

Attorney General Herbert Slatery III
The Office of the Attorney General & Public Reporter
c/o Public Interest Division
P.O. Box 20207
Nashville, TN 37202

Dear Attorney General Slatery —

The Vanderbilt Board of Trust (“the Board of Trust”), as fiduciary of a non-profit educational institution, is bound by the laws of Tennessee to promote the well-being of Vanderbilt’s students and community and to further the University’s commitment to educational excellence. Vanderbilt’s mission statement envisions the University as “a center for scholarly research, informed and creative teaching, and service to the community and society at large,” and commits its leaders to “uphold[ing] the highest standards and be a leader in the quest for new knowledge through scholarship, dissemination of knowledge through teaching and outreach, creative experimentation of ideas and concepts.”¹

Under the Tennessee Uniform Prudent Management of Institutional Funds Act, the Board of Trust 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 is problematic, then, that the Board of Trust has invested a portion of the University’s 10.3 billion dollar endowment in the fossil fuel industry — raising a serious question of conflicts of interest involving the Board of Trust’s members, as well as contributing to the myriad harms of 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 of Trust’s investment practices into compliance with its fiduciary obligations.

Tennessee law provides rules that charitable managers and investors must follow in managing institutional funds. As stewards of the Vanderbilt endowment, the Board of Trust is required to act in good faith and with loyalty, taking care that its investments further the purposes of the University. The Board of Trust may not seek profit at any cost nor use its assets to further the financial interests of its members: the privileges that Vanderbilt 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 506 million dollars in fossil fuel stocks, the Board of Trust is in violation of these duties to Vanderbilt and the public.

Vanderbilt’s investments in the fossil fuel industry are colored by the fact that Board of Trust members, including Chancellor Daniel Diermeier, maintain significant financial ties to the industry. Chancellor Diermeier operates multiple private consulting businesses whose clients include Shell, ExxonMobil, BP, and other fossil fuel firms, and he has spoken at an industry conference where he was introduced by his official University role (the University failed to note the appearance on its official channels). Chancellor Diermeier’s questionable business activities have been the subject of recent investigation.² Other members of the Board of Trust, including

¹ [Board of Trust](#), Vanderbilt University (last visited Feb. 15, 2022).

² Emma Whitford, [Vanderbilt Students Press Chancellor’s Ties to Fossil Fuels](#), Inside Higher Ed (Feb. 2, 2022); Kelsey Beyeler, [Vanderbilt Student Group Claims Chancellor Has Oil-Related Conflicts of Interest](#), Nashville Scene

Steven H. Madden, Sr. and Ross Perot, Jr., lead fossil fuel or fossil fuel services corporations. Such connections demand an inquiry into potential conflicts of interest and raise the question of whether the Board's refusal to divest from fossil fuels — an action mandated by the University's charitable purpose and mission — has been affected by these ties.

The values that should guide the Board of Trust's investments are clear. According to the Vanderbilt charter, the University was established as an "institution of learning of the highest order and upon the surest basis where the Youth of the Church and Country may prosecute theological, literary, Scientific and professional studies to an extent as great, and in a manner as thorough as their wants demand."³ University leadership has acknowledged that its mission includes addressing the threat of climate change. University Chancellor Daniel Diermeier has stated that "[c]limate change is one of the world's greatest challenges, and research universities can and must play a unique role in identifying and modeling solutions . . . At Vanderbilt, this means constantly asking ourselves how we can accomplish more—and then serving as a laboratory for innovation to reduce our total carbon footprint."⁴ And yet, despite the demonstrable financial and social benefits of institutional fossil fuel divestment, the Board of Trust 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 Trust has repeatedly refused to apply Vanderbilt's values to its investment activity. From managers of an institution of higher education, this conduct is especially galling. Fossil fuel companies have long engaged in a well-documented campaign to undermine climate science and distort public debate about how to deal with the climate crisis. The industry's spread of scientific misinformation and funding of questionable research

(Jan. 31, 2022); Jessica Barker, Charlotte Mauger, & Rachael Perrotta, [Chancellor Diermeier's ties to fossil fuel industry under review after conflict of interest filing](#), Vanderbilt Hustler (Jan. 31, 2022). On February 9, 2022, the University announced that the Board of Trust Audit Committee had "thoroughly investigated the complaint's allegations and found no evidence of any conflict." However, the announcement failed to address potential conflicts involving other members of the Board of Trust and failed to note whether such potentially conflicted members had been part of the Audit Committee investigation. See [Vanderbilt University statement regarding Board of Trust Audit Committee findings](#), MyVU News (Feb. 9, 2022).

³ [Code of ByLaws of The Vanderbilt University](#), Vanderbilt University Board of Trust at 11 (Apr. 30, 2021).

