Attorney General Rob Bonta
Attorney General's Office
Registry of Charitable Trusts
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

Dear Attorney General Bonta —

The Board of Trustees of Stanford University, as fiduciary of a non-profit educational institution, is bound by the laws of California to promote the well-being of Stanford's students and community and to further the University's commitment to educational excellence. Stanford's mission and values are "to promote the public welfare by exercising an influence in behalf of humanity and civilization,"[1] and, with the help of "optimism, ingenuity and a sense of responsibility," to "accelerate [Stanford's] purposeful impact in the world."[2]

Under the California Uniform Prudent Management of Institutional Funds Act, the Board of Trustees has a fiduciary duty to invest with consideration for the University's charitable purposes — a duty that distinguishes non-profit institutions from other investors. It may be problematic, then, that the Board of Trustees has invested a portion of the University's 37.8 billion dollar endowment in the fossil fuel industry — damaging the world's natural systems, disproportionately harming youth, low-income 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 use your enforcement powers to bring the Board's investment practices into compliance with its fiduciary obligations.

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

The values that should guide the Board of Trustees' investments are clear. According to the Stanford charter, the University was established "to qualify its students for personal success, and direct usefulness in life." The Board recognizes that "[a]ddressing issues like racial injustice, rising healthcare costs, climate change and unequal learning opportunities will involve rethinking

[1] The founding grant : with amendments, legislation, and court decrees at 3, Stanford Digital Repository (last visited Feb. 3, 2022).
[2] Stanford's Long-Range Vision, Stanford University (last visited Feb. 3, 2022).

existing ways of carrying out research and turning ideas into action"[3] and that the University is "commit[ed] to incorporat[ing] sustainability practices and ethos into every aspect of campus life."[4] And yet, despite the demonstrable financial and social benefits of institutional fossil fuel divestment, the Board of Trustees continues to provide financial support for an industry whose business model inexorably leads to environmental destruction and social injustice.

It is now widely recognized that 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 burdens from fossil fuel extraction and combustion. Low-income people bear the brunt of climate-based economic dislocation, 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. And, as a result of the economic precarity and increased burden of care work that results from climate disruptions, women suffer more serious detriments.

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the Board of Trustees has repeatedly refused to apply Stanford's values to its investment activity. From managers of an institution of higher education, this conduct is especially galling. For over fifty years, fossil fuel companies have 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 and funding of questionable research undermines the work of Stanford faculty and students who are 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 the Stanford community grapples with the reality that "our institutional systems and behaviors intertwine with the environmental, social, and economic health of our society and the planet,"[5] the Board of Trustees channels funds to an industry committed to winning short-term profits at the expense of the present and future public good.

A similar inversion of values underlies the Board of Trustees' funding of climate degradation despite its duty to protect Stanford's physical property. As documented in Santa Clara County's 2021 Climate Action Plan, higher temperatures, wildfire risk, decreased air quality, and other sources of disruption are likely to pose serious threats to University land, buildings, and operations in the coming decades. Administrators may be forced to retrofit facilities and manage infrastructure disruptions. Instead of facilitating such injuries, the Board of Trustees should be doing everything in its power to prevent them.

The Board of Trustees is bound by an additional legal duty: the requirement to manage Stanford's assets with prudence. Prudent investment practice cannot be squared with the

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[3] Our Vision: Solutions, Stanford University (last visited Feb. 3, 2022).
[4] About - Sustainable Stanford, Stanford University (Nov. 2, 2021).
[5] Sustainability at Stanford: 2020-21 Year in Review, Stanford University (last visited Feb. 3, 2022).

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 avoid capital-intensive extraction. Fossil fuel stocks have performed significantly worse than market averages in recent years. 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. Despite its legal duty to exercise care and prudence in avoiding dangerous securities, however, the Board of Trustees continues to invest in the fossil fuel sector.

The Board cannot plead ignorance of its duty to divest. For years, Stanford students and faculty have pushed for investment practices that align with the University's mission. This pressure was instrumental in the Board's decisions in 1986 and 1988 to withdraw investments from companies doing business in apartheid South Africa, its 2005 decision to divest from companies contributing to violence in Darfur, and its 2014 decision to end investments in the coal industry: acknowledgments that its investment activity must comport with the University's missions and values. In recent years, the Associated Students of Stanford University voted unanimously in favor of divesting Stanford's endowment from fossil fuel companies, and both undergraduate and graduate students have expressed overwhelming support for fossil fuel divestment in student body referenda. Repeated rallies, reports, and requests for negotiation have alerted the Board of Trustees to its fiduciary responsibilities.

It is too late for the Board of Trustees to deny the relation between its investments and climate change. Its obligations under California 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 Board's violations, along with documents and reports supporting the claims made in this complaint. Under the statutes governing charitable corporations, your office may investigate violations of California's charitable contribution laws. We would appreciate the opportunity to have members of our group meet with your staff to discuss legal avenues to address this matter.

Sincerely,

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

Fossil Free Stanford

Elected Officials
Lenny Siegel, *Former Mayor of Mountain View, Stanford '70*

Climate Science and Policy Community

Dr. Philip G. Alston, *John Norton Pomeroy Professor of Law, New York University and former UN Special Rapporteur*
Dr. Alyssa Battistoni, *Assistant Professor of Political Science, Barnard College*
Dr. Jason Box, *Professor in Glaciology at the Geological Survey of Denmark and Greenland*
Dr. Robert Brulle, *Visiting Professor of Environment and Society, Brown University*
Dr. Holly Jean Buck, *Assistant Professor of Environment & Sustainability, University of Buffalo College of Arts and Sciences*
Dr. J. Mijin Cha, LLM, JD *Assistant Professor of Urban and Environmental Policy, Occidental College*
Dr. Noam Chomsky, *Institute Professor Emeritus, Massachusetts Institute of Technology; Laureate Professor, University of Arizona*
Dr. Daniel Aldana Cohen, *Assistant Professor of Sociology and Director, Socio-Spatial Climate Collaborative, University of California, Berkeley*
Judith Enck, *former Regional Administrator, US Environmental Protection Agency; Senior Fellow and Visiting Faculty Member, Bennington College*
Dr. Gabriel Filippelli, *Chancellor's Professor of Earth Sciences, Executive Director, Environmental Resilience Institute, IUPUI*
Dr. Dana R. Fisher, *Professor of Sociology, University of Maryland, Contributing Author for Working Group 3 of IPCC AR6*
Dr. Benjamin Franta, JD, *PhD Candidate in History of Science, Stanford University; Member of the California Bar*
Dr. Jacquelyn Gill, *Associate Professor of Paleoecology & Plant Ecology, School of Biology and Ecology and Climate Change Institute, the University of Maine*
Dr. Peter H. Gleick, *Member US National Academy of Sciences, MacArthur Fellow*
Dr. Jessica F. Green, *Associate Professor, Political Science & School of the Environment, University of Toronto*
Dr. Jade d'Alpoim Guedes, *Associate Professor in the Department of Anthropology and the Scripps Institution of Oceanography, University of California, San Diego*
Dr. Genevieve Guenther, *Founder and Director, End Climate Silence, Affiliate Faculty, Tishman Environment and Design Center, The New School*
Dr. James E. Hansen, *Director, Climate Science and Awareness Program, Earth Institute, Columbia University*
Dr. John Harte, *Distinguished Professor of the Graduate School, Ecosystem Sciences, University of California, Berkeley*
Dr. Noel Healy, *Associate Professor of Geography and Sustainability, Salem State University; Contributing Author for Working Group 3 of IPCC AR6*
Richard Heede, *Climate Accountability Institute*
Dr. Jessica Hernandez, *Climate Justice Policy Strategist for the International Mayan League*

Dr. Jason Hickel, *Professor, Institute for Environmental Science and Technology, Autonomous University of Barcelona; Visiting Senior Fellow, London School of Economics*
Dr. Robert W. Howarth, *David R. Atkinson Professor of Ecology & Environmental Biology, Cornell University, Co-Editor in Chief, OLAR, journal of Ocean-Land-Atmosphere Research*
Dr. Peter Kalmus, *Climate Scientist, NASA JPL*
Dr. Regina Larocque, MD, MPH, *Associate Professor of Medicine, Harvard Medical School; Associate Director, MGH Center for the Environment and Health*
Dr. Simon Lewis, *Professor of Global Change Science, UCL*
Bill McKibben, *Schumann Distinguished Scholar, Middlebury College; Co-founder and Senior Advisor, 350.org*
Dr. Naomi Oreskes, *Henry Charles Lea Professor of the History of Science and Affiliated Professor of Earth and Planetary Sciences, Harvard University*
Dr. Mark Paul, *Assistant Professor of Economics and Environmental Studies, New College of Florida*
Dr. Nathan Phillips, *Professor in the Department of Earth & Environment, Boston University*
Dr. Thea Riofrancos, *Associate Professor of Political Science, Providence College*
Dr. Juliet Schor, *Ecological Economist and Professor of Sociology, Boston College*
Dr. Drew Shindell, *Nicholas Distinguished Professor of Earth Science, Duke University; Coordinating Lead Author for IPCC AR5 and 2018 Special Report*
Dr. Mick Smyer, *former Provost and Emeritus Professor of Psychology at Bucknell University; Senior Fellow in Social Innovation at Babson College*
Dr. Julia Steinberger, *Professor of Social Ecology & Ecological Economics, University of Leeds; Lead Author for Working Group 3 of IPCC AR6*
Dr. Richard C. J. Somerville, *Distinguished Professor Emeritus, Scripps Institution of Oceanography, University of California, San Diego; Coordinating Lead Author for IPCC AR4*
Gus Speth, JD, *Former Dean, Yale School of the Environment; Co-founder, National Resources Defense Council; Founder, World Resources Institute*
Dr. Geoffrey Supran, *Research Associate, Department of the History of Science, Harvard University*
Dr. Olúfẹ́mi O. Táíwò, *Assistant Professor of Philosophy, Georgetown University*
Dr. Arandha Tripati, *Professor, UCLA in the Institute of the Environment and Sustainability, the Department of Atmospheric and Oceanic Sciences, the Department of Earth, Planetary, and Space Sciences, the Institute for Geophysics and Planetary Physics (IGPP), the California Nanosystems Institute (CNSI), the American Indian Studies Center, and Director of the Center for Diverse Leadership in Science*
Natalie Unterstell, *President, Institute Talanoa; former climate finance negotiator, United Nations*
Dr. Gernot Wagner, *Visiting Associate Professor, Columbia Business School; Clinical Associate Professor, Department of Environmental Studies, New York University; Associated Clinical Professor, Robert F. Wagner Graduate School of Public Service, New York University*
Sen. Timothy Wirth, *former US Senator, State of Colorado; President Emeritus, The United Nations Foundation*
Dr. Gary Yohe, *Huffington Foundation Professor of Economics and Environmental Studies Emeritus, Wesleyan University*
Dr. Benjamin Zaitchik, *Professor in the Department of Earth and Planetary Sciences, Johns Hopkins University*

Alumni and Community Members
Dr. Joyce Chaplin, *Environmental Historian and James Duncan Phillips Professor of Early American History, Harvard University*
Karenna Gore, Executive Director, Center for Earth Ethics at Union Theological Seminary
Denis Hayes, *First Coordinator of Earth Day (Stanford '68)*
Bevis Longstreth, JD*, former Commissioner, US Securities and Exchange Commission; former Adjunct Professor, Columbia Law School*
Virginia Maztek, *Associate Professor in Environmental Studies and Sciences at Santa Clara University (Stanford PhD '06)*
Kelsey Wirth, *Chair and Co-founder, Mothers Out Front (Stanford Business '97)*

Stanford Faculty
Prof. Mark Jacobson, Professor of Civil and Environmental Engineering (MS '88)
Prof. David Spiegel, Professor and Associate Chair of Psychiatry
Prof. Helen Blau, Professor of Psychiatry and Behavioral Sciences
Prof. Stephen Galli, Professor of Pathology, Microbiology & Immunology
Prof. Christine Min Wotipka, Associate Professor of Education

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

Organizations
Center for Biological Diversity
DivestEd
DivestPrinceton
Interfaith Power and Light
Fossil Fuel Divest Harvard
Mothers Out Front
MIT Divest
GreenFaith
Seeding Sovereignty
Rainforest Action Network
Dores Divest, Vanderbilt University
Yale Endowment Justice Coalition

Prepared with assistance from attorneys at Climate Defense Project.

cc:

Marc Tessier-Lavigne, President of Stanford University
Persis Drell, Provost
Felix J. Baker, Board of Trustees Member, Stanford University
Richard N. Barton, Board of Trustees Member, Stanford University
Aneel Bhusri, Board of Trustees Member, Stanford University
DeAngela J. Burns-Wallace, Board of Trustees Member, Stanford University
Michael C. Camuñez, Board of Trustees Member, Stanford University
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Clara Wu Tsai, Board of Trustees Member, Stanford University
Jerry Yang, Board of Trustees Member, Stanford University
Charles D. Young, Board of Trustees Member, Stanford University

SUPPORTING DOCUMENTATION

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I. The Board's violation of California law

The Board of Trustees of the Leland Stanford Junior University ("the Board of Trustees") is a non-profit corporation organized under Title 1, Division 2 of the California Corporations Code; its corporate powers were granted by the California State Legislature in 1900[6] and are recognized in Title 3, Division 10, Part 59, Chapter 1 of the California Education Code. Stanford's 1885 Founding Grant describes the purposes of the University: "Its nature, that of a university with such seminaries of learning as shall make it of the highest grade, including mechanical institutes, museums, galleries of art, laboratories, and conservatories, together with all things necessary for the study of agriculture in all its branches, and for mechanical training, and the studies and exercises directed to the cultivation and enlargement of the mind; Its object, to qualify its students for personal success, and direct usefulness in life; And its purposes, to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness."[7]

The Board of Trustees "is custodian of the endowment and all the properties of Stanford University. The board administers the invested funds, sets the annual budget and determines policies for operation and control of the university."[8] The Stanford Management Company is "the office within Stanford University that invests the Endowment and other financial assets to provide long-term support to the University."[9]

- Continued investment in fossil fuels by the Board of Trustees *violates the fiduciary duties spelled out in the California Uniform Prudent Management of Institutional Funds Act (CUPMIFA)*.
    - CUPMIFA 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."[10] The model UPMIFA drafting committee describes consideration of "charitable purposes" as a "fundamental duty,"[11] and this requirement distinguishes charitable investors like the Board of Trustees from other entities such as pension funds.
    - CUPMIFA further requires that, "[i]n addition to complying with the duty of loyalty imposed by law other than this part, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances."[12]

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[6] The founding grant : with amendments, legislation, and court decrees at 39, Stanford Digital Repository (Stanford Libraries, Nov. 11, 1885).
[7] *Id.* at 3.
[8] The Board of Trustees of the Leland Stanford Junior University, Stanford University Board of Trustees (last visited Feb. 15, 2022).
[9] Stanford Management Company, Stanford Management Company (last visited Feb. 15, 2022).
[10] Cal. Prob. Code § 18503(a).
[11] National Conference of Commissioners on Uniform State Laws at 15, Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments (2006).
[12] Cal. Prob. Code § 18503(b).

