longer harms the UW-Madison community, the State, and the public. We respectfully request a meeting with your offices to discuss this matter further.

Appendix A



Observed Number of Extreme Precipitation Events, 1900-2014. Source: [Wisconsin State Climate Summaries](#), National Oceanic & Atmospheric Administration (last visited May 7, 2021).

Appendix B

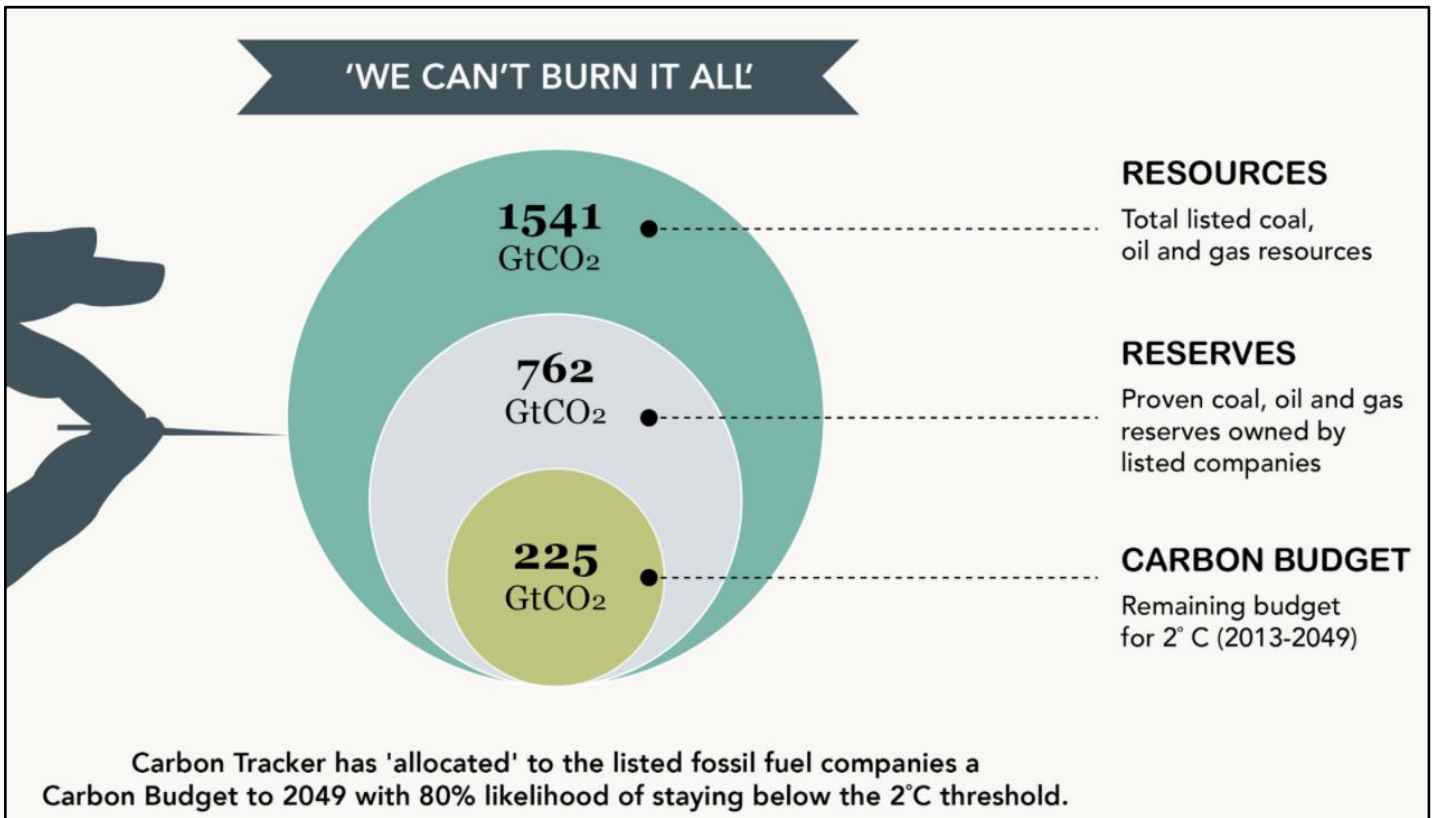


Illustration of Carbon Bubble, as reprinted in Katharine Earley, [Carbon Tracker measures oil and coal risk for investors](#), The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