⁴ [Vanderbilt announces new collaboration to accelerate efforts to address its carbon footprint and tackle climate change](#), Vanderbilt University News (May 24, 2021).

undermines the work of Vanderbilt faculty and students who are designing solutions for a sustainable future and is directly contrary to the University's commitment to "[i]ntellectual freedom that supports open inquiry, equality, compassion and excellence in all endeavors."⁵ 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 Vanderbilt community grapples with what the University's Climate Change Initiative describes as "one of the world's most pressing problems and presents significant risks to human health, ecosystems, communities, critical infrastructure, corporate value, sustainability, and more,"⁶ the Board of Trust channels funds to an industry committed to winning short-term profits at the expense of the public good.

A similar inversion of values underlies the Board of Trust's funding of climate degradation despite its duty to protect Vanderbilt's physical property. Recent catastrophic incidents, including the devastating 2021 Waverly and Nashville floods — the latter of which caused the death of a Vanderbilt employee — are likely to recur in coming years as the risk of climate change-induced precipitation events increases. In addition to the duties owed towards its surrounding community as a public charity and as the largest private employer in the Nashville region, the Board of Trust is also obligated to protect University property from harm; yet facilities such as the LASIR research center lie in floodplains at severe risk of future inundation. Rather than doing its best to prevent such injuries, the Board of Trust is contributing to the causes of widespread economic damage and personal injury in the region and on campus.

The Board of Trust is bound by an additional legal duty: the requirement to manage Vanderbilt's assets with prudence. Prudent investment practice cannot be squared with the ownership of fossil fuel assets. Investment in the oil, gas, and coal sectors has become excessively risky thanks to increased government regulation and the fossil fuel industry's own failure to diversify its operations and 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 Trust continues to invest in the fossil fuel sector.

The Board of Trust cannot plead ignorance of its duty to divest. For years, Vanderbilt students and faculty have pushed for investment practices that align with the University's mission. Matthew Wright, the Vice Chancellor of Investments, acknowledged in 2012 that "[i]f we expect our students to take responsibility for their actions, we can hold our investments to the

⁵ [Board of Trust](#), Vanderbilt University (last visited Feb. 15, 2022).

⁶ [Climate Change](#), Vanderbilt Climate Change Initiative (last visited Feb. 15, 2022).

same standard.”⁷ Community pressure led the Board to divest from EMVest, a company accused of land grabbing, in 2013, and in 2012 not to reinvest in HEI Hotels and Resorts, a company charged with unfair labor practices. In 2013, the Vanderbilt Student Government passed a resolution calling for fossil fuel divestment (reiterated unanimously in 2020). Thousands of Vanderbilt community members have signed petitions urging divestment, and repeated rallies, reports, and requests for negotiation have alerted the Board of Trust to its fiduciary responsibility. Nonetheless, the Board has persistently failed to engage students, faculty, and staff on the issue.

It is too late for the Board of Trust to deny the relation between its investments and climate change. Its obligations under Tennessee 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 Title 48, Chapter 51, § 701 and Title 35, Chapter 13 of the Tennessee Code, your office may investigate violations of Tennessee’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:

Community Leaders

Sen. Timothy Wirth, *former US Senator, State of Colorado; President Emeritus, The United Nations Foundation*

Bevis Longstreth, JD, *former Commissioner, US Securities and Exchange Commission; former Adjunct Professor, Columbia Law School*

Dr. Noam Chomsky, *Institute Professor Emeritus, Massachusetts Institute of Technology; Laureate Professor, University of Arizona*

Bill McKibben, *Schumann Distinguished Scholar, Middlebury College; Co-founder and Senior Advisor, 350.org*

Karenna Gore, JD, *Executive Director, Center for Earth Ethics at Union Theological Seminary*
Gus Speth, JD, *Former Dean, Yale School of the Environment; Co-founder, National Resources Defense Council; Founder, World Resources Institute*

Dr. Joyce Chaplin, *Environmental Historian and James Duncan Phillips Professor of Early American History, Harvard University, former Vanderbilt University Professor*

⁷ E.F. Schumacher, [Office of Investments Agrees to Ethical Investment Guidelines After Activists Organize Donation Strike](#) at 1, *The Occupied Vanderbilt Hustler* (Apr. 23, 2012).