- ○ CUPMIFA 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."[13]
- ○ Although the directors of charitable institutions may delegate investment authority to an external agent,[14] such delegation does not suspend the duty of each director to act in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."[15]

- The Board of Trustees 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 Stnaford was established distinguishes the Board of Trustees 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 Board of Trustees's fossil fuel investments are directly contrary to Stanford's mission to "to promote the public welfare by exercising an influence in behalf of humanity and civilization"[16] and its acknowledged obligation to "apply Stanford's intellectual and financial resources to provide leadership in climate change solutions."[17] The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene Stanford's mission to promote "the study of agriculture in all its branches, and for mechanical training, and the studies and exercises directed to the cultivation and enlargement of the mind."[18] As such, continued investment in fossil fuel holdings *violates the Board of Trustees's duty to consider an asset's special relationship or special value, if any, to the charitable purposes of the institution.*
- The Board of Trustees has *violated its duty of loyalty* to the Stanford community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to Stanford property, thus failing to act in the best interests of the institution. Members of the Board of Trustees have also violated their duty of loyalty by indulging conflicts of interest with the fossil fuel industry, maintaining personal, professional, and financial ties to oil, gas, and coal companies even as these companies harm Stanford.
- The Board of Trustees 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 regulators that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts

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[13] Cal. Prob. Code § 18503(e)(1).
[14] Cal. Prob. Code § 18505.
[15] Cal. Corp. Code § 5231(a).
[16] The founding grant: with amendments, legislation, and court decrees at 3, Stanford Digital Repository (last visited Feb. 3, 2022).
[17] Stanford University Energy and Climate Plan at 15, Office of Sustainability, Stanford University (Dec. 16, 2021).
[18] The founding grant: with amendments, legislation, and court decrees at 3, Stanford Digital Repository (last visited Feb. 3, 2022).

by campus groups to push the university's investment practices toward a more consistent and sustainable approach.

- The Board of Trustees 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 Board of Trustees's failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.
- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the original UPMIFA, has called for the application of the prudence standard to the threats of climate change. As Longstreth writes, the risks posed by fossil fuel investments are so serious that institutional investors will be hard-pressed to justify continued holdings in the industry: "The prudence standard of the Act can easily support a decision not to continue to hold or invest in fossil fuel companies. The risks and rewards now offered by such securities are asymmetric, in the sense that the foreseeable rewards are not likely to be equal to the foreseeable risks. The risk that, at some unknown and unknowable, yet highly likely, point in the future, markets will begin to adjust the equity price of fossil fuel company securities downward to reflect the swiftly changing future prospects of those companies, is as serious as it is immense. Moreover, the possibility of that adjustment being a swift one is also a serious risk. A decision to linger in an investment with such an overhanging risk, and expect to time one's exit before the danger is recognized in the market, is a strategy hard to fit within the concept of prudence."[19]
- 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."[20]
    - 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).
    - As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that "[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings."[21]

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

- The public benefit purpose of non-profits like Stanford distinguishes charitable corporations from private trusts and makes the fiduciary duties of loyalty and care more tailored and specific. As the Restatement of the Law for Charitable Nonprofit Organizations states: ". . . in the case of a private trust, property is devoted to the use of specified or described persons who are designated as beneficiaries of the trust, whereas in the case of a charitable trust, property is devoted to purposes the law deems appropriately beneficial to the public . . . unlike in the case of a private trust in which fiduciary duties are owed to the beneficiaries, *in the case of a charity, fiduciary duties are owed to the charity's purposes rather than to a specific person or persons* . . . the fiduciaries of a charity owe the duty of loyalty to the charity's purposes rather than the entity."[22]
- In the context of investment, the standard prudent investor rule carries the additional burden of considering charitable purposes. "[T]he test of prudence evaluates the care, diligence, and skill demonstrated by the actor considering the relevant circumstances, as well as whether the person acted in good faith . . . *In the case of charities, however, the most relevant circumstance is the purpose to which the funds must be devoted*."[23]
- Stanford's fossil fuel holdings are estimated at 838 million dollars.

II. Stanford's social, environmental, and climate commitments

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

- The 1885 Founding Grant describes the University's purpose in part as "to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness."[24]
- Stanford's Long-Range Vision reads in part: "Fueled by optimism, ingenuity and a sense of responsibility, we seek to accelerate our purposeful impact in the world. The scale and urgency of challenges facing us today require that Stanford reach farther and move faster to accelerate our purposeful impact in the world. We need a new way of working that enables us to tackle long-standing issues facing our society and our planet and allows us to be nimble when faced with unexpected threats."[25]
- In his 2016 inaugural address, University President Marc Tessier-Lavigne stated: "When I reflect on Stanford's 125-year history, I see a University that has pressed forward through thick and thin, gaining in stature as a leader in education and scholarship, to make increasingly important contributions to society and to human well-being… Stanford's

[22] Restatement of the Law for Charitable Nonprofit Organizations, § 2.02, cmt. (2021) (emphasis added).
[23] *Id.* at § 2.04 ("Management, Investment, and Expenditure of a Charity's Assets), cmt. (emphasis added).
[24] The founding grant: with amendments, legislation, and court decrees at 3, Stanford Digital Repository (last visited Feb. 3, 2022).
[25] Our Vision, Stanford University (last visited Feb. 15, 2022).

preeminence derives from its bedrock dedication to fostering education, research, and creativity for the benefit of humanity."[26]

- The SMC's webpage states that "the success of SMC's investment program is crucial to the University's ability to carry out its mission and have the greatest impact on campus and around the world . . . The Endowment is a key resource for Stanford as it strives to advance human knowledge and ultimately benefit the local, national, and global community."[27]
- Through events, webpages, and press releases, the Board of Trustees has recognized that the Stanford campus lies on the ancestral territory of the Muwekma Ohlone tribe: "Stanford sits on the ancestral land of the Muwekma Ohlone Tribe. This land was and continues to be of great importance to the Ohlone people. Consistent with our values of community and inclusion, we have a responsibility to acknowledge, honor, and make visible the University's relationship to Native peoples."[28]
- The Board has repeatedly emphasized that addressing the causes of climate change and reducing greenhouse gas emissions is part of the University's mission.
    - The Board asserts that, "[i]n response to the scale and urgency of challenges facing the world today Stanford is creating new ways of accelerating solutions and delivering them beyond our walls. Addressing issues like racial injustice, rising healthcare costs, climate change and unequal learning opportunities will involve rethinking existing ways of carrying out research and turning ideas into action."[29]
    - The sustainability webpage for Stanford Earth opens with the following quote: "We prepare leaders to radically accelerate the transition to a more sustainable society."[30]
    - The About page for the Sustainable Stanford initiative to reduce the University's environmental impact denotes how the University aims to have a positive influence on human welfare: "Sustainable Stanford is a university-wide effort to reduce our environmental impact, preserve resources, and lead sustainability by example across its three pillars - environment, economy, and equity. Dedication to a culture of innovation and outreach has been central to Stanford's mission since its founding in 1891, when Jane and Leland Stanford exhorted university leaders to 'promote the public welfare by exercising an influence on behalf of humanity and civilization.' That sense of purpose drives our commitment to incorporate sustainability practices and ethos into every aspect of campus life. In pursuing its academic mission, Stanford University is committed to being a leader in research, teaching and action (institutional practice) of sustainability."[31]
    - The 2015 Stanford University Climate and Energy Plan's vision is to "apply Stanford's intellectual and financial resources to provide leadership in climate change solutions, even if these efforts may differ from popular perceptions of how

[26] Stanford's Mission, Stanford University Catalog (last visited Feb. 15, 2022).
[27] Stanford Management Company.
[28] Stanford's Relationships with Native Peoples, Stanford University (last visited Feb. 15, 2022).
[29] Our Vision: Solutions, Stanford University (last visited Feb. 15, 2022).
[30] Change Leadership for Sustainability Program, Stanford Earth (last visited Feb. 15, 2022).
[31] About - Sustainable Stanford, Stanford University (Nov. 2, 2021).

to pursue GHG reduction or are greater than governmental regulations may require.'"[32]

- According to a Stanford News press release, the University has committed ten million dollars over ten years to an educational initiative to "develop an expanded platform of educational and research opportunities for students and faculty with interests in responsible, sustainable and impact investing and governance. The goal of the initiative is to deepen research efforts and create a robust set of educational offerings for students with interests at the dynamic intersection of social change, finance, philanthropy and governance. 'The world is moving away from a sharp separation between 'finance' and 'social responsibility',' said Jonathan Levin, dean of the Stanford Graduate School of Business. 'At the GSB, we're excited to join with others across the campus to develop this new initiative that will bring together ethics, investing, social responsibility, corporate finance and other closely related topics.'"[33]
- In 2015, Stanford University signed the American Campuses Act on Climate Pledge, a White House initiative intended "to amplify the voice of the higher-ed community in support of a strong international climate agreement in the United Nations COP21 climate negotiations in Paris." The pledge reads, "As institutions of higher education, we applaud the progress already made to promote clean energy and climate action as we seek a comprehensive, ambitious agreement at the upcoming United Nations Climate Negotiations in Paris. We recognize the urgent need to act now to avoid irreversible costs to our global community's economic prosperity and public health and are optimistic that world leaders will reach an agreement to secure a transition to a low carbon future. Today our school pledges to accelerate the transition to low-carbon energy while enhancing sustainable and resilient practices across our campus."[34]
- In a 2017 press release from Stanford News, President Marc Tessier-Lavigne and Provost Persis Drell announced that the University had signed a joint statement from several Ivy-Plus universities addressing climate change. The statement, entitled "Affirmation of leading research universities' commitment to progress on climate change," read as follows: "In 2015, we were proud to be among 318 institutions of higher education in signing the American Campuses Act on Climate Pledge, affirming our commitment to accelerate the global transition to low-carbon energy while enhancing sustainable and resilient practices on our campuses. Today, we reaffirm that commitment, which is consistent with the Paris Agreement and recognizes the concerted action that is needed at every level to slow, and ultimately prevent, the rise in the global average temperature and to facilitate the transition to a clean energy economy. Universities have a critical role to play in reducing our own greenhouse gas emissions, continuing to advance evidence-based understanding of the causes and effects of climate change on the environment, the economy and public health, and developing solutions . . . As institutions of higher education, we remain committed to a broad-based global

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[32] Stanford University Energy and Climate Plan at 15 (3rd ed., revised Aug. 2015).
[33] Trustees adopt new investment responsibility framework for Stanford; university commits $10 million to educational and research initiative, Stanford News (Dec. 4, 2018).
[34] American Campuses Act on Climate, The White House (Dec. 11, 2015).

agreement on climate change and will do our part to ensure the United States can meet its contribution."[35]

- In announcing a new school focused on climate and sustainability, President Marc Tessier-Lavigne stated: "Among the most urgent issues of our time are climate change and the challenge of creating a sustainable future for people and our planet. At Stanford we have tremendous strengths in climate and sustainability studies working across the schools and institutes, but there is an opportunity to amplify our contributions in education, research and impact further by aligning people and resources more effectively in a school."
  - Stephen Graham, dean of the School of Earth, Energy & Environmental Sciences, echoed Tessier-Lavigne: "We are in an era of rapid environmental and societal change, and the challenges we face this century are formidable. Stanford must be a visionary leader in understanding environmental change, and in collaboration with diverse partners, translating that knowledge into action toward our goal of a sustainable, healthy planet and healthy people."
  - Chris Field, director of the Stanford Woods Institute for the Environment stated that "Stanford has an incredible legacy of high-impact leadership on climate and sustainability. The school will powerfully amplify Stanford's legacy and leadership role in tackling the defining issues of our era."[36]
  - Vice Provost and Dean of Research Kathryn Moler noted that "[t]he school's charter will be to understand and protect nature and to serve society… The school has to be structured to address near-term threats like climate change and habitat loss while also probing fundamental questions about the Earth that will expand our knowledge and help address new challenges in the decades to come… I'm really excited about the potential we have as a community to do scholarship that will help create solutions for problems both locally and around the world. This school will be an important part of creating a better world for all people.'"[37]
  - When announcing the new academic structure of the new school in July, 2021, President Marc Tessier-Lavigne stated: "Stanford is taking the historic step of creating the university's first new school in seventy years in response to the scale and urgency of threats facing our planet. With our faculty aligned in these new divisions, and with cross-cutting themes and an accelerator integrating expertise from the entire university to drive solutions, we will marshal our resources to serve humanity's top priority, which is to create a future in which all humans and natural systems can thrive together in concert and in perpetuity."[38]
  - In April, 2021, the University sold 375 million dollars in public market debt securities to help finance projects including the new school. According

[35] Message on Stanford's commitment to progress on climate change, Stanford News (June 5, 2017).
[36] Amy Adams, School focused on climate and sustainability will amplify Stanford's impact, Stanford News (May 21, 2020).
[37] Amy Adams, School focused on climate and sustainability moves forward, Stanford News (Oct. 9, 2020).
[38] Amy Adams, Academic structure announced for new school focused on climate and sustainability, Stanford Report (July 29, 2021).

to a University news story, "Stanford has become the first U.S. college or university to issue bonds carrying dual climate and sustainability designations for financing campus construction and renovation projects. The bonds are rooted in the university's commitment to environmental stewardship and social responsibility standards over years of foundational work to expand the university's shift toward renewable energy sources and programs to balance social equity …The securities are in the emerging ESG (Environmental, Social and Governance) investment category."[39]

- The Board of Trustees has acknowledged in the past that its investment practices must align with its charitable purposes.
  - In its 1971 Statement on Investment Responsibility (amended through 2018), the Board describes one of its "most important responsibilities" as being the provision of "oversight for the University's endowment, which is intended to provide financial support in perpetuity for the University's mission of education and research for the benefit of humanity."[40] The statement notes that "SMC recognizes, in making investment decisions, companies that fail to demonstrate appropriate regard for human and environmental welfare do not represent attractive long-term economic opportunities . . . The Trustees believe that incorporating environmental, social and governance factors into investment decisions advances investment responsibility in the context of the University endowment . . . It also provides a proactive and adaptable mechanism for SMC to act as a responsible investor for the Universityand is consistent with the Trustees' fiduciary duties"[41]
    - While maintaining a presumption against divestment in the interest of fostering academic discussion and promoting endowment returns, "[t]he Trustees recognize that very rare occasions may arise when companies' actions or inactions are so abhorrent and ethically unjustifiable as towarrant the University's dissociation from those investments. Such activities include apartheid, genocide, human trafficking, slavery, and violations of child labor laws."[42]
    - In an announcement requesting comments for a 2018 review of the Statement, the Stanford Office of Investment Responsibility stated that "the Trustees note that Stanford Management Company, the university's investments office, understands that long-term investment success coincides with appropriate regard for human and environmental welfare. Stanford Management Company, therefore, incorporates ethical and social issues into its investment work, and always operates in close observance of accepted moral principles."[43]
  - The Board of Trustees has outlined several processes and standards for considering divestment decisions. SMC's Advisory Panel on Investment Responsibility (APIRL) reviews and make recommendations regarding issues of socially