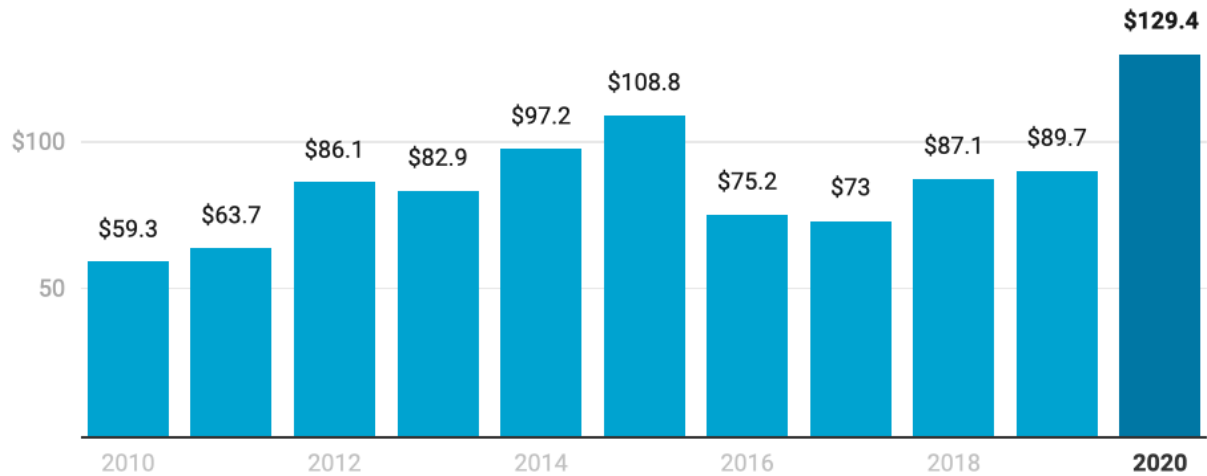
Appendix C



Comparison of ten-year performance of the S&P 500 Index with the S&P Oil & Gas Exploration & Production Select Industry Index (blue) and the S&P Oil & Gas Equipment Select Industry Index (yellow). Created using comparison tool at [S&P 500 Dow Jones Indices](#) (last visited Apr. 30, 2021).

Appendix D

U.S. Energy Sector Debt Issuance Through Q3 (\$Billions)

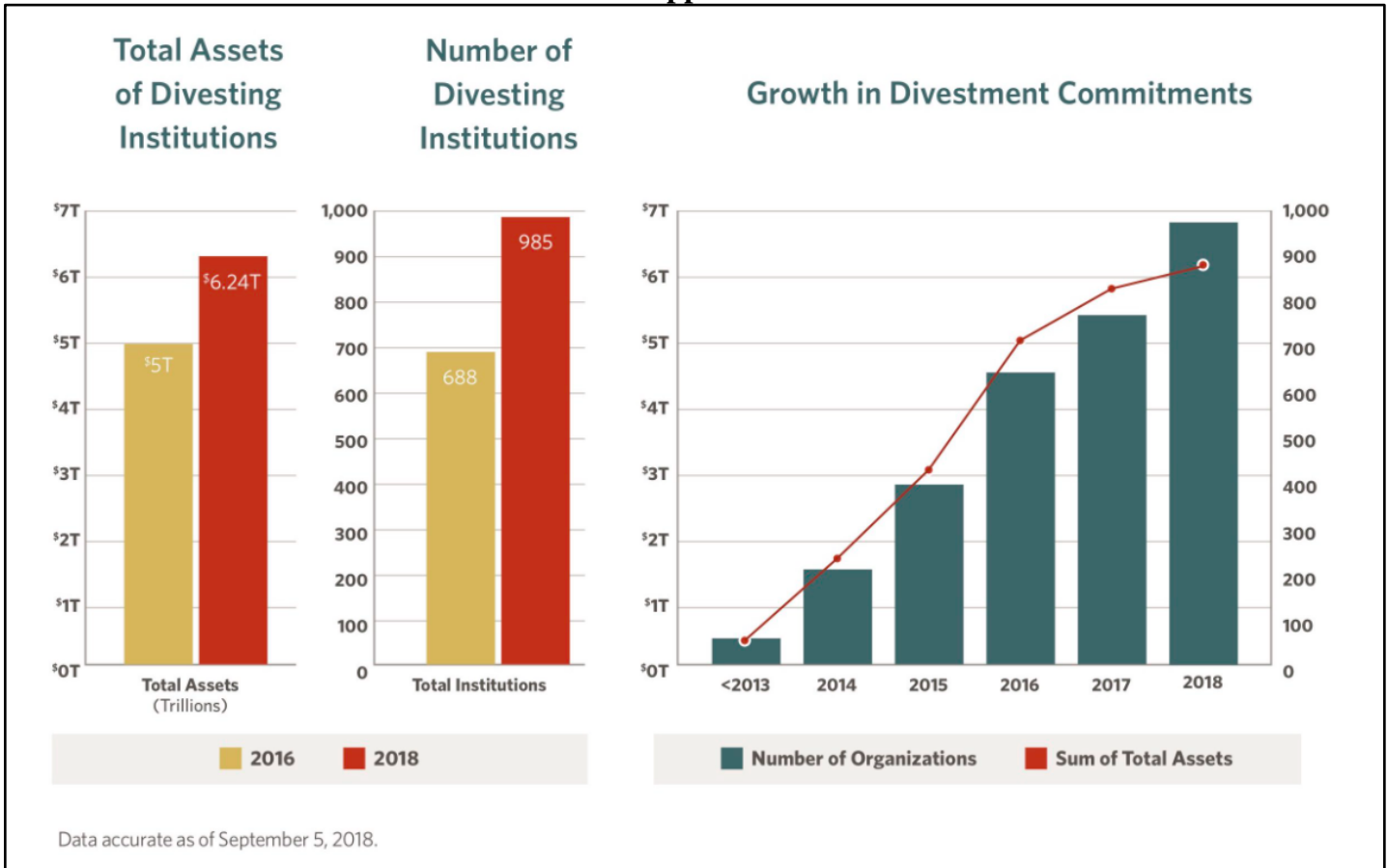


2020 data is through Sept 18

Source: Bloomberg • [Get the data](#) • Created with [Datawrapper](#)

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.