Students of Vanderbilt Does Divest

Miguel Moravec, 2018
Joshua Doh, 2022
Aaditi Lele, 2025
Zahra Biabani, 2021
Allison Yi, 2024
Andrei Olaru, 2023
Andrew Barclay, 2024
Ben Hayden, 2024
Ben Siraphob, 2024
Callie Hilgenhurst, 2024
Celia Waldman, 2024
Charlie Rost, 2024
Connor Mahoney, 2024
Eleazar Rodriguez, 2024

Eli Crenshaw-Smith, 2024
Emily Qian, 2025
Hannah Tate, 2021
Isaiah Maynard, 2024
Julia Tilton, 2024
Michael Chyobotov, 2025
Nathaniel Calhoon, 2025
Ruth Aklilu, 2024
Samantha Wyman, 2023
Samantha Jacobs, 2024
Scott Burns, 2024
Stephanie Cantellano, 2025
William Coburn, 2024

Organizations

American Association of University Professors, Vanderbilt Chapter
Center for Biological Diversity
DivestEd
Divest Princeton
Fossil Free Stanford
Fossil Fuel Divest Harvard
Interfaith Power and Light
MIT Divest
Mothers Out Front
Students Promoting Environmental Awareness & Responsibility (SPEAR), Vanderbilt University
The Sunrise Movement
Yale Endowment Justice Coalition

Climate Science and Policy Community

Dr. James E. Hansen, *Director, Climate Science and Awareness Program, Earth Institute, Columbia University*
Judith Enck, *former Regional Administrator, US Environmental Protection Agency; Senior Fellow and Visiting Faculty Member, Bennington College*
Dr. Peter H. Gleick, *Member US National Academy of Sciences, MacArthur Fellow*
Philip Alston, *John Norton Pomeroy Professor, New York University School of Law*
Dr. Robert Brulle, *Visiting Professor of Environment and Society, Brown University*
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. 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. Daniel Aldana Cohen, *Assistant Professor of Sociology and Director, Socio-Spatial Climate Collaborative, University of California, Berkeley*

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. 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. 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*

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*

Dr. Geoffrey Supran, *Research Associate, Department of the History of Science, Harvard University*

Dr. Olúfemi O. Táíwò, *Assistant Professor of Philosophy, Georgetown University*

Dr. Aradhna Tripathi, *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*

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*

For individual signatories, affiliations are for identification purposes only.

Prepared with assistance from attorneys at Climate Defense Project.

In honor of the contributions of Ruth Aklilu (2001-2022).

Cc:

Daniel Diermeier

Chancellor, Vanderbilt University

Ex Officio Member, Vanderbilt Board of Trust

Member, Vanderbilt Investment Committee

Bruce R. Evans

Chairman, Vanderbilt Board of Trust

Member, Vanderbilt Investment Committee

Jeffrey J. Rothschild

Vice Chairman, Vanderbilt Board of Trust

Nora Wingfield Tyson

Vice Chairman, Vanderbilt Board of Trust

Adolpho A. Birch III

Secretary, Vanderbilt Board of Trust

Anders Halls

*Vice Chancellor for Investments and Chief Investment Officer, Vanderbilt University
CFA, Vanderbilt Office of Investments*

Travis Shore

*Deputy Chief Investment Officer, Vanderbilt University
CFA, Vanderbilt Office of Investments*

Bart Brunk

Chief Operating Officer and Head of the Operations Team, Vanderbilt Office of Investments

Andrea George

Director of the Sustainability and Environmental Management Office

SUPPORTING DOCUMENTATION

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I. The Vanderbilt Board of Trust's violation of Tennessee law

The Vanderbilt Board of Trust (“the Board of Trust”) is a charitable corporation organized under Title 48, Chapter 51 of the Tennessee Code. Its charter, granted in 1873, established The Vanderbilt University as an “institution of learning of the highest order and upon the surest basis where the Youth of the Church and Country may prosecute theological, literary, Scientific and professional studies to an extent as great, and in a manner as thorough as their wants demand.”⁸ The Charter endowed the Board of Trust “with power to solicit and invest funds, appoint an agent or agents, and to do whatever else is necessary for the execution of this scheme.”⁹ According to the University ByLaws, “[t]he general government of The Vanderbilt University is vested in its Board of Trust.”¹⁰ The Investment Committee of the Board of Trust, which includes the Chairman of the Board and the University Chancellor, “shall have authority and direct responsibility, within any policies and subject to any specific instructions of the Board, for the management, investment and custody of the University's endowment assets, and of assets functioning as endowment, and for the investment of the assets of charitable remainder and other trusts where the University is named trustee.”¹¹ The Office of Investments invests the University endowment under the Investment Committee's supervision.¹²

- Continued investment in fossil fuels by the Vanderbilt Board of Trust *violates the fiduciary duties spelled out in the Tennessee Uniform Prudent Management of Institutional Funds Act (TUPMIFA)*.
 - TUPMIFA 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.”¹³ The model UPMIFA drafting committee describes consideration of “charitable purposes” as a “fundamental duty,”¹⁴ and this requirement distinguishes charitable investors like the Vanderbilt Board of Trust from other entities such as pension funds.
 - TUPMIFA further requires that, “[i]n addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”¹⁵
 - TUPMIFA lists several factors that must be considered in managing and investing in 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

⁸ [Code of ByLaws of The Vanderbilt University](#), Vanderbilt University Board of Trust at 11 (Apr. 30, 2021).

⁹ *Id.* at 12.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 8.

¹² [Office of Investments](#), Vanderbilt University (last visited Feb. 15, 2022).