[39] Chris Peacock, Stanford issues first bond in US higher education based on rigorous environmental stewardship and social responsibility standards, Stanford News (May 4, 2021).
[40] Stanford University Board of Trustees Statement on Investment Responsibility at 1 (1971, amended through 2018).
[41] *Id.*
[42] *Id.* at 2.
[43] Review of Stanford's Statement on Investment Responsibility, Stanford University, (Dec. 4, 2018).

responsible investing.[44] The University's amended Social Issue Proxy Voting Policy Statements and Guidelines promotes proxy voting as a means of encouraging companies to meet environmental sustainability goals (guided by business practice standards set by the United Nations Global Compact, the Ceres Principles, and the G3 Sustainability Reporting); if proxy votes fail to achieve this goal, the University may move to divest.[45]

    - The Guidelines for proxy voting note that, with respect to encouraging companies to adopt low-carbon practices: "In 2007, the United Nations Intergovernmental Panel on Climate Change released its Fourth Assessment Report, in which it concluded that global warming is unequivocal, that it is mostly due to an increase in the concentration of [human]-made greenhouse gasses, and that its effects could be catastrophic. Although Stanford University generally restricts its support to resolutions requiring the disclosure of information, it recognizes that in certain situations and with respect to certain types of companies, affirmative action may be called for. Stanford University therefore supports additional measures beyond disclosure with respect to companies that have a particularly significant impact on climate change and environmental sustainability problems and solutions."[46]
    - The Guidelines also oblige the Board of Trustees to seek disclosure about hydrauling fracturing business practices that have the potential to cause "substantial social injury,"[47] and state that "Stanford recognizes the economic and environmental importance of early corporate action to mitigate global climate change. To these ends, Stanford supports inquiries on a company's business or political activities vis-à-vis global climate change."[48]

  - In its Ethical Investment Framework, SMC states that "[e]thical and social considerations play a central role in SMC's work, beginning with our asset allocation decisions . . . Ethical and social factors can alter these prospects, particularly if they involve a public good, such as clean air or water. For example, climate change alters the risk and return characteristics of conventional energy holdings. As a prudent fiduciary, SMC incorporates the risks associated with carbon when considering conventional energy holdings … Businesses that consistently and willfully mistreat stakeholders usually make poor long-term investments, as stakeholder dissatisfaction, and perhaps even legal sanction, erode the value of the business. We believe the University has more productive places to invest its capital . . . We consider a strong moral framework to be an important aspect of an alignment of interests with the University."[49]

- The Board of Trustees has in the past recognized that its fiduciary duties may require divestment from certain companies and industries.

[44] Mission and Operational Guidelines, Stanford Investment Responsibility and Stakeholder Relations (IRSR) (2022).
[45] Social Issue Proxy Voting Policy Statements and Guidelines at 6, Stanford University (June 9, 2011).
[46] *Id.* at 7.
[47] *Id.* at 9.
[48] *Id.* at 11.
[49] Stanford Management Company: Ethical Investment Framework, Stanford University (Jan. 2020).

- In 1985, after years of student and community pressure to divest from apartheid South Africa, the Board of Trustees established a Commission on Investment Responsibility and set out case-by-case guidelines for investing in South Africa-related companies.[50]
- By 1986, the Board divested from at least five such companies, and further divestments followed.[51] In 1988, the Board divested 700,000 dollars of stock in Tenneco, a diversified industrial company, after the firm refused to end its sales of machinery to the South African military despite engagement attempts by the Board."[52]
- In 2005, the Board announced that it would divest from PetroChina, ABB Ltd., Sinopec and Tatneft "because of their business operations in support of the Sudanese government, whose actions in Darfur have been condemned universally, including by a unanimous censure vote of the U.S. Congress." The Board also announced their intention to "send letters to its investment managers recommending that they also divest their holdings in these companies." Then-president John Hennessy stated that "[d]ivestment is an act that should be made rarely and carefully . . . In this case, it was clear that the genocide occurring in Darfur, which appears to be at least partly enabled by these four companies, is in direct opposition to Stanford University's principles.'"[53]
- In 2014, the Board decided to "not make direct investments of endowment funds in publicly traded companies whose principal business is the mining of coal for use in energy generation" after a recommendation made by APIRL: "APIRL acknowledged findings of the U.N. Intergovernmental Panel on Climate Change regarding the role of fossil fuels in contributing to changes in the global climate system. The APIRL also noted that the use of coal for electricity production generates higher greenhouse gas emissions per unit of energy generated than other fossil fuels, such as natural gas, and that alternatives to coal are sufficiently available."[54]
    - Then-president John Hennessy stated that "Stanford has a responsibility as a global citizen to promote sustainability for our planet, and we work intensively to do so through our research, our educational programs and our campus operations . . . Moving away from coal in the investment context is a small, but constructive, step while work continues, at Stanford and elsewhere, to develop broadly viable sustainable energy solutions for the future."
    - Steven A. Denning, chair of the Stanford Board of Trustees noted that "[w]e believe this action provides leadership on a critical matter facing our world and is an appropriate application of the university's investment responsibility policy."[55]

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[50] Stanford Students campaign for divestment from apartheid South Africa, US, 1977, Global Nonviolent Action Database (2022).
[51] Jeremy Quach, Stanford's rich history of divestment movements, The Stanford Daily (Feb. 11, 2015).
[52] Eric Young, Trustees divest from ninth firm, The Stanford Daily (Oct. 12, 1988).
[53] University to divest from four companies connected to Sudan, Stanford News (June 9, 2005).
[54] Stanford to divest from coal companies, Stanford News (May 6, 2014).
[55] *Id.*

- In a 2020 statement, the Board of Trustees explained its decision to not divest from fossil fuel companies: "Based on the opinions of experts in the field, however, the Board has concluded that, in the absence of readily available alternatives at scale, the transition to clean energy will require the continued, time limited use of less carbon-intensive fossil fuels, and that loss of these alternatives today is both unfeasible and would impose a particularly harsh cost on energy-impoverished communities. Consequently, the Board concluded that participation in today's energy systems — either as suppliers or consumers — does not in and of itself currently meet the standard required for blanket divestment under Stanford's Statement on Investment Responsibility." The Board endorsed "the objective of decarbonizing the global economy" and expressed its commitment to the goals of the 2015 Paris Agreement, while promising to "not invest in energy firms that operate in a manner inconsistent with established climate science."[56]

III. The scientific reality and risks of climate change

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

- Statistically significant, historically unprecedented, and potentially irreversible changes are taking place in the Earth's oceans, atmosphere, and biospheres. These changes are collectively known as climate change. Such changes are "unequivocally" the result of human activities — primarily carbon dioxide emissions resulting from extraction and combustion of fossil fuels including but not limited to coal, oil, and fracked gas — according to the Sixth Assessment Report Summary for Policymakers by the Intergovernmental Panel on Climate Change (IPCC), the leading global authority responsible for synthesizing and producing much of the scientific research on climate change across the globe.[57]
- A small number of fossil fuel producers have been disproportionately responsible for greenhouse gas emissions since the Industrial Revolution: twenty companies account for nearly thirty percent of all emissions between 1751 and 2010.[58] A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all global greenhouse gas emissions since 1988 "can be traced to just 100 fossil fuel producers."[59]
- There is a near-linear relationship between the cumulative amount of carbon dioxide emitted and the amount of global warming it causes.[60] Every one-half degree Celsius of further global warming results in discernible increases in intensity and frequency of

[56] Decision on the Divestment Request of Fossil Free Stanford at 1, 3, Stanford Board of Trustees (June 12, 2020).
[57] *See* "Summary for Policymakers" at 7, in Climate Change 2021: The Physical Science Basis, Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Aug. 2021).
[58] Richard Heede, Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010, 122 Climatic Change 229, 234 (2014). These companies include Chevron, ExxonMobil, BP, Shell, ConocoPhillips, and Peabody. *Id.* at 237.
[59] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (July 2017).
[60] IPCC, Summary for Policymakers, *supra* at note 57, at 37.

temperature extremes, heavy precipitation and agricultural, hydrological and ecological droughts in some regions.[61] As a result of human-caused warming, climate change is already affecting every inhabited region across the globe, leading to observed changes in weather and climate extremes.[62]

- 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."[63] The USGRCP report concluded that, as a result of climate change, "annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states."[64]
- 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.[65]
- According to the Environmental Protection Agency, climate change effects in California will include: decreased water availability and more severe droughts by extension; reduced yield rates for grain and other water-intensive crops; threats to livestock health; increased severity, frequency, and extent of wildfires; increased incidence of heat-related diseases; and sea level rise between one and four feet.[66]
- Climate change will continue to cause severe problems in Santa Clara County, where Stanford is located, with more severe impacts expected under high-emissions scenarios. According to the County's 2021 Climate Action Plan:
  - "The County is expected to see an increase in annual average temperature of 2-4°F by 2050 and 4-6°F by 2100." That temperature increase "will cause more heat-related illness and hospitalizations. Increased allergens and harmful air pollutants due to higher temperatures will put people with asthma and other vulnerable populations at higher risk for health complications."[67]
  - The Plan also predicts that "[t]he probability of a 100-year flood event in Santa Clara County could be 10-20% higher by 2050 and 30-40% higher by 2100." Moreover, the Plan finds that "the San Francisco Bay is projected to rise: 6 inches by 2030… 11 inches by 2050… 36 inches by 2100."[68]

[61] *Id.* at 19.
[62] *Id.* at 10.
[63] Fourth National Climate Assessment, Volume II at 25, U.S. Global Change Research Program (Mar. 2021).
[64] *Id.* at 26.
[65] Rebecca Lindsey, Climate Change: Global Sea Level, Climate.gov (Jan. 25, 2021).
[66] What Climate Change Means for California, Environmental Protection Agency (Aug. 2016).
[67] City of Santa Clara Climate Action Plan at 18, City of Santa Clara (Dec. 2021).
[68] *Id.*

- Wildfires also pose an increased threat. According to the Plan, "the Bay Area is one of the more risk prone areas in the state. Regional wildfires threaten Santa Clara's air quality, supply chain and distribution channels, and water quality."[69]
- These changing environmental conditions threaten the area. The Plan finds that "wildfires, warming temperatures, and changing precipitation patterns will disrupt forests, streams, and other critical habitats that are home to important local species," and that "[m]ore extreme temperatures and weather patterns threaten agriculture and food security, tourism, outdoor recreation and other seasonal and climate-dependent industries."[70]

- The California Department of Public Health's Climate Change and Health Profile Report for Santa Clara County finds that Santa Clara County will experience significant negative effects as a result of climate change.
  - According to the Report, "the temperature increases projected in the higher emissions scenario are approximately twice as high as those projected in the lower emissions scenario," pointing to the necessity of restricting emissions from fossil fuels.[71]
  - The Report also finds that "the area projected to be threatened for a 55-inch sea level rise, which is consistent with a high carbon emissions scenario," will significantly increase in high-emissions scenarios.[72] This is a conservative estimate, as the Report notes that "[c]limate change models indicate that California may see up to a 66 inch (167 cm) rise in sea level within this century."[73]
  - Flooding and sea level rise are already being recorded. Santa Clara Valley Water's Climate Action Plan states that "[s]ea level in the San Francisco Bay Area, including Santa Clara County, has risen nearly eight inches in the last 100 years and continues to rise."[74] Valley Water's Report details that in the highest-emissions scenario, "a rise between 1.6 and 3.4 feet is projected."[75]
  - Effects may be worse than predicted, given that "these projections may underestimate the possibility of extensive loss from Antarctic ice sheets… In an extreme scenario, the OPC projects that the San Francisco tidal gauge could see SLR of ten feet."[76]
  - According to the Report, environmental changes caused by climate change harm human health in three main ways: direct exposures, indirect exposures, and socioeconomic disruption.[77]
    - Direct exposure to extreme weather events cause "fatal and nonfatal injuries from drowning, being struck by objects, fire, explosions, electrocution, or exposure to toxic materials," as well as destroying schools

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[69] *Id.*
[70] *Id.*
[71] Neil Maizlish, Dorette English, Jacqueline Chan, Kathy Dervin, & Paul English, Climate Change and Health Profile Report, Santa Clara County at 6, Office of Health Equity, California Department of Public Health (Feb. 2017).
[72] *Id.* at 10.
[73] *Id.*
[74] Neeta Bijoor, Lydia Dadd, Kirsten Struve, Cris Tulloch, Rachel Barrales, Nick Mascarello, & Maggie O'Shea, Climate Change Action Plan at 21, Santa Clara Valley Water (July 2021).
[75] *Id.*
[76] *Id.*
[77] Maizlish, *et al.*, *supra* at note 71.

and causing "post-traumatic stress, depression, and increased risk of suicide."[78]

- Extreme heat can cause heat-related illnesses and "the exacerbation of pre-existing conditions in the medically fragile, chronically ill, and vulnerable," as well as reduced air quality, which contributes to respiratory disease.[79]
- Drought increases wildfire risk, causing "sediment in run-off that reduce[s] water quality" and "smoke, ash, and fine particles [that] increases respiratory and cardiovascular risks."[80]
- Sea level rise will reduce water quality and cause mold contamination, which is detrimental to indoor air quality.[81]
- Finally, climate change causes socio-economic disruption through infrastructure damage. "Health care facilities, water treatment plants, and roads for emergency responders and transportation for health care personnel can be damaged in climate-related extreme weather events. Increased burden of disease and injury will test the surge capacity of health care facilities. Economic disruption can lead to income loss, income insecurity, food insecurity, housing insecurity, and mental health problems, which in turn may increase substance abuse, suicide, and other health problems."[82]

IV. The societal effects of climate change and fossil fuel extraction

Mounting evidence demonstrates that fossil fuel investments create disproportionate burdens on people of color, Indigenous communities, and low-income communities. Fossil fuel investments also harm the public health and property of California residents, including those in the Stanford community, violating the Stanford Corporation's duties to *consider the charitable purposes* of Stanford and to act with *loyalty* toward its community and property.