¹³ Tenn. Code Ann. § 35-10-103(a).

¹⁴ National Conference of Commissioners on Uniform State Laws, [Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments](#) at 15 (2006).

¹⁵ Tenn. Code Ann. § 35-10-103(b).

investments . . . [and] an asset's special relationship or special value, if any, to the charitable purposes of the institution.”¹⁶

- Although the directors of charitable institutions may delegate investment authority to an external agent, such delegation does not suspend the duty of each director to act “(1) In good faith; (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) In a manner the director reasonably believes to be in the best interests of the corporation.”¹⁷ When reliance upon the advice of an external agent produces results adverse to the mission of the institution, a director “is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.”¹⁸
- The Vanderbilt Board of Trust 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 Vanderbilt was established distinguishes the Board of Trust 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 Trust's fossil fuel investments are directly contrary to Vanderbilt's mission to be “a center for scholarly research, informed and creative teaching, and service to the community and society at large”¹⁹ and its acknowledgement that “[c]limate change is one of the world's greatest challenges, and research universities can and must play a unique role in identifying and modeling solutions”²⁰ The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene Vanderbilt's value of “[i]ntellectual freedom that supports open inquiry, equality, compassion and excellence in all endeavors”²¹ As such, continued investment in fossil fuel holdings ***violates the Board of Trust's duty to consider an asset's special relationship or special value, if any, to the charitable purposes of the institution.***
- The Board of Trust has ***violated its duty of loyalty*** to the Vanderbilt community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to University property, thus failing to act in the best interests of the institution. Members of the Board of Trust 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 Vanderbilt.
- The Board of Trust 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, and alumni that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus

¹⁶ Tenn. Code Ann. § 35-10-103(e)(1).

¹⁷ Tenn. Code Ann. § 48-58-301(a).

¹⁸ Tenn. Code Ann. § 48-58-301(c).

¹⁹ [Board of Trust](#), Vanderbilt University (last visited Feb. 15, 2022).

²⁰ [Vanderbilt announces new collaboration to accelerate efforts to address its carbon footprint and tackle climate change](#), Vanderbilt University News (May 24, 2021).

²¹ [Board of Trust](#), Vanderbilt University (last visited Feb. 15, 2022).

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

- The Board of Trust 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 Trust'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."²²
- 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."²³
 - The report identifies four categories of risk to the value of fossil fuel assets: 1) impact risk (the risk of loss due to the physical effects of global warming, such as sea level rise and wildfires); 2) carbon asset risk (the risk that fossil fuel reserves will never be exploited and remain unprofitable); 3) transition risk (the risk that regulation and the growth of renewable energy will render fossil fuel products too expensive for or unappealing to consumers); and 4) litigation risk (the risk of financial penalties from lawsuits and other legal actions, such as the Massachusetts Attorney General's action against ExxonMobil).
 - As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that "[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest

²² Bevis Longstreth, [Outline of Possible Interpretative Release by States' Attorneys General Under The Uniform Prudent Management of Institutional Funds Act](#) (Jan. 26, 2016).

²³ [Trillion Dollar Transformation](#), Center for International Environmental Law at 1-2 (Dec. 2016).

or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings.”²⁴

- The public benefit purpose of non-profits like Vanderbilt 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.”²⁵
- 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.*”²⁶
- Vanderbilt’s fossil fuel holdings are estimated at 506 million dollars.²⁷

II. Vanderbilt’s social and environmental commitments

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

- The University’s original charter states that that Vanderbilt was founded as an “institution of learning of the highest order and upon the surest basis where the Youth of the Church and Country may prosecute theological, literary, Scientific and professional studies to an extent as great, and in a manner as thorough as their wants demand.”²⁸
- Vanderbilt’s official mission statement reads: “Vanderbilt University is a center for scholarly research, informed and creative teaching, and service to the community and society at large. Vanderbilt will uphold the highest standards and be a leader in the quest for new knowledge through scholarship, dissemination of knowledge through teaching and outreach, creative experimentation of ideas and concepts. In pursuit of these goals, Vanderbilt values most highly: Intellectual freedom that supports open inquiry, equality, compassion and excellence in all endeavors.”²⁹
- According to the University website, Vanderbilt’s mission likewise “lies in the quest to bring out the best in humanity—pushing new ideas into the frontiers of discovery,

²⁴ *Id.* at 5-7, 12-17, 19.

²⁵ Restatement of the Law for Charitable Nonprofit Organizations, § 2.02, cmt. (2021) (emphasis added).

²⁶ *Id.* at § 2.04 (“Management, Investment, and Expenditure of a Charity’s Assets), cmt. (emphasis added).

²⁷ See Appendix F.

²⁸ [Code of ByLaws of The Vanderbilt University](#) at 11.