- Climate change heavily impacts so-called frontline communities, including communities of color and Indigenous communities, with their disproportionate exposure to air pollution, sea level rise, drought, and other consequences of climate change.[83] In general, those who have contributed the least to the climate crisis by virtue of their economic position stand to suffer the most from dislocation and natural disasters caused by increased warming.
  - Climate change exacerbates racial inequality by focusing health and economic injuries on people of color, who tend to have fewer economic resources to adjust to

[78] *Id.*
[79] *Id.* at 13.
[80] *Id.*
[81] *Id.*
[82] *Id.* at 14.
[83] The Geography of Climate Justice, Mary Robinson Foundation (last visited Feb. 10, 2021).

rising temperature and tend to receive less government assistance to deal with emergencies.[84]

  - 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.[85]
  - According to the United Nations, "[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."[86] Indigenous communities are also vulnerable to climate change impacts because of the enduring legacy of colonialism, forced relocations, the loss of cultural practices, and other harms, which create health burdens.[87]
  - 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.[88]

- In September 2021, The Lancet published a Comment co-signed and co-published by the editors of more than 200 leading medical journals worldwide.[89] The authors noted that "[h]ealth institutions have already divested more than $42 billion of assets from fossil fuels" and urged others to join them, since "[t]he greatest threat to global public health is the continued failure of world leaders to keep the global temperature rise below 1.5°C and to restore nature."[90]

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[84] 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).

[85] Rachel Morello Frosch, Manuel Pastor, Jim Sadd, & Seth Shonkoff, The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap at 5, University of Southern California Program on Environmental and Regional Equity (May 2009).

[86] United Nations Department of Economic and Social Affairs — Indigenous Peoples, Climate Change (last visited Oct. 5, 2021).

[87] Jantarasami, L.C., *et al.*, Chapter 15: Tribes and Indigenous Peoples at 582. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II, U.S. Global Change Research Program (2018) ("A number of health risks are higher among Indigenous populations due in part to historic and contemporary social, political, and economic factors that can affect conditions of daily life and limit resources and opportunities for leading a healthy life. Many Indigenous peoples still experience historical trauma associated with colonization, removal from their homelands, and loss of their traditional ways of life, and this has been identified as a contributor to contemporary physical and mental health impacts. Other factors include institutional racism, living and working circumstances that increase exposure to health threats, and limited access to healthcare services. Though local trends may differ across the country, in general, Indigenous peoples have disproportionately higher rates of asthma, cardiovascular disease, Alzheimer's disease or dementia, diabetes, and obesity. These health disparities have direct linkages to increased vulnerability to climate change impacts, including changes in the pollen season and allergenicity, air quality, and extreme weather events. For example, diabetes prevalence within federally recognized tribes is about twice that of the general U.S. population. People with diabetes are more sensitive to extreme heat and air pollution, and physical health impacts can also influence mental health.").

[88] Michael Werz & Laura Conley, Climate Change, Migration, and Conflict: Addressing complex crisis scenarios in the 21st century, at 3-5, 12-14, Center for American Progress (Jan. 2012).

[89] Lukoye Atwoli, *et al.*, Call for emergency action to limit global temperature increases, restore biodiversity, and protect health, 398 (10304) The Lancet 939 (2021).

[90] *Id.*

- Fossil fuel emissions are directly responsible for nearly one-fifth of all deaths globally. Particulate matter spread by fossil fuel combustion killed eight million people in 2018, about eighteen percent of total deaths that year.[91]
- Children bear especially heavy burdens from the impacts of climate change and fossil fuel extraction.
    - According to UNICEF, one billion children live at extreme risk of climate and environmental hazards, shocks, and stresses.[92] The United States ranks among the countries in which children face at least five major climate and environmental shocks (extremely high category).[93]
    - Children are more vulnerable than adults to extreme weather. They are less able to regulate their body temperature during heat waves,[94] breathe at twice the adult rate,[95] and are at crucial stages of brain and organ development.[96] Exposure to toxins has more potential to harm their cognitive ability and lung capacity,[97] and they suffer these deficits their entire lives. Climate change-caused disasters, air pollution extremes, and environmental degradation also disrupt education, and excessive heat interferes with learning capacity.[98]
    - UNICEF concludes that "the climate crisis affects or will affect all children, everywhere, in often significant, life-changing ways, throughout their lives" and "undermines the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child."[99]
- Climate change presents significant challenges to human and environmental health in California.
    - California's ongoing drought has revealed varying drought-preparedness across socioeconomic classes in California. A study by the Public Policy Institute of California found that drought caused by anthropogenic warming has burdened already disadvantaged low-income rural communities the most with job-losses, decreasing water availability and quality, land subsidence, and particulate air pollution.[100]
    - According to a recent study by Stanford researchers published in the Science of the Total Environment journal, the drilling and operation of oil wells in California emits dangerous levels of pollution and puts the health of nearby residents at risk of respiratory illnesses and death by Covid-19. Additionally the study found over 2

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[91] K. Vohra, A. Vodonos, J. Schwartz, E. Marais, M.P. Sulprizio, & L.J. Mickley, Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem, Environmental Research (in press 2021).
[92] UNICEF, The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index (Aug. 2021).
[93] *Id.* at 80.
[94] *Id.* at 110.
[95] *Id*.
[96] *Id*. at 20.
[97] *Id*.
[98] *Id.* at 110; Joshua Goodman, Michael Hurwitz, Jisung Park, & Jonathan Smith, Heat and Learning, National Bureau of Economic Research (May 2018).
[99] *Id*.
[100] E. Hanak, J. Mount, C. Chapelle, J. Lund, J. Medellin-Azuara, P. Moyole, & N. Seavy, What if California's Drought Continues?, Public Policy Institute of California (Aug. 2015).

million Californians live within a mile of an oil or gas well and are most commonly Black or Latinx individuals.[101]
    - A paper published by Berkeley researchers notes that "[c]limate change will likely reinforce and amplify current as well as future socioeconomic disparities, leaving low-income, minority, and politically marginalized groups with fewer economic opportunities and more environmental and health burdens." The paper goes on to state: "In California, the five smoggiest cities are also the locations with the highest projections of climate change induced ambient ozone increases as well as the highest densities of people of color and low-income residents."[102]
- Burning fossil fuels has altered ocean chemistry, making it more acidic.[103] Acidification has caused serious economic harm to the global fishing industry and also threatens coral reefs and other marine ecosystems.[104] California stands to be particularly impacted by these harms, with more jobs in the seafood industry than any other state.[105]
- Plastic waste — a direct by-product of fossil fuel extraction, with ninety-eight percent of plastics made from fossil fuels — further damages marine ecosystems.[106] The United Nations Environment Programme estimates that damage to marine ecosystems from plastic waste causes thirteen billion dollars' worth of damage every year.[107] Fossil fuel companies rely on plastic production to shore up profits.[108]
- Finally, 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."[109] A 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.[110]

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[101] D. Gonzalez, C. Francis, G. Shaw, M. Cullen, M. Baiocchi, & M. Burke, Upstream oil and gas production and ambient air pollution in California, Science of the Total Environment (Feb. 1, 2021).
[102] Rachel Morello Frosch, Manuel Pastor, Jim Sadd, & Seth Shonkoff, The climate gap: environmental health and equity implications of climate change and mitigation policies in California, 109 Climatic Change S485, S491 (2011).
[103] Scott Doney, Oceans of Acid: How Fossil Fuels Could Destroy Marine Ecosystems, Public Broadcasting Service (Feb. 12, 2014).
[104] *Id.*
[105] *See* National Oceanic and Atmospheric Administration, The Economic Importance of Seafood (Oct. 21, 2020) (estimating that California's seafood industry provided 152,508 jobs in 2017).
[106] Marty Mulvihill, Gretta Goldenman, & Arlene Blum, The Proliferation of Plastics and Toxic Chemicals Must End, The New York Times (Aug. 27, 2021).
[107] United Nations Environment Programme, Plastic Waste Causes Financial Damage of US$13 Billion to Marine Ecosystems Each Year as Concern Grows over Microplastics (June 23, 2014).
[108] Mulvihill, *et al.*, *supra* at note 106.
[109] Intergovernmental Platform on Biodiversity and Ecosystem Services, IPBES Workshop on Biodiversity and Pandemics: Workshop Report (Oct. 29, 2020).
[110] Renee N. Salas, James M. Shultz, & Caren G. Solomon, The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response, New Eng. J. Med. (2020).

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

The fossil fuel industry remains resolutely committed to a business model that produces and exacerbates climate change, and to the suppression of nonviolent protest. Investments that promote this activity contravene Stanford's *charitable purposes.*

- 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."[111]
    - Coal industry publications suggested as early as 1966 that the combustion of fossil fuels could cause "vast changes in the climates of the earth."[112] 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.[113]
    - As early as 1977, Exxon scientists had privately concluded that "there is general scientific agreement that the most likely manner in which [hu]mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels."[114]
    - Shell internally reached similar conclusions by at least the 1980s,[115] as did Mobil (then separate from Exxon).[116] 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."[117]
- 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."[118]
- 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.[119] That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.[120]

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[111] 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).
[112] Elan Young, Exxon knew -- and so did coal, Grist (Nov. 29, 2019).
[113] Oliver Milman, Oil industry knew of 'serious' climate concerns more than 45 years ago, The Guardian (Apr. 13, 2016).
[114] Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, Sci. Am. (Oct. 26, 2015).
[115] John H. Cushman Jr., Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show, Inside Climate News (Apr. 5, 2018).
[116] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[117] Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 111, at 15.
[118] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (Jul. 2017).
[119] 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).
[120] Ron Bousso, Big Oil spent 1 percent on green energy in 2018, Reuters (Nov. 11, 2018).

- 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.[121] A September 2020 report by climate research group Oil Change International concluded that "[n]one of the evaluated oil majors' climate strategies, plans, and pledges come close to alignment with the Paris Agreement."[122]

- 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.[123] As recently as November 2020, BP was buying up Canadian offshore oil parcels.[124]
    - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.[125] 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.[126]
    - Several leading executives from Shell's renewable energy sectors recently quit in response to the company's lackluster efforts to decarbonize.[127] 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.[128] In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.[129]
    - Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.[130]

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[121] Anjli Raval, Big fossil fuel groups all failing climate goals, study shows, Financial Times (Oct. 6, 2020).
[122] Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans, Oil Change International (Sept. 2020).
[123] 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 . . . .").
[124] Julianne Geiger, From Billions To Millions: Canada's Offshore Oil Disappointment, OilPrice.com (Nov. 5, 2020).
[125] 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).
[126] Crowley & Rathi, *supra* at note 125. ExxonMobil's growth strategy has since changed in light of the Covid-19 pandemic.
[127] Anjli Raval & Leslie Hook, Shell Executives Quit Amid Discord Over Green Push, Financial Times (Dec. 8, 2020).
[128] Laurel Wamsey, Climate Case Against Shell Begins In The Netherlands, NPR (Dec. 1, 2020).
[129] Jillian Ambrose, Shell to expand gas business despite pledge to speed up net zero carbon drive, The Guardian (Feb. 11, 2021).
[130] Carolyn Davis, Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities - Natural Gas, Natural Gas Intelligence (Dec. 3, 2020).

    - 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.[131]
- The commitment of the fossil fuel industry to increased emissions makes fossil fuel investment incompatible with international targets to reduce greenhouse gas emissions. In a recent report, the International Energy Agency concluded that, in order to reach net zero emissions by 2050, "[t]here is no need for investment in new fossil fuel supply in our net zero pathway."[132]
- 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.[133]
    - 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.[134]
- 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 one [billion] dollars of shareholder funds on misleading climate-related branding and lobbying."[135]
    - Each year, "the world's five largest publicly owned oil and gas companies spend approximately 200 million dollars on lobbying designed to control, delay or block binding climate-motivated policy."[136]
    - In 2018, the industry spent nearly 100 million dollars 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.[137]
- 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

[131] Nicholas Kusnetz, American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy, Inside Climate News (Jan. 14, 2021).
[132] International Energy Agency, Net Zero by 2050: A Roadmap for the Global Energy Sector at 21 (July 2021).
[133] Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, Fossil fuel companies and climate change: the case for divestment, 350 Brit. Med. J. (June 2015).
[134] 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* at note 121.
[135] Big Oil's Real Agenda on Climate Change, InfluenceMap (Mar. 2019).
[136] 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.*
[137] Amy Harder, With deep pockets, energy industry notches big midterm wins, Axios (Nov. 7, 2018).

policies… a powerful and sustained effort to deny the reality and significance of human-induced climate change has been a key factor."[138]

- Finally, the fossil fuel industry has engaged in a sustained effort to silence climate protesters and increase the severity of criminal punishment for their activities.
    - Since 2017, the industry has pushed for the passage of numerous "critical infrastructure" bills in U.S. state legislatures, thirteen of which have become law.[139] Many of the bills are similar or identical to model legislation authored by the corporate lobbying group American Legislative Exchange Council, and at least three were accompanied by political contributions from oil and gas companies to the bills' sponsors.[140]
        - The majority of enacted "critical infrastructure" laws contain provisions for organizational as well as individual criminal liability.[141]
        - 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.[142]
    - 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.[143]
    - There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing climate protest, and the use of heavy-handed tactics to suppress protest against fossil fuel infrastructure projects such as Energy Transfer Partners' Dakota Access pipeline.
        - In response to protests at the Standing Rock reservation in 2016 and 2017, Energy Transfer Partners hired TigerSwan, a military contractor with experience in Iraq and Afghanistan. In collaboration with local police, TigerSwan used legally questionable tactics against protesters, including

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[138] 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).

[139] Institute for Policy Studies, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws (Oct. 2020). *See* US Protest Law Tracker, International Center for Not-for-Profit Law (last visited Feb. 10, 2021).

[140] 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 at 8-9 (Oct. 2020).

[141] Namely, those enacted in Kentucky, Mississippi, North Dakota, Ohio, Oklahoma, North Dakota, South Dakota, Tennessee, Texas, and West Virginia. US Protest Law Tracker, *supra* at note 139.

[142] 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 (July 8, 2019).

[143] *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.

digital surveillance.[144] Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.[145]

  - 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.[146]
  - 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."[147]
  - In 2019, the Canadian pipeline company Enbridge used digital and aerial surveillance, along with embedded informants, against nonviolent protesters targeting the company's Line three pipeline in Minnesota, attempting to follow the same playbook used by law enforcement at Standing Rock.[148]
- 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."[149]

VI. The financial risk of fossil fuel investments

As an asset manager, the Board has violated its *duty of care* by failing to adequately consider the risk of continued investment in fossil fuels despite ample evidence of the industry's financial precarity. The untenable value thesis of fossil fuel investments should be especially concerning for investors at charitable institutions. As a public charity that "promote[s] the public welfare by exercising an influence in behalf of humanity and civilization,"[150] Stanford 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. Since the Board's fiduciary duties oblige it to promote the financial non-viability of the fossil fuel sector, continued investment in the sector is unreasonable on its face.