²⁹ [Board of Trust](#), Vanderbilt University (last visited Feb. 15, 2022).

challenging the limits of what's possible and working diligently in the service of others.”³⁰

- Many of the University's constituent schools tout commitments to social welfare, public health, and environmental well-being.
 - The Vanderbilt School of Medicine, for example, states on its website that its vision “is to shape a future in which all persons reach their full health potential. The core values of Vanderbilt University School of Medicine are integrity, inclusion, humility, equity, mutual respect, and excellence. The mission of Vanderbilt University School of Medicine is to catalyze the advancement of impactful discovery, servant leadership, and lifelong learning.”³¹
 - The Vanderbilt Divinity School acknowledges that a part of its mission is to encourage “active participation in the struggles of individuals and groups for a healthier, more just, more humane, and more ecologically wholesome world. It has special concern for the oppressed, for prisoners, for the poor, for victims of warfare and militarism, for the effects of environmental destruction, and for the securing of equal opportunity for all individuals, peoples, and creatures.”³²
- The Board of Trust and related entities have acknowledged the University's commitment to social responsibility:
 - According to the Vanderbilt Student Center for Social Justice and Identity, a core part of the University's mission is “to foster a community dedicated to critical dialogue and inclusive engagement that works collaboratively to create change. We will accomplish this by empowering Vanderbilt student leaders to be social actors who have a sense of their own agency as well as a sense of social responsibility toward and with others, their society, the environment, and the broader world in which we live.”³³
 - University Chancellor Daniel Diermeier has acknowledged the social obligations of the University, stating that “[m]any in our community face hardships of inequity, injustice, marginalization and stigma, and we must not be afraid to recognize and address these issues.”³⁴
 - In the words of Chancellor Daniel Diermeier, “Universities such as ours exist because of an unshakable belief in human potential. We must do whatever it takes to create an environment in which all members of our community can thrive and contribute to their full potential.”³⁵
- The Vanderbilt Board of Trust has explicitly recognized the connections between its educational mission and fighting the climate crisis.
 - The “Sustainability” section of the Vanderbilt website states: “In 2019, the university set a goal to power its campus entirely through renewable energy and

³⁰ [About](#), Vanderbilt University (last visited Feb. 15, 2022).

³¹ [About the School](#), Vanderbilt School of Medicine (last visited Feb. 15, 2022).

³² [Vanderbilt Divinity School](#) (last visited Feb. 15, 2022).

³³ [Social Justice and Identity Vision](#), Vanderbilt University Student Center for Social Justice and Identity (last visited Feb. 15, 2022) (internal quotation omitted).

³⁴ “[Vanderbilt communities tackle tough social issues in ‘This Moment in America’ Discussion](#),” MyVU News (Feb. 26, 2021).

³⁵ [You Can Be You at VU](#), Vanderbilt University: Work at Vanderbilt (last visited Feb. 15, 2022).

achieve carbon neutrality by 2050. Several large efforts are already underway to make significant strides toward this goal. While the university continues to push action and innovations on several fronts, it has identified a near-term opportunity to work with [the nonprofit organization] Climate Vault and use the cap-and-trade market—which is designed to limit harmful emissions—to accelerate its impact, allowing it to become the first member of the Association of American Universities to achieve carbon neutrality . . . *The sustainability efforts also align with the university’s core missions of teaching, research and discovery through the Academic Strategic Plan.*”³⁶

- In announcing Vanderbilt’s carbon neutrality goal, University Chancellor Daniel Diermeier stated that “Climate change is one of the world’s greatest challenges, and research universities can and must play a unique role in identifying and modeling solutions . . . At Vanderbilt, this means constantly asking ourselves how we can accomplish more—and then serving as a laboratory for innovation to reduce our total carbon footprint.”³⁷
- The Vanderbilt Board of Trust has joined the Race to Zero—Universities and Colleges coalition, and by doing so, pledges to reduce half of its greenhouse gasses by 2030 in addition to reaching carbon neutrality by 2050.
 - In announcing the initiative, University Chancellor Daniel Diermeier stated that “Vanderbilt has a longstanding commitment to advancing sustainability on our campus and in our region, and to developing scalable, global solutions to climate change . . . In joining the Race to Zero coalition, we are excited to unite with our peer institutions in the shared mission of higher education to create a better future for our world.”³⁸
 - Vanderbilt also does not acknowledge emissions from its investments, which the EPA defines as a Scope 3 emission, in its carbon neutrality commitments.³⁹ In Vanderbilt’s annual sustainability report, Scope 3 emissions were defined only as “faculty, staff, and student commuting, air travel, waste disposal, and recycling,” without the mention of investments.⁴⁰
- The website of the Vanderbilt Climate Change Initiative states that “[c]limate change is one of the world’s most pressing problems and presents significant risks to human health, ecosystems, communities, critical infrastructure, corporate value, sustainability, and more . . . mitigating (reducing or eliminating) greenhouse gas emissions is critical.”⁴¹

³⁶ [Sustainability: Our Goal](#), Vanderbilt University (last visited Feb. 15, 2022) (emphasis added).