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[144] Antonia Juhasz, Paramilitary security tracked and targeted DAPL opponents as 'jihadists,' docs show, Grist (Jun. 1, 2017).
[145] Alleen Brown, Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons, The Intercept (Nov. 21, 2016).
[146] Alleen Brown, Will Parrish & Alice Speri, Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet, The Intercept (Aug. 26, 2017).
[147] *Id.*
[148] Will Parrish & Alleen Brown, How Police Are Preparing for a Standoff Over Enbridge Line 3, The Intercept (Jan. 30, 2019).
[149] Bill McKibben, Shake Harvard Free of Oil Stock, The Boston Globe (Apr. 7, 2015).
[150] Stanford's Mission, Stanford University Catalog (last visited Feb. 4, 2022).

- Oil, gas, and coal companies face an extremely uncertain financial future due to mismanagement, the failure to prepare for a renewable energy economy, social pressures and unrest created by the unequally distributed health and economic burdens of fossil fuel products, and the pressures of COVID-19.
    - Oil and gas stocks have greatly underperformed other investments over the last ten years. While the S&P 500 has gained approximately 189 percent in value since 2011, the S&P Oil and Gas Exploration and Production Index has lost approximately fifty-six percent of its value and the S&P Oil and Gas Equipment Select Industry Index has lost approximately eighty-six percent of its value.[151] 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.[152]
    - 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.[153]
    - 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.[154]
- 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 dollars to around 260 billion dollars.[155]
- In February 2021, ExxonMobil reported quarterly losses of 20.1 billion dollars.[156]
- 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 dollars) than they have earned from business operations (340 billion dollars), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.[157]
- 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.[158]
- 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

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[151] Data from S&P Dow Jones Indices, S&P Global (Dec. 23, 2021).
[152] Kevin Stankiewicz, There's no more money to be made in oil and gas stocks, Jim Cramer says, CNBC (Feb. 3, 2020).
[153] Jillian Ambrose, Seven top oil firms downgrade $87bn in nine months, The Guardian (Aug. 14, 2020).
[154] 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).
[155] Avi Salzman, Why Exxon Is Being Dropped From the Dow, Barron's (Aug. 25, 2020).
[156] ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans, ExxonMobil (Feb. 2, 2021).
[157] 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).
[158] Fred Pearce, As Investors and Insurers Back Away, the Economics of Coal Turn Toxic, Yale Environment 360 (Mar. 10, 2020).

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 — is no longer tenable.[159]

  - 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."[160]
  - 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."[161]
  - 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."[162]

- 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. Such reductions — which represent only a moderate chance at avoiding catastrophe — would render the majority of oil and gas reserves unexploitable and unprofitable.[163]
- 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

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[159] 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).
[160] *Id.* at 4.
[161] *Id.* at 1.
[162] *Id.* at 38.
[163] Carbon Tracker Initiative, Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink (Nov. 1, 2019).

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.[164] 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.[165]

- In its 2020 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."[166]
- 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."[167]
- 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.[168]
- In a 2020 report, the Commodity Futures Trading Commission warned that "Climate change poses a major risk to the stability of the U.S. financial system and to its ability to sustain the American economy."[169]
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz and 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. 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."

[164] Mercer LLC, Investing in a Time of Climate Change: The Sequel 2019 at 34 (2019).
[165] European Green Party, The Carbon Bubble: The financial risk of fossil fuels and need for divestment at 7 (2020).
[166] Board of Governors of the Federal Reserve System, Financial Stability Report at 58 (Nov. 2020).
[167] Clyde & Co LLP, Climate change: Liability risks at 37 (Mar. 2019).
[168] Michael Slezak, Rest super fund commits to net-zero emission investments after Brisbane man sues, ABC News (Nov. 2, 2020).
[169] Managing Climate Risk In the U.S. Financial System, Climate-Related Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission at i (Sept. 2020).

VII. 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 Board 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."[170]
- 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.[171] 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.[172]
    - 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 percent 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."[173]
    - In 2020, the financial research agency Morningstar reported that European sustainable investment funds — defined as "funds that use environmental, social, and governance criteria as a key part of their security selection and portfolio-construction process, and/or indicate that they pursue a sustainability-related theme, and/or seek a measurable positive impact alongside financial return" — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.

[170] Jeremy Grantham, The mythical peril of divesting from fossil fuels, London School of Economics (June 13, 2018).
[171] Christopher Ryan & Christopher Mariscano, Examining the Impact of Divestment from Fossil Fuels on University Endowments, 17 NYU J. L. & Bus. 95 (2020).
[172] Auke Plantinga and Bert Scholtens, The financial impact of fossil fuel divestment, 21 Climate Policy 1 (2020).
[173] George O. Aragon, Yuxiang Jiang, Juha Joenväärä, and Cristian Ioan Tiu, Socially Responsible Investments: Costs and Benefits for University Endowment Funds at 5 (July 21, 2020).

- A 2018 analysis concluded that the New York State Common Retirement Fund would have earned an additional 22.2 billion dollars (137 billion dollars versus 114.8 billion dollars) from 2008 to 2018 had it divested from fossil fuels.[174]

VIII. 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 Board has persisted in buying industry securities, violating its duty of care.

- Fossil fuel companies have allegedly long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This alleged fraud has been a matter of public record since at least 2015, and a matter of common knowledge for investors since at least 2019.[175]
  - In 2019, the Massachusetts Attorney General sued ExxonMobil, one of the world's leading oil companies, for three alleged violations of the Massachusetts Consumer Protection Act.
    - The state's Second Amended Complaint alleges that "[f]or many years, Exxon Mobil Corporation . . . the world's largest publicly traded oil and gas company, systematically and intentionally has misled Massachusetts investors and consumers about climate change. In order to increase its short-term profits, stock price, and access to capital, ExxonMobil has been dishonest with investors about the material climate-driven risks to its business and with consumers about how its fossil fuel products cause climate change—all in violation of Massachusetts law."[176]
    - 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.[177]
    - Despite this knowledge, ExxonMobil — like many of its peers in the industry — persisted in a "highly misleading" campaign to spread doubt about climate science and to prevent measures that would decrease the use of fossil fuels. As late as 2015, ExxonMobil's CEO was publicly disputing the scientific consensus that rising atmospheric carbon dioxide levels produce catastrophic warming.[178]
    - The Attorney General concluded that ExxonMobil's value will fall precipitously in coming years, thanks in large part to an expected transition

[174] Toby A.A. Heaps, Divestment would have made NY pension fund $22B richer, Corporate Knights (Oct. 4, 2018).
[175] Neela Banerjee, Lisa Song, & David Hasemyer, Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago, Inside Climate News (Sept. 16, 2015).
[176] Second Amended Complaint, Massachusetts v. ExxonMobil, No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5, 2020) at 1.
[177] *Id.* at 5.
[178] *Id.* at 9, 50-51.

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."[179]

    - According to the Complaint, "[t]he systemic risk climate change poses to the world's financial markets is comparable to, and could well exceed, the impact of the 2008 global financial crisis . . . The risks of climate change and regulatory responses to it pose an existential threat to [the company's] business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors."[180]
    - The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the Harvard Corporation in danger of serious financial damage: "ExxonMobil's omissions and misrepresentations put its Massachusetts investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances."[181]
- In September 2020, the State of Connecticut sued ExxonMobil for violations of the state's Unfair Trade Practices Act, alleging that the company has for decades "misled and deceived Connecticut consumers about the negative effects of its business practices on the climate."[182]
    - The lawsuit alleges that, beginning in the 1980s, ExxonMobil defied its own scientists' warnings dating back to the 1950s and "began a systematic campaign of deception to undermine public acceptance of the scientific facts and methods relied upon by climate scientists who knew that anthropogenic (human-caused) climate change was real and dangerous to humanity."[183]
    - The complaint goes on to note that "ExxonMobil's strategy to create uncertainty about climate science successfully kept consumers purchasing ExxonMobil products by deceiving consumers about the serious harm caused by ExxonMobil's industry and business practices."[184]
- In January 2021, a former senior accounting analyst for ExxonMobil 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 —

[179] *Id.* at 8.
[180] *Id.* at 65, 80-81.
[181] *Id.* at 138.
[182] Complaint, Connecticut v. ExxonMobil, No. HHDCV206132568S (Conn.. Super. Ct. Spe. 14, 2020) at 1.
[183] *Id.*
[184] *Id.* at 2.

fraudulently inflating the company's worth to investors by as much as fifty-six billion dollars.[185]

  - In April 2021, neighboring New York City sued Exxon Mobil, Royal Dutch Shell, and the American Petroleum Institute (an industry trade association) for systematically and intentionally deceiving consumers.[186] 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.[187]
  - In June 2021, an Exxon lobbyist admitted that ExxonMobil was engaged in a concerted effort to block climate change and deceive the public.[188] This revelation led the House Oversight Committee to ask the chief executives of Exxon Mobil, Chevron, BP, and Shell, along with the American Petroleum Institute and the Chamber of Commerce, to appear at a hearing and provide emails and documents about whether the industry led an effort to mislead the public and prevent action to fight climate change.[189]
  - In August 2021, California Attorney General Rob Bonta joined a coalition of seventeen attorneys general to file an amicus brief in support of the State of Minnesota's lawsuit against fossil fuel producing companies.[190] The Minnesota lawsuit asserts that the defendant fossil fuel companies engaged in corporate fraud and deceptive trade, downplayed the role of fossil fuels in causing climate change, and hid the information that, without swift action, it would be too late to stop climate devastation.[191]
- 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.[192]

[185] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[186] New York City Sues ExxonMobil, Shell, BP, and The American Petroleum Institute for Systematically and Intentionally Deceiving New Yorkers, The Official Website of the City of New York (Apr. 22, 2021).
[187] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[188] Hiroko Tabuchi, In Video, Exxon Lobbyist Describes Efforts to Undercut Climate Action, The New York Times (Jun. 30, 2021).
[189] Timothy Gardner, U.S. House panel to probe oil companies over climate disinformation, Reuters (Sept. 16, 2021).
[190] Attorney General Bonta Supports Minnesota Efort to Hold Big Oil Accountable for Misleading the Public and Exacerbating Climate Change, California Department of Justice (last visited Jan. 14, 2022).
[191] Complaint, State v. American Petroleum Institute, 62-CV-20-3837 (Minn. Dist. Ct. 2020) at 4.
[192] Dana Drugman, Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk, The Climate Docket (Jan. 29, 2020).

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

Fossil fuel companies have engaged in decades-long efforts 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 Board contravenes Stanford's core *charitable purposes* as an educational institution and violates its *duty of loyalty*.

- Beginning in the 1980s, in response to mounting evidence of climate risks, 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."[193] 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.[194]
    - In 2019 testimony to the Senate Special Committee on the Climate Crisis, Dr. Justin Farrell described a decades-old movement "to deceive the American people about the reality of climate change." This movement has been largely successful "sowing seeds of widespread popular doubt, transforming climate change into a sharply politicized issue, infusing climate denial into the highest levels of government, and obstructing policy solutions that are so direly needed to decarbonize our economy and mitigate the impacts of warming." Research shows that fossil fuel companies launched a "multi-pronged manipulation effort" to manufacture uncertainty around climate science by funding climate denial groups as well as creating "fake grassroots efforts" to promote climate misinformation. "Money facilitated coordination between 200 organizations," said Farrell, to create the "appearance of scientific credibility."[195]
    - In his analysis of the funding sources of 164 climate denialist organizations, Farrell found that ExxonMobil and the Koch foundations were "the most reliable and theoretically important across-time indicators of corporate involvement."[196]
    - 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.[197]
    - Since 1997, Koch Industries, through its various foundations and institutes including the Koch Family Foundation, has donated more than 145 million dollars

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[193] 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).
[194] *See generally id.*
[195] Senate Dems, Senate Dems Special Committee on the Climate Crisis Hearing (Oct. 29, 2019).
[196] Justin Farrell, Corporate Funding and Ideological Polarization, 113(1) Proceedings of the National Academy of Sciences 92-97 (2016).
[197] Union of Concerned Scientists, Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science at 5 (Jan. 2007).

from 1997 to 2018, financing ninety organizations that attack climate science and policy solutions.[198]

    - Over about the last three decades, "five major U.S. oil companies have spent a total of at least $3.6 [billion] on advertisements."[199] 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.[200]
- These activities were summarized in an amicus brief by academic researchers, including researchers currently and formerly affiliated with Stanford, as part of the ongoing tort litigation by California counties against fossil fuel companies,[201] and by the Massachusetts Attorney General's complaint against ExxonMobil in its deceptive advertising litigation.[202]
- 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."[203]
- Undermining the work of academics and scholars has been another key tactic of the fossil fuel industry, and Stanford researchers have been among those targeted.
    - ExxonMobil has repeatedly sought to portray the Intergovernmental Panel on Climate Change — a coordinating body of respected scientists and academics who publish periodic reports on climate science to aid policymakers — as biased and untrustworthy.[204]
    - Several Stanford scholars have contributed to IPCC reports, including Paul N. Edwards, who served as lead author on the IPCC's 2021 6th Assessment Report, and Chris Field, who served as co-chair of Working Group II of the IPCC.[205]
- The fossil fuel industry has also sought to legitimize its policy positions by funding research and programs at Stanford, calling into question the intellectual independence of those activities and the balance of perspectives within the academy.[206]

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[198] Koch Industries: Secretly Funding the Climate Denial Machine, Greenpeace (last visited Jan. 31, 2022).

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

[200] Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications (1977–2014), 12(8) Envtl. Res. Letters (Aug. 2017).

[201] *See* Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 193.

[202] *See* Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 176, at Part IV.B.

[203] 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).

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

[205] *See* Stanford experts on climate change, adaptation and mitigation, Stanford News Service (Mar. 25, 2014); Jody Berger, UN Climate Panel Releases Latest Report, Stanford Center for International Security and Cooperation (Aug. 5, 2021); Chris Field, School of Earth, Energy, & Environmental Sciences (last visited Jan. 31, 2022).

[206] These funding relationships are not unique to Stanford. *See* Benjamin Franta & Geoffrey Supran, The fossil fuel industry's invisible colonization of academia, The Guardian (Mar. 13, 2017).

- The Stanford Natural Gas Institute lists on its website BPX Energy, Inc., ExxonMobil, and Shell as its three "sustaining members," who contribute at least 250,000 dollars per year to the Institute.[207] The Natural Gas Institute also receives at least 75,000 dollars per year from the American Petroleum Institute and the oil and gas companies Aramco Services, ARC Resources, Kinder Morgan, Schlumberger, and Trafigura.[208]
- Three of the four founding members of Stanford's Strategic Energy Alliance are oil and gas companies ExxonMobil, Shell, and Total Energy.[209]
- Stanford's Precourt Institute for Energy draws research funding from corporate affiliates including Chevron, ExxonMobil, Trafigura, and Shell.[210]
- Stanford's Global Climate and Energy Project is funded by ExxonMobil and Schlumberger.[211]

- 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."[212]
- At least one fossil fuel company has tried 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 dollar 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,"[213] 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 . . . ."[214]
    - The upshot of the research was that juries' punitive damage awards in cases that involve "normative judgments" are "arbitrary," "unpredictable," "erratic," and

[207] *See* Industrial Affiliates, Stanford Natural Gas Initiative (last visited Jan. 31, 2022).
[208] *See* Corporate Affiliates Program, Stanford Natural Gas Initiative (last visited Jan. 31, 2022).
[209] *See* Membership, Stanford Strategic Energy Alliance (last visited Jan. 31, 2022).
[210] *See* Membership Overview, Stanford Energy Corporate Affiliates (last visited Jan. 31, 2022).
[211] *See* About Us, Global Climate & Energy Project, Stanford University (last visited Jan. 18, 2022).
[212] Wen Stephenson, Other Universities Are Divesting From Fossil Fuels—but Harvard Is Doubling Down on Them, The Nation (May 4, 2016).
[213] 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.*
[214] 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.

"incoherent," and ought to be replaced with a schedule-based system of fines.[215] One professor called for the total abolishment of punitive damages.[216]
  - 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 them."[217] The same study found that courts cited industry-funded studies more often.[218]
- Stanford's mission is "to qualify its students for personal success, and direct usefulness in life" and "to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness."[219] Continued investment in an industry that undermines scientific knowledge, compromises the integrity of Stanford's own research, and threatens young people's future runs directly contrary to this mission.

X. 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 Stanford. Their reasoning applies to Stanford's circumstances as well as their own, and thus the Board 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.[220]

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[215] 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.

[216] McGarity, *supra* at note 215, 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)).

[217] McGarity, *supra* at note 215, 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.*

[218] *Id.* at 56.

[219] *Id.* at 3.

[220] *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

- 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."[221]
- In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is effective in reducing the fossil fuel industry's harmful effects on the climate: "Insofar as they damage companies' reputations for their social responsibility and environmental stewardship, and thus their societal 'license to operate,' divestment efforts pose an additional climate-related risk to oil and gas companies. In 2018, an oil major that competes with ExxonMobil acknowledged that divestment campaigns and related efforts pose a material risk to its business and the price of its securities."[222]
    - 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."[223]
    - 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."[224]
- 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."[225]

- Many of Stanford's peer institutions have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. Such institutions have often chosen

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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.").

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

[222] Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 176, at 108-09.

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

[224] Peabody Energy Corporation, Form 10-K: Annual Report at 30 (2014).

[225] Emma Howard, A beginner's guide to fossil fuel divestment, The Guardian (Jun. 23, 2015) (quoting Jamie Henn, of 350.org, who explains that institutional divestment commitments "hasten the [fossil fuel] industry's decline and help push governments to take action," while also serving to stigmatise fossil fuel companies in order to "make the space for progress" and reduce those companies' corrupting influence on politics).

divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals.

- On October 8, 2021, Dartmouth College announced that the Dartmouth Investment Office would let its remaining public investments in the fossil fuel industry expire.[226] The decision was made based on both moral and financial considerations. Dartmouth's statement cited the worsening effects of climate change, saying that the "damaging effects will continue to exacerbate existing threats to global health, nutrition, and biodiversity while also creating new hazards."[227] Dartmouth President Phil Hanlon said the College has noticed "that investments in energy transitions are now comparable or better than the investment opportunities in fossil fuel companies."[228]
- Boston University also announced its decision to divest from the fossil fuel industry in September 2021.
  - Emphasizing the practical and moral value of divestment, Boston University President Robert Brown described divestment "a necessary step toward mitigating global warming and the devastating impacts of climate change" and as a choice that "will put the University on the right side of history."[229]
  - Both Brown and Richard Reidy, leader of the Advisory Committee on Socially Responsible Investing for the Boston University Board of Trustees, acknowledged the urgency of effective climate action, with Brown stating that "we face the challenge of changing our way of life at unprecedented speed if we are going to preserve the Earth's environment as we know it" and Reidy acknowledging that "climate change is moving much more rapidly than we thought even five years ago—it's not something our great-grandchildren are going to deal with, it's here and something we're worrying about now."[230]
  - Reidy highlighted the power of divestment, calling it a "vehicle to hasten fossil fuel extractors to transition to renewable energy."[231]
- 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.[232] Paxson explained the move as

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[226] Office of Communications, Darmouth Taking Formal Steps to Address Climate Crisis, Dartmouth College (Oct. 8, 2021).
[227] *Id.*
[228] Taylor Haber, College formally announces plan to divest from fossil fuels, The Dartmouth (Oct. 8, 2021).
[229] Board of Trustees Approves Fossil Fuel Divestment Policy, Boston University Office of the President (last visited Feb. 4, 2022).
[230] Jessica Colarossi, Boston University to Divest from Fossil Fuel Industry, BU Today (Sept. 23, 2021).
[231] *Id.*
[232] Christina Paxson, Letter from President Paxson: Brown's actions on climate change, Brown University, (Mar. 4, 2020).

aligning with "the view that, as the world shifts to sustainable energy sources, investments in fossil fuels carry too much long-term financial risk."[233]

- 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.[234] 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.[235]
- On October 1, 2020, the University of Cambridge announced plans to divest all direct and indirect holdings from the fossil fuel industry and to achieve net-zero greenhouse gas emissions by 2038 — commitments that are more ambitious than Harvard's in both their scope and timescale.[236]
  - As of December 2020, the university had already withdrawn investments in "conventional energy-focused public equity measures," and planned to divest from "all meaningful exposure in fossil fuels" by 2030. It now aims to achieve net-zero greenhouse gas emissions across its entire investment portfolio by 2038 — twelve years before Harvard's 2050 deadline.[237]
  - 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.[238]
  - 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."[239]
- In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.[240]
  - 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 Celsius.[241]

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233 *Id.*
234 Kathryn Stamm, Cornell to Effectively Divest from Fossil Fuels, Trustees Vote, Cornell Daily Sun (May 22, 2020).
235 James Dean, Cornell announces moratorium on fossil fuel investments, Cornell Chronicle (May 22, 2020).
236 Matthew Taylor, Cambridge University to divest from fossil fuels by 2030, The Guardian (Oct. 1, 2020).
237 *Id.*
238 Cambridge to divest from fossil fuels with 'net zero' plan, University of Cambridge (Oct. 1, 2020).
239 *Id.*
240 University of Oxford cuts ties to fossil fuels industry, BBC News (Apr. 28, 2020).
241 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., & M.R. Allen, Principles to guide investment towards a stable climate, 8 Nature Climate Change 2-4 (2018)).

        - While some universities have insisted on "shareholder engagement" *instead of* divestment, Oxford chose to pursue both strategies, divesting from fossil fuel companies while also pledging to work with companies around the world, "helping them assess whether investments are compatible with transition to a more stable climate and the goals of the Paris Agreement on climate change." Oxford also plans to engage with fund managers "to request evidence of net-zero carbon business plans across their portfolios."[242]
        - 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.[243]
    - In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.[244]
        - 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."[245]
        - Georgetown President John J. DeGioia also identified moral concerns as important to the decision, nothing that "caring for our environment is one of the most urgent moral and practical concerns of our time."[246]
    - In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.[247]
        - 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 dollars in fossil fuel assets from our endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC's diversified portfolios."[248]
        - 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."[249]

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[242] Oxford announces historic commitment to fossil fuel divestment, University of Oxford (Apr. 27, 2020).
[243] Aiming for zero carbon and biodiversity net gain by 2035, University of Oxford (Nov. 20, 2020).
[244] Fossil Fuels Divestment Continues Georgetown's Commitment to Sustainability, Georgetown University (Feb. 6, 2020).
[245] *Id.*
[246] *Id.*
[247] 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 (Sept. 17, 2019).
[248] *Id.*
[249] *Id.*

  - In May 2016, the University of Massachusetts system announced the divestment of its endowment from all fossil fuel assets.[250]
    - University of Massachusetts President Marty Meehan stressed the need to align their investments with institutional values, writing that the move "reflects our commitment to take on the environmental challenges that confront us all."[251]
    - Fund managers also stressed the compatibility of moral and fiduciary duties in divesting, with UMass Foundation Treasurer and Investment Committee Chair Edward H. D'Alelio stating that the fact "we took this step reflects not just our comfort as fiduciaries but the seriousness with which we see climate change."[252]
- Aside from peer universities, many other large-scale charitable funds with analogous fiduciary duties have divested.
  - Pension funds that have divested from fossil fuels include the California Public Employees' Retirement System (coal), the California State Teachers' Retirement System (coal), the country of Ireland, the New York City Employees Retirement System, the New York State Common Retirement Fund, the Teachers Retirement System of the City of New York, and the City of Providence, Rhode Island (partial).[253] In September 2021 the Caisse de dépôt et placement du Québec — Canada's second-biggest pension fund at 310 billion dollars — announced it was divesting from oil production investments by the end of 2022.[254]
  - Other major funds that have divested include the seven-billion-dollar MacArthur Foundation,[255] the five-billion-dollar Rockefeller Foundation,[256] Norway's 1.1 trillion dollar sovereign wealth fund (oil and gas exploration and production)[257] and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).[258]

XI. The Board's ties to the fossil fuel industry and conflicts of interest

Board members maintain significant financial ties to the fossil fuel industry. These apparent conflicts of interest violate the Board's *duty of loyalty* because fossil fuel companies' business models are in fundamental tension with Stanford's espoused values and commitment to decarbonization.

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[250] UMass Becomes First Major Public University to Divest from Direct Fossil Fuel Holdings, University of Massachusetts (May 25, 2016).
[251] *Id.*
[252] *Id.*
[253] 1000+ Divestment Commitments, GoFossilFree.org (updated Dec. 9, 2020).
[254] CDPQ announces its new climate strategy, Caisse de dépôt et placement du Québec (Sept. 28, 2021).
[255] John Palfrey, Aligning Our Investments With Our Mission, Values, and Programs, MacArthur Foundation (Sept. 22, 2021).
[256] *Id.*
[257] Terje Solsvik, Norway sovereign wealth fund to divest oil explorers, keep refiners, Reuters (Oct. 1, 2019).
[258] Jillian Ambrose, Major investment firm dumps Exxon, Chevron and Rio Tinto stock, The Guardian (Aug. 24, 2020).

- Multiple members of the Stanford Board of Trustees maintain or have recently maintained financial ties to the fossil fuel industry.
    - Aneel Bhusri, first elected to the Board in 2019,[259] maintains ties to the fossil fuel industry through the firm Workday, a management software vendor where he is CEO.[260] Workday provides services to Borr Drilling,[261] a oil & gas drilling contractor,[262] and Bangchak Corporation,[263] a petroleum refineries company.[264]
    - JamesCoulter, first elected to the Board in 2021,[265] is the Founding Partner & Executive Chair of TPG Capital,[266] an asset manager which maintains significant ties to the oil and gas industry. TPG formed the special purpose acquisition company TPG Pace Energy Holdings which acquired the oil and gas assets within EnerVest's South Texas Division in 2018 for 2.66 billion dollars in cash and stock,[267] formed a 500 million dollar partnership with Glendale Energy Ventures, LLC to invest in oil-and-gas assets in 2019,[268] and acquired a majority stake in Goodnight Midstream, a saltwater management provider for the oil & gas industry, in 2021.[269]
    - José Feliciano, elected to the board in 2021,[270] is the Co-Founder & Managing Partner of Clearlake Capital Group LP, an investment firm which backs the oilfield infrastructure company Gravity Oilfield Services Inc.[271]
    - Sarah Ketterer, elected to the board in 2019,[272] is the CEO of Causeway Capital,[273] an investment management firm whose International Opportunities Fund named oil and gas companies BP Plc and Total as top contributors.[274]
    - Kenneth Olivier, elected to the board in 2014,[275] is the Chair Emeritus of Dodge and Cox, a mutual fund company which, in 2020, initiated new holdings in Exxon Mobil and Williams, alongside existing holdings in midstream oil companies Kinder Morgan, TC Energy, The Williams Companies, and Ultrapar, international oil companies Concho Resources, EOG Resources, Exxon Mobil, and Occidental

[259] Stanford Board of Trustees elects two new members, Stanford News (last visited Feb. 8, 2022).
[260] Leadership: Aneel Bhusri, Workday (last visited Feb. 8, 2022).
[261] Inspiring stories from inspiring customers, Workday (last visited Feb. 8, 2022).
[262] Introducing Borr Drilling, Borr Drilling (last visited Feb. 8, 2022).
[263] Energy and Resources, Workday (last visited Feb. 8, 20220.
[264] Bangchak Business, Bangchak (last visited Feb. 8, 2022).
[265] Chelcey Adami, José E. Feliciano, James Coulter elected to Stanford Board of Trustees, Stanford News (July 27, 2021).
[266] Who Are We, TPG (last visited Feb. 8, 2022).
[267] Pace Energy, TPG (last visited Feb. 8, 2022).
[268] Luis Garcia, TPG Sixth Street Forms $500 Million Partnership Targeting Oil and Gas, Wall Street Journal (June 13, 2019).
[269] TPG Capital to pay $930m for majority stake in Goodnight Midstream, Produced Water Society (last visited Feb. 8, 2022); Home, Goodnight Midstream (last visited Feb. 8, 2022).
[270] Adami, José E. Feliciano, James Coulter elected to Stanford Board of Trustees, *supra* at note 265.
[271] Clearlake Capital-Backed Gravity Acquires Bakken Disposal Infrastructure From MBI Oil & Gas, LLC, Clearlake Capital (last visited Feb. 8, 2022).
[272] Chris Bliss, Stanford Board of Trustees elects two new members, Stanford News (May 31, 2019).
[273] Sarah Ketterer, Causeway Capital Management (last visited Feb. 7, 2022).
[274] Concentrated Equity Fund, Causeway Capital Management (last visited Feb. 7, 2022).
[275] Kathleen Sullivan, Kenneth E. Olivier, investment manager, joins Stanford's Board of Trustees, Stanford News (Nov. 12, 2014).

Petroleum, state-controlled oil companies Petrobras and Petroleos Mexicanos, and asset-backed company Rio Oil Finance Trust.[276]

- ○ Jeffrey Stone, elected to the board in 2018,[277] is the Chair Emeritus and Senior Partner of McDermott Will & Emery LLP, an international law firm that advertises providing "the highest quality of legal counsel across the full range of the oil and gas industry."[278] The McDermott, Will & Emery website provides a comprehensive list of services related to oil and gas that it has provided, including acquisitions and construction of new oil and gas infrastructure.[279]
- ○ Elizabeth Weatherman, elected to the board in 2020,[280] is a Special Limited Partner at Warburg Pincus, LLC, a private equity company which invests in several oil and gas companies, including Citizen Energy, Ensign Natural Resources, and Terra Energy Partners.[281]

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

The Board has failed to act in *good faith* or with *due care* by ignoring repeated efforts by Stanford students, faculty, and other community members to align the university's investment practices with its charitable mission. Members of the Stanford 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. Despite the strong support for fossil fuel divestment among members of the Stanford community, Board members refused to engage with the question in good faith.