³⁷ [Vanderbilt announces new collaboration to accelerate efforts to address its carbon footprint and tackle climate change](#), Vanderbilt University News (May 24, 2021).

³⁸ [Vanderbilt University signs on to U.N.-backed Race to Zero campaign](#), Vanderbilt University News (Nov. 8, 2021).

³⁹ [Scope 3 Inventory Guidance](#), EPA Center for Corporate Climate Leadership (last visited Feb. 15, 2022).

⁴⁰ [Annual Sustainability Report \(FY 2019-2020\)](#), Vanderbilt University (2020).

⁴¹ [Climate Change](#), Vanderbilt Climate Change Initiative (last visited Feb. 15, 2022).

- The Board of Trust recognizes its duty to align these institutional values with Vanderbilt's financial holdings.
 - In 2012, in response to student pressure, the University announced new ethical investment guidelines to present the University's ownership of assets in problematic companies. Matthew Wright, the Vice Chancellor of Investments, stated in 2012 that "[i]f we expect our students to take responsibility for their actions, we can hold our investments to the same standard."⁴²
 - In response to the new ethical investment guidelines, then-University Chancellor Nicholas Zeppos stated: "We certainly hope that this is just the first step in creating democratic governance of university resources... I will personally submit a proposal at our next board of trust meeting establishing a review committee composed of students, faculty, and staff to review our investments and enforce our new ethical guidelines"⁴³
- The Vanderbilt Board of Trust has recognized that divestment is at times necessary to satisfy its legal obligation to invest in ways consistent with its charitable purposes.
 - In 2013, in response to student pressure, the Vanderbilt Board of Trust started to withdraw its twenty-six million dollar investment in EMVest, a company accused of land grabbing.⁴⁴
 - In 2012, Matthew Wright, the outgoing Investment officer at Vanderbilt, stated in a written statement that Vanderbilt would not reinvest in HEI Hotels and Resorts. This private equity company was charged with unfair labor practices, and the Vanderbilt Board of Trust initially divested from HEI in response to student pressure.⁴⁵

III. Vanderbilt's ties to the fossil fuel industry and conflicts of interest

Vanderbilt Board of Trust members, including Chancellor Daniel Diermeier, maintain significant professional or financial ties to the fossil fuel industry. These apparent conflicts of interest violate the Board of Trust's *duty of loyalty* because fossil fuel companies' business models are in fundamental tension with Vanderbilt's espoused values and commitment to decarbonization. Chancellor Daniel Diermeier, as the ex officio leader of both the Board and the University, has a special *duty of loyalty* to lead the university in compliance with its mission and stated environmental commitments. However, Diermeier has been investigated for potential conflicts of interest regarding his consulting services with several fossil fuel companies.⁴⁶ Diermier has

⁴² E.F. Schumacher, [Office of Investments Agrees to Ethical Investment Guidelines After Activists Organize Donation Strike](#), The Occupied Vanderbilt Hustler at 1 (Apr. 23, 2012).

⁴³ *Id.* at 2.

⁴⁴ [Vanderbilt University Divests from "Land Grab" in Africa](#), Oakland Institute (Feb. 13, 2013).

⁴⁵ *Id.*

⁴⁶ Emma Whitford, [Vanderbilt Students Press Chancellor's Ties to Fossil Fuels](#), Inside Higher Ed (Feb. 2, 2022); Kelsey Beyeler, [Vanderbilt Student Group Claims Chancellor Has Oil-Related Conflicts of Interest](#), Nashville Scene (Jan. 31, 2022); Jessica Barker et. al., [Chancellor Diermeier's ties to fossil fuel industry under review after conflict of interest filing](#), Vanderbilt Hustler (Jan. 31, 2022). On February 9, 2022, the University announced that the Board of Trust Audit Committee had "thoroughly investigated the complaint's allegations and found no evidence of any conflict." The announcement did not address potential conflicts involving other members of the Board of Trust and failed to note whether such potentially conflicted members had been part of the Audit Committee investigation. [Vanderbilt University statement regarding Board of Trust Audit Committee findings](#), MyVU News (Feb. 9, 2022).

registered nine businesses to his apparent residential address, some of which advertise themselves as reputation management services with fossil fuel company clients.⁴⁷

- As of January 1, 2022, Chancellor Diermeier’s official Vanderbilt curriculum vitae includes the following clients for outside work “in the areas of crisis management, business and politics, reputation management, political, and regulatory risk and integrated strategy:” Shell, ExxonMobil, BP, Enbridge, CMS Energy Company, FMC Technologies (oil and gas exploration), McDermott (oil and gas infrastructure), Nicor (natural gas infrastructure), and People’s Energy (natural gas utility).⁴⁸
- On August 12, 2020 On August 12, 2020, Diermeier registered “Novo Aurelius LLC” to his apparent residential address.⁴⁹ “Novo Aurelius” is Latin for “New Front Cover.” Diermeier, who is fluent in Latin, is listed as the principal officer and the only employee.
- On August 13, 2020 the International Pipeline Conference Foundation announced that registration had opened for its virtual 2020 conference.⁵⁰
 - The official conference sponsors included Enbridge Pipelines, TC Energy Natural Gas Company, Petrosleeve Pipeline Repair, and five additional fossil fuel service companies.⁵¹
 - Corporate conference registrants included ExxonMobil, PG&E, Marathon Petroleum, and approximately fifteen other fossil fuel companies.⁵² Corporate registration rates are listed as between 6,198 dollars and 39,500 dollars per company.⁵³
 - On September 30, 2020, Chancellor Diermeier delivered scheduled remarks as part of the “International Pipeline Conference Executive Leadership Panel” along with executives from ROSEN Group Oil Industry Company and TC Energy Natural Gas Company to conclude the Conference.⁵⁴ The panel addressed the theme of “managing perceptions.”
 - Diermeier was introduced as “Chancellor, Vanderbilt University.” Unlike with other official university appearances, Vanderbilt University did not acknowledge the Chancellor’s participation in the event on its official channels.
- On March 16, 2021, eight LLCs were simultaneously re-registered from Illinois to Tennessee at the Chancellor’s apparent residential address, including Diermeier Consulting LLC.⁵⁵ According to SourceWatch, Diermeier Consulting LLC clients include BP, Shell Oil, People’s Energy, and Exelon (an energy company).⁵⁶
- In an April 23, 2021 interview with the Vanderbilt Hustler, Diermeier reiterated his position against fossil fuel divestment, stating “We’re going to adopt a stance of

⁴⁷ [Diermeier Consulting](#), SourceWatch (last visited Feb. 4, 2022).

⁴⁸ “[Outside Activities, Advisory](#),” Daniel Diermeier Curriculum Vitae (2019).

⁴⁹ [Business Entity Detail: NOVO AURELIUS LLC](#), Tennessee Secretary of State (Aug. 12, 2020).

⁵⁰ [Aug. 13, 2020 "Group corp..."](#), IPC 2020 Calgary (@IPC_Calgary), Twitter.com (last visited Feb. 4, 2022).

⁵¹ [Sponsors Exhibit](#), IPC (Sept. 2020).

⁵² [Register](#), IPC (Aug. 2020).

⁵³ [Corporate Commitment Form](#), IPC (Aug. 2020).

⁵⁴ [Sept. 24, 2020 "We have..."](#), IPC 2020 Calgary (@IPC_Calgary), Twitter.com (last visited Feb. 11, 2022); [Event: 2020 Executive Leadership Panel](#), IPC (Sept. 2020).

⁵⁵ [Business Entity Detail: Diermeier Consulting LLC](#), Tennessee Secretary of State (filed Mar. 16, 2021).

⁵⁶ [Diermeier Consulting](#), SourceWatch (last visited Feb. 4, 2022).

principled neutrality.”⁵⁷ Diermeier did not disclose his relationships with fossil fuel companies during this or three other published interviews on the topic.

- On March 1, 2021, a Twitter account run by the Independent Petroleum Association of America tweeted its support for the Chancellor’s ClimateVault program. The tweet acknowledged the program “as opposed to #divestment.”⁵⁸

Several additional members of the Vanderbilt Board of Trust maintain or have recently maintained financial ties to the fossil fuel industry.

- Steven H. Madden, Sr., first elected to the board in 2016,⁵⁹ is the chair and CEO of the following companies in the energy industry:⁶⁰
 - WeldFit Energy Group, a global manufacturer of standard and custom products for the pipeline, oilfield, refining, and petrochemical industries.⁶¹
 - Ashburn Chemical Technologies, a provider of fluid solutions to manufacturers in the oil and gas industry that produces equipment including drilling tools, drill pipe, wellheads, pumps, seals, valves, flanges.⁶²
 - Dan-Loc Group, which manufactures and supplies threaded products, gaskets and seals, and precision machined components used in the global oil and gas industry.⁶³
- Ross Perot, Jr., an emeritus trustee, was first elected to the Vanderbilt Board of Trust in 2010,⁶⁴ and became an emeritus member of the Board in 2020.⁶⁵ Perot is founder of HKN Energy Ltd.⁶⁶ and Hillwood Energy,⁶⁷ and is the chair of The Perot Companies.⁶⁸
 - HKN Energy Ltd. is a privately held energy company with oil exploration and discovery efforts in Kurdistan.⁶⁹
 - Hillwood Energy is a large residential, industrial, and commercial real estate company that has a history of investing in a Russian oil field.⁷⁰
 - The Perot Companies is the asset management company of the Perot family companies which include significant investments in the oil and gas industry.⁷¹
- Suzanne Perot McGee, first elected to the Board in 2019,⁷² is on the Board of Directors of Petrus Management Holding Company and the Perot Foundation. She is the daughter of emeritus Board member Ross Perot Jr.; By immediate familiar association with Ross

⁵⁷ Jonathan Liu, [Debrief with Diermeier: Close of the 2020-21 school year, vaccine protocols, the VSG election and more](#), Vanderbilt Hustler (Apr. 25, 2021).