- In the Fall of 2012, Fossil Free Stanford (FFS) formed as a new student group, joining the broader university environmental divestment movements across the country.
- On March 4, 2014, FFS members Michael Peñuelas and Yari Greaney wrote an article in *The Stanford Daily* contextualizing the Keystone XL pipeline and international protests against its construction.[282]
- On April 10, 2014, FFS member Graham Provost wrote an op-ed in The Stanford Daily encouraging students to vote in favor of divestment in the ASSU 2014 referendum and provided context for the movement based on historical divestment campaigns.[283]
- In April 2014, students voted overwhelmingly in favor of a fossil fuel divestment referendum in the 2014 Associated Students of Stanford University (ASSU) elections.[284]

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276 Re-evaluating the Opportunity in Energy, Dodge & Cox (July 2020).
277 Bliss, Stanford Board of Trustees elects two new members, *supra* at note 272.
278 Oil & Gas, McDermott Will & Emery (last visited Feb. 7, 2022).
279 *Id.*
280 Kathleen Sullivan, Stanford University Board of Trustees elects four new members, Stanford News (July 13, 2020).
281 Select Investments, Warburg Pincus (last visited Feb. 7, 2022).
282 From the Community, Tar Sands, Arrests and a Movement: Fossil Free Stanford on the Keystone XL Pipeline, The Stanford Daily (Mar. 4, 2014).
283 From the Community, Fossil Fuel Divestment: Stanford's Unique Role in a Global Movement, The Stanford Daily (Apr. 10, 2014).
284 Lucy Svoboda, Fossil Fuel Divestment Discussion Moves toward Board of Trustees, The Stanford Daily (Apr. 18, 2014).

- On May 6, 2014, the Board of Trustees announced that the Stanford Endowment would end direct investments in the coal industry.[285]
- On October 19, 2014, Timothy E. Wirth, Ph.D. '73, former U.S. Senator from Colorado; Christopher W. Wirth, B.A. '90, the founder of the Boulder, Colorado, based Liberty Puzzles; and Kelsey D. Wirth, M.B.A. '97, the founder of Align Technology and founder and co-director of Mothers Out Front wrote an op-ed in *The Stanford Daily* responding to Stanford's decision to divest from coal and encouraging the university to divest from all fossil fuels.[286]
- On October 23, 2014, Ian Monroe, lecturer on renewable energy and climate change in Stanford's earth systems department, published an op-ed in *The Stanford Daily* in support of FFS's push for divestment.[287]
- On November 13, 2014, FFS and Students for a Sustainable Stanford members Josh Lappen and Charlie Jiang published a piece encouraging fossil fuel divestment in *The Stanford Daily*.[288]
- On April 8, 2015, FFS published an open letter to the Board of Trustees in *The Stanford Daily*."[289]
- From November 16 to 20, 2015, Fossil Free Stanford staged a sit-in on the campus's main quad in protest of a pattern of administrative delay and failure to communicate with student activists.[290] The protest gained international attention and ended with a meeting with then-President Hennessy on November 20, where he argued that fossil fuel divestment would not pass the Board of Trustees due to inadequate research into the issue.[291]
- In February 2016, FFS led an initiative to encourage graduating seniors to decline contributing to the senior gift as long as Stanford remains invested in the fossil fuel industry.[292]
- On April 25, 2016, the Board of Trustees stated that it had decided to not divest from fossil fuels.[293]
- On April 28, 2016, FFS members demonstrated against the Board's decision not to divest at a lecture by then-President John L. Hennessy.[294]
- In September 2016, FFS began exploring the possibility of divestment by Stanford Student Enterprises' (SSE) endowment, which is the money allotted for the Associated Students of Stanford University (ASSU) and pathways for fossil fuel divestment.

[285] Stanford to divest from coal companies, Stanford News (May 6, 2014).
[286] From the Community, Teaching by example: Divestment from fossil fuels, The Stanford Daily (Oct. 19, 2014).
[287] From the Community, Fossil failure: why Stanford's future depends on divesting from dirty energy, The Stanford Daily (Oct. 23, 2014).
[288] From the Community, Do divest from fossil fuels: A response, The Stanford Daily (Nov. 13, 2014).
[289] From the Community, Fossil Free Stanford: Open letter to the Stanford University Board of Trustees, The Stanford Daily (Apr. 8, 2015).
[290] Fossil Fuel Divestment Sit-In: Nov. 16 - Nov. 20, The Stanford Daily (2019).
[291] Ada Statler, Fossil Fuel Divestment Sit-in Ends with Rally, Hennessy Meeting, The Stanford Daily (Dec. 9, 2015).
[292] Fangzhou Liu, Fossil Free Calls on Students to Withhold Senior Gift until Divestment, The Stanford Daily (Feb. 11, 2016).
[293] Michael Gioia, Board of Trustees Declines to Divest from Fossil Fuels, The Stanford Daily (Apr. 26, 2016).
[294] Ariel Liu, Fossil Free Stanford Holds Protest Rally as Hennessy Speaks in MemChu, The Stanford Daily (Apr. 28, 2016).

- On December 1, 2016, ASSU Executives Jackson Beard and Amanda Edelman presented to the Faculty Senate, noting the work of FFS and the initial request for divestment of SSE's endowment.[295]
- On December 8, 2016, FFS contacted SSE's CEO, Jelani Monroe, to discuss the ASSU joint bylaws in relation to SSE's current investment policies.
- On March 7, 2017, the ASSU Undergraduate Senate passed a FFS-drafted bill seeking comment from the student body about divesting student funds distributed by ASSU from fossil fuels.[296]
- On April 11, 2017, the SSE Board of Directors & CEO issued a letter to FFS, the ASSU Undergraduate Senate, and the Graduate Student Council with questions concerning fossil fuel divestment.[297]
- On August 23, 2017, FFS members coordinated with the Union of Concerned Scientists in a conference call to discuss the implementation of their 2016 Climate Accountability Scorecard for 8 Fossil Fuel Companies.[298]
- During the fall and winter quarters of 2017 and 2018, students continued this conversation on investment responsibility and sought to clarify the legal terms of operation and investment of the Petroleum Investment Fund, a source of funding for the School of Earth, created in the 1950s and to invest in "producing oil and gas royalties and other mineral and energy interests."[299]
- In October 2017, the Board released a statement claiming that they were "initiating a full review of the Statement on Investment Responsibility," and would not be accepting divestment requests in the year 2017-2018 as the evaluation took place.[300]
- On November 14, 2017, students met with School of Earth administrators Stephan Graham (Professor and Dean), Pam Matson (Professor and former Dean), and Amy Balsom (Senior Associate Dean) to discuss the university's Petroleum Investment Fund and its role in funding School of Earth's operations.[301]
- On March 14th, 2018, FFS met with Doria Xu, Program Manager of Investment Responsibility Stakeholder Relations, and student representatives Ben Hur and Avery Bick.
- During the fall and winter quarters of 2017 and 2018, FFS held conversations with Advisory Panel on Investment Responsibility (APIRL) representatives Carolyn Oliver, Avery Bick, and Michael Ocon about Fossil Free Stanford's perspectives on Stanford's Statement on Investment Responsibility (SIR) and the APIRL review process.
- During the academic year 2017-18, FFS coordinated and communicated with the university during the APIRL review process.[302]

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[295] *See* Official Minutes: Meeting of the Forty-Ninth Senate of the Academic Council, Senate of the Academic Council (Dec. 1, 2016).
[296] Tynan Challenor, Cameron McKenzie, & Luke Miller, Fossil Free Stanford, Joint Bill to Seek Comment Regarding Divesting ASSU Funds from Fossil Fuels, Undergraduate Senate (2017).
[297] SSE Board of Directors and CEO, Letter to the ASSU regarding questions concerning fossil-free divestment, ASSU Undergraduate Senate (Apr. 11, 2017).
[298] The Climate Accountability Scorecard: Ranking Major Fossil Fuel Companies on Climate Deception, Disclosure, and Action, Union of Concerned Scientists (Oct. 3, 2016).
[299] *See* Stanford School of Earth Sciences Advisory Board Annual Meeting at 10 (Apr. 2013).
[300] Anna-Luisa Brakman, Fossil Free Stanford releases new divestment petition, The Stanford Daily (Feb. 27, 2018).
[301] Fossil Free Stanford Meeting Notes, on file with Fossil Free Stanford (Nov. 13, 2017).
[302] Email from Kathleen Greenan, on file with Fossil Free Stanford (Jan. 28, 2019).

- On June 16, 2017, FFS submitted a long-range planning proposal regarding ethical investing to the university leadership.[303]
- In winter quarter 2017, FFS started an email campaign to place a referendum calling for fossil fuel divestment. on the ASSU ballot. The proposed referendum stated: "In accordance with Stanford's commitment to ethical investment, the university should divest its endowment from fossil fuel extraction companies in order to avert further environmental and social harm caused by climate change."[304] By April 1st, 2018, over 1,000 students (undergraduate and graduate) had signed Fossil Free Stanford's petition to put the referendum on the 2018 ASSU ballot.
- On January 21, 2018, Fossil Free Stanford met with a range of university activist communities for an event in El Centro Chicano y Latino, the Stanford student center for the Chicano and Latino community.
- On February 27, 2018, FFS released a new divestment petition for students and faculty to sign.[305]
- On April 14, 2018, the ASSU Referendum calling for the university to divest from fossil fuels passed overwhelmingly with undergraduate and graduate student support (graduate students: 1586 in favor versus 456 not in favor; undergraduates: 2410 in favor versus 481 not in favor).[306]
- On April 12, 2018, an article "From the Community" was published in *The Stanford Daily* entitled, "Why you should vote to divest from fossil fuels," addressed to the Stanford University administration.[307]
- On May 9, 2018, an article "From the Community" was published in The Stanford Daily entitled, "Op-ed: Fossil Free Stanford urges students to submit divestment standard recommendations."[308]
- On April 15, 2019, FFS stood in solidarity with the Students for Environmental and Racial Justice's (SERJ) Rally and March for Environmental Justice. At the rally, two Fossil Free Stanford members spoke on the need for structural and institutional action from the university to combat climate and racial injustice perpetuated by the fossil fuel industry's business practices.[309]
- On April 17, 2019, FFS organizer Zoe Brownwood met with President Tessier-Lavigne and Chief of Staff to the President Megan Pierson during their office hours. This meeting covered student-campus engagement in the past year for fossil fuel industry divestment, discussed the role of the Office of the President in Stanford's divestment procedure. President Tessier-Lavigne emphasized that his office had no power over investment and divestment decisions.
- On April 24, 2019, Fossil Free Stanford co-hosted an event with the Women's Community Center to discuss the intersections of environmental injustice and gender inequities.

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[303] 170524 APIR-L Proposal, on file with Fossil Free Stanford (last visited Feb. 15, 2022).
[304] *See* Email with Paul Serrato, on file with Fossil Free Stanford (Feb. 18, 2018).
[305] Brakman, Fossil Free Stanford releases new divestment petition, *supra* at note 300.
[306] Brian Contreras, Courtney Douglas, Yasmin Samrai, & Claire Wang, 2018 ASSU election results announced: Shanta-Rosie slate elected as executives, The Stanford Daily (Apr. 14, 2018).
[307] From the Community, Why you should vote to divest from fossil fuels, The Stanford Daily (Apr. 12, 2018).
[308] From the Community, Op-ed: Fossil Free Stanford urges students to submit divestment standard recommendations, The Stanford Daily (May 9, 2018).
[309] Elise Miller, Environmental justice rally demands faculty, reparations, agency, The Stanford Daily (Apr. 16, 2019).

- On March 3, 2020, FFS presented their Resolution in Support of Divesting Stanford's Endowment from Fossil Fuel Companies to the ASSU, which unanimously voted to pass the resolution.[310]
- On March 5, 2020, the Graduate Student Council (GSC) passed a Resolution in Support of Divesting Stanford's Endowment from Fossil Fuel Companies.[311]
- On May 8, 2020, FFS organizers discussed the impacts of the fossil fuel industry on human rights at a meeting with the Stanford Committee on Investment Responsibility.
- By June 9, 2020, Fossil Free Stanford organized petitions that had accumulated over 1,000 student signatures and over 100 faculty signatures calling on the Board of Trustees to divest.[312]
- On June 10, 2020, the Board of Trustees voted against fossil fuel divestment. The Board determined that the behavior of oil and natural gas companies did not meet the "ethically and abhorrently unjustifiable" standard established by the Stanford Management Company (SMC) in 2018.[313]

Conclusion

The Registry of Charitable Trusts is responsible for ensuring that charitable assets are allocated appropriately and for investigating charitable managers' violations of fiduciary duties. Under Title 2, Division 3, Part 2 of the California Government Code, your office is empowered to supervise charitable trustees and their management of charitable funds. We ask that you investigate the violations described above and that you take action to ensure that the investment activity of the Board of Trustees no longer harms the Stanford community, the State of California, and the public.