⁵⁸ [June 1, 2020 "NEWS: Vanderbilt..."](#), DivestmentFacts (@DivestmentFacts), Twitter (last visited Feb. 4, 2022).

⁵⁹ [Steven H. Madden Sr.](#), Vanderbilt University Board of Trust (last visited Feb. 4, 2022).

⁶⁰ *Id.*

⁶¹ [We’re Making Pipelines More Productive](#), WeldFit (last visited Feb. 4, 2022).

⁶² [Go Beyond](#), Ashburn Chemical Technologies (last visited Feb. 4, 2022).

⁶³ [About Us](#), Dan-Loc Group (last visited Feb. 4, 2022).

⁶⁴ [Vanderbilt establishes Nicholas S. Zeppos Scholarship with \\$8 million gift](#), Vanderbilt University (May 22, 2020).

⁶⁵ [Vanderbilt Board of Trust names four new members](#), Vanderbilt University (Apr. 22, 2020).

⁶⁶ [Who We Are](#), HKN Energy (last visited Feb. 4, 2022).

⁶⁷ *Id.*

⁶⁸ [The Perot Companies](#), World Economic Forum (last visited Feb. 4, 2022).

⁶⁹ [Who We Are](#), HKN Energy (last visited Feb. 4, 2022).

⁷⁰ *Id.*

⁷¹ [The Perot Companies](#), *supra* at note 68.

⁷² [Suzanne Perot McGee](#), Vanderbilt University Board of Trust (last visited Feb. 4, 2022).

Perot Jr., Suzanne may also have conflicts of interest with HKN Energy Ltd. and Hillwood Energy, and The Perot Companies.

According to Vanderbilt's own policy, a "[c]onflict of [i]nterest refers to a situation in which an individual's financial, professional, or other personal considerations may directly or indirectly affect, or have the appearance of affecting, an individual's professional judgment in exercising any University duty or responsibility... in ways that could lead to financial, professional, or personal gain or advantage of any kind, whether or not the value is readily ascertainable."⁷³ By participating in fossil fuel divestment-related decision-making without disclosing active ties to the fossil fuel industry, the Chancellor and other members of the Board have created the appearance of conflicts of interest that should be investigated and publicly disclosed.

IV. The scientific reality and risks of climate change

The current and future effects of climate change jeopardize the physical integrity of Vanderbilt's campus and the safety of its students, faculty, and staff, undermining the Vanderbilt Board of Trust's *charitable purposes*. By investing in companies disproportionately responsible for the climate crisis, the Vanderbilt Board of Trust exposes the Vanderbilt community, the city of Nashville, and society at large to severe injury, thus failing to act in the best interests of the institution 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.⁷⁴
- 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 2010.⁷⁵ 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."⁷⁶
- There is a near-linear relationship between the cumulative amount of carbon dioxide emitted and the amount of global warming it causes.⁷⁷ Every one-half degree Celsius of

⁷³ [Conflict of Interest and Commitment Policy](#) at 1, Vanderbilt University (Apr. 20, 2017).

⁷⁴ 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).

⁷⁵ 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.

⁷⁶ [New report shows just 100 companies are source of over 70% of emissions](#), Carbon Disclosure Project (July 2017).

⁷⁷ IPCC, [Summary for Policymakers](#), *supra* at note 74, at 37.

global warming results in discernible increases in intensity and frequency of temperature extremes, heavy precipitation and agricultural, hydrological and ecological droughts in some regions.⁷⁸

- As a result of warming, climate change is already affecting every inhabited region across the globe, with human carbon emissions contributing to many observed changes in weather and climate extremes including increased heavy precipitation, tropical cyclones, and extreme heat.⁷⁹
- 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.”⁸⁰ The USGCRP report concluded that, as a result of climate change, “annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states.”⁸¹
- Continued global warming is projected to further intensify the global water cycle, including the severity of wet and dry events.⁸² Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level.⁸³
- Global warming will exceed two degrees Celsius by the end of this century unless drastic reductions in carbon dioxide and other greenhouse gas emissions occur in the coming decades.⁸⁴ To limit warming, cumulative carbon dioxide emissions must reach net zero, along with strong reductions in other greenhouse gasses.⁸⁵
- 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.⁸⁶
- Climate change is raising the odds of dangerous severe weather outbreaks across the South and Mid