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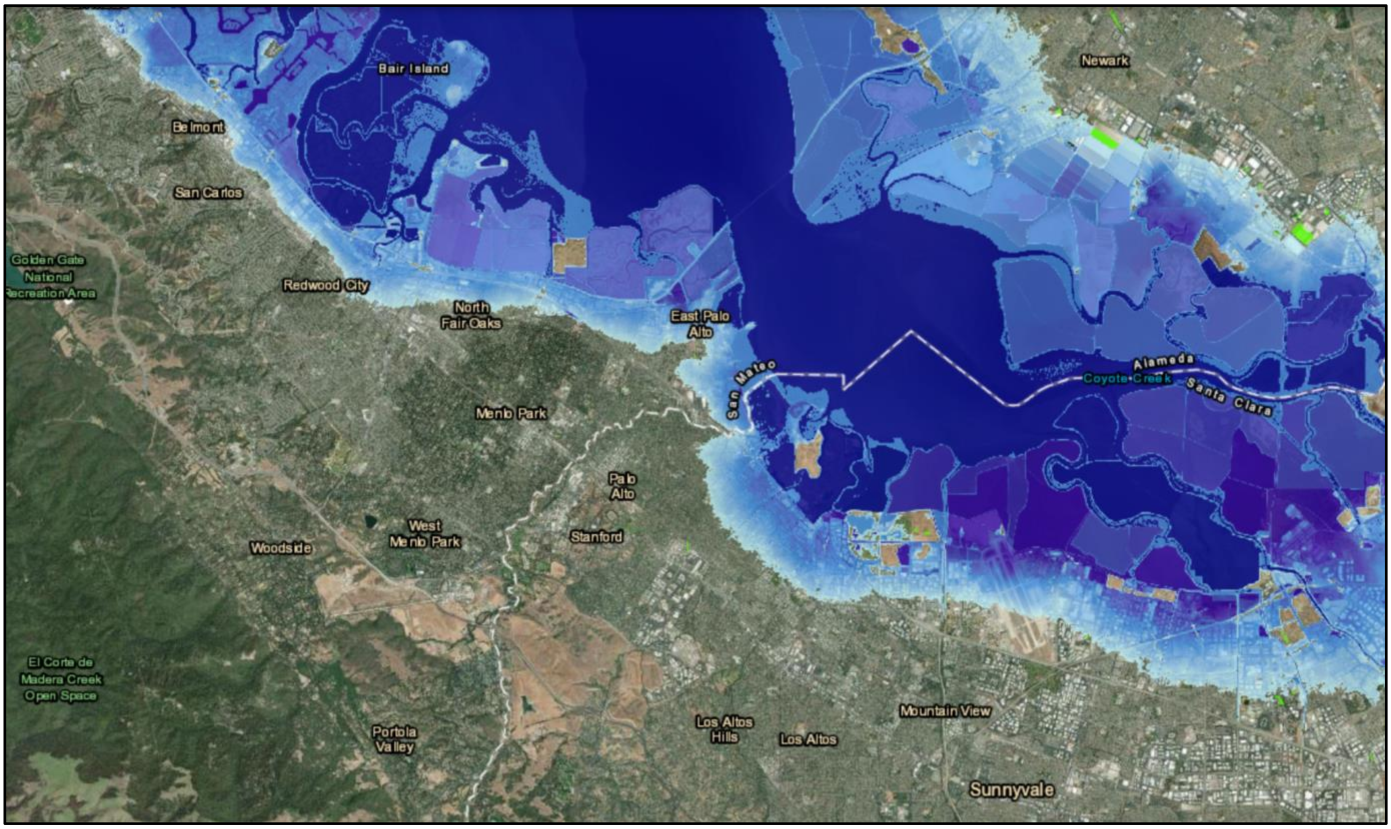
[310] Emma Talley, Senate adds constitutional amendment favoring incumbents to ASSU spring election ballot, The Stanford Daily (Mar. 3, 2020).
[311] Erin Pang, Conflict of Interests: Fossil Fuel Money in Environmental Research at Stanford, Stanford Politics (Jan. 31, 2021).
[312] *See* Summary of Petitions, on file with Fossil Free Stanford (June 11, 2020).
[313] Board of Trustees commits to accelerating transition to net-zero greenhouse gas emissions, reports major reduction in fossil fuel investments, Stanford News (June 12, 2020).

Appendix A



Simulated map of Stanford University and environs with ten feet of sea level rise. Source: [Sea Level Rise Viewer](), NOAA.

Appendix B

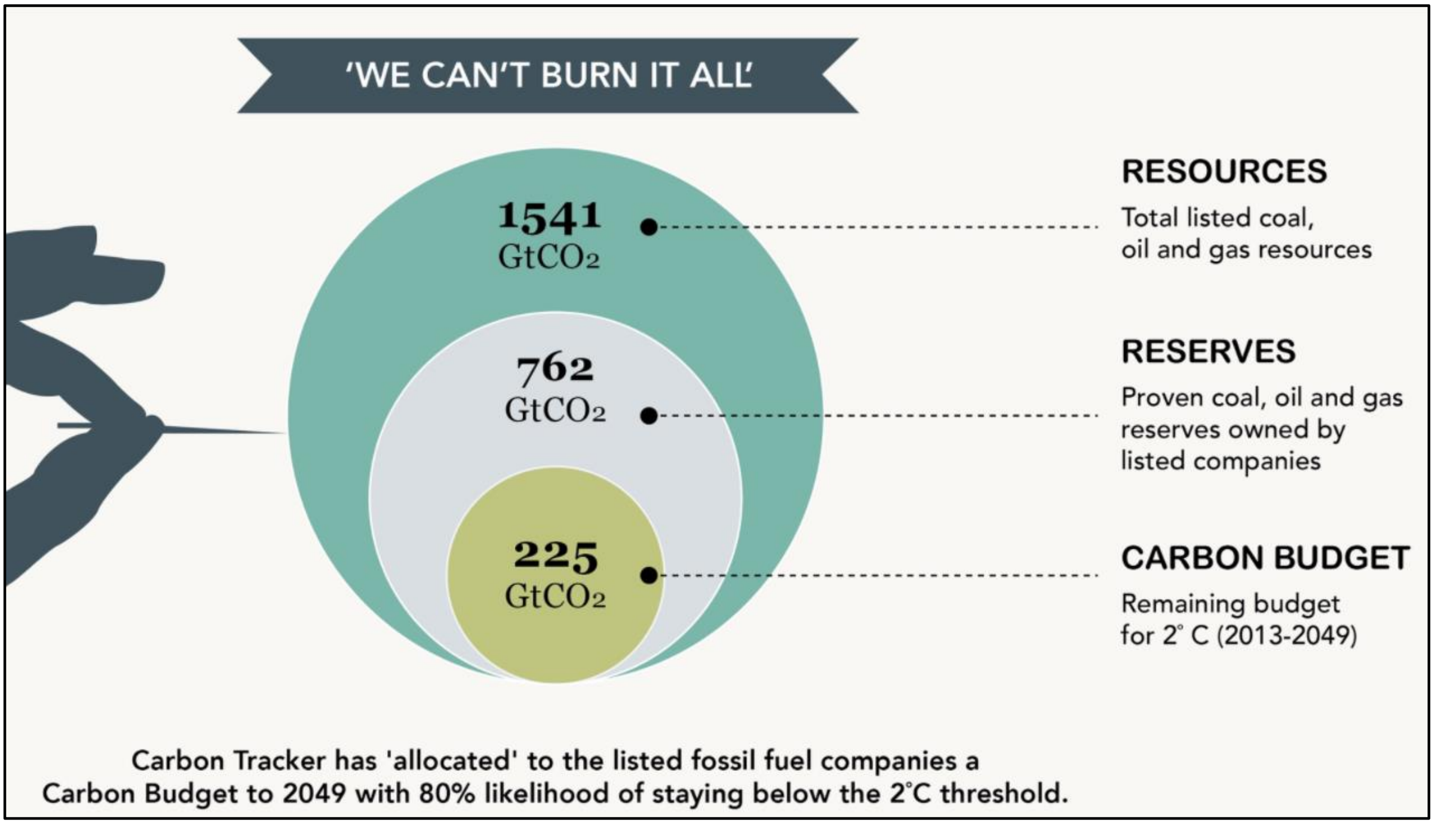


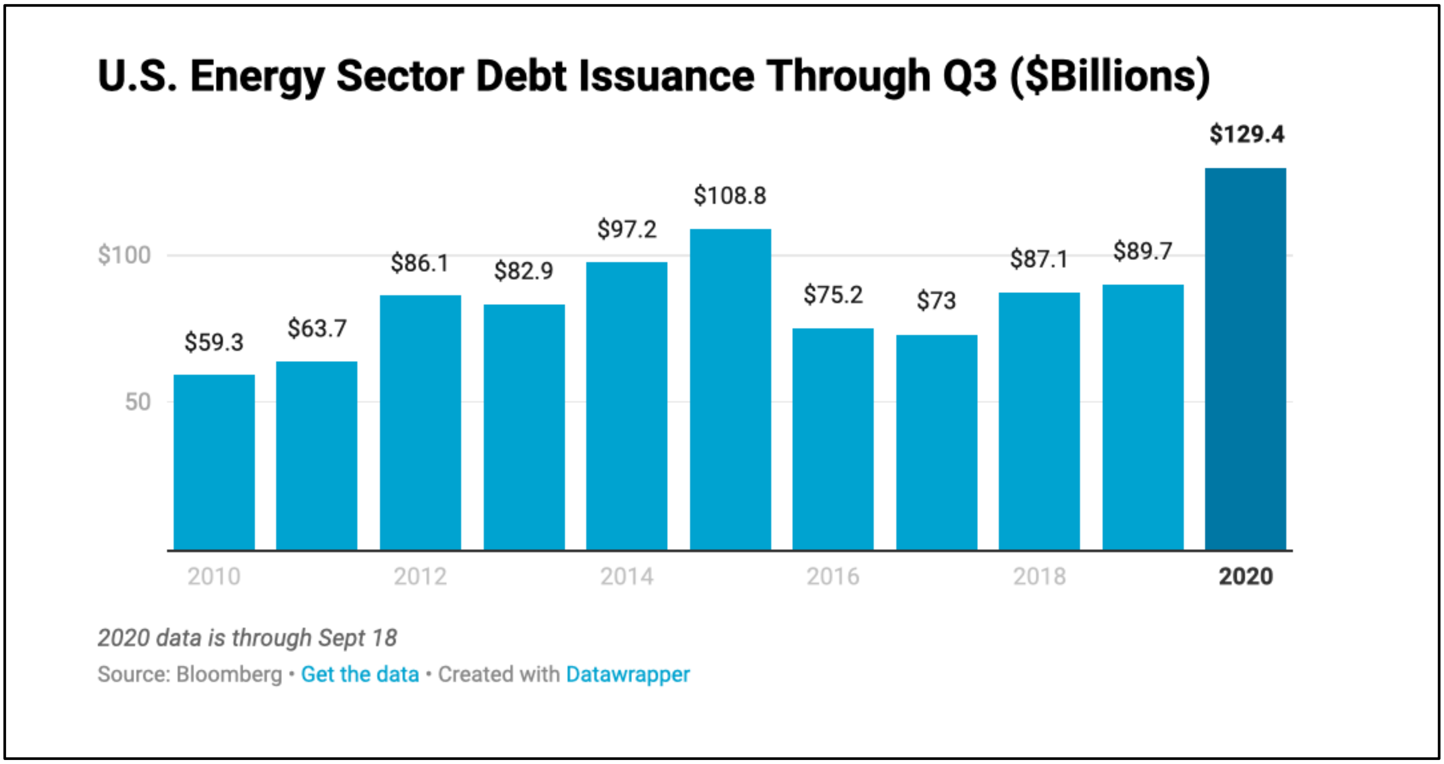
Illustration of carbon bubble, as reprinted in Katharine Earley, Carbon Tracker measures oil and coal risk for investors, The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix C

Comparison of ten-year performance of S&P 500 Energy Index[314] (white) with S&P 500 Index (blue).[315] Created using comparison tool at S&P 500 Dow Jones Indices (as of Jan. 3, 2022).

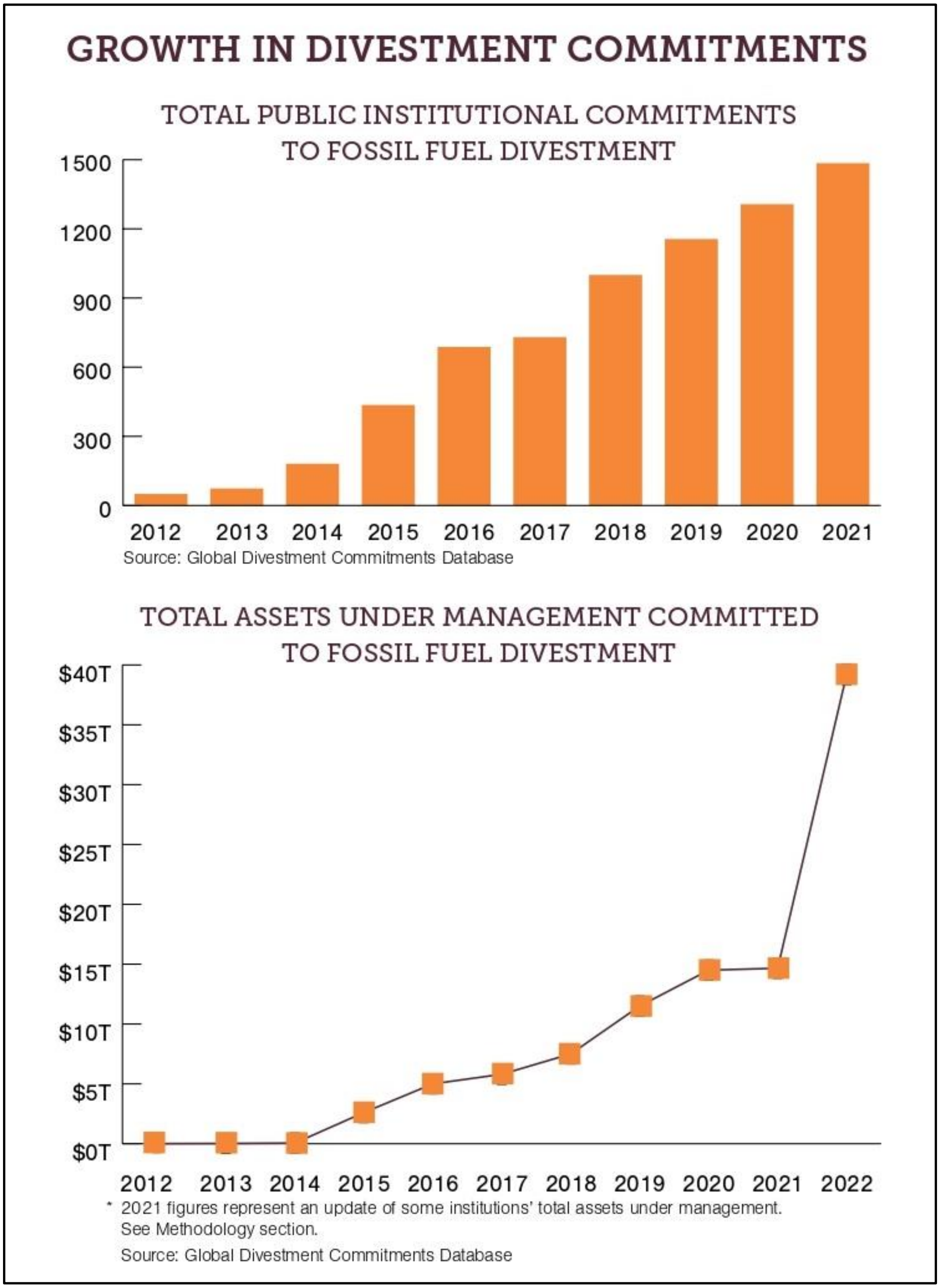
[314] The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.
[315] The energy sector's recovery in late 2020 came in part thanks to a large bailout of corporate debt markets by the federal government. *See* Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke,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

Appendix D



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

Appendix E



Growth in Divestment Commitments. Source: A Decade of Progress Towards a Just Climate Future, Institute for Energy Economics and Financial Analysis, Stand.earth, C40, & Wallace Global Fund (2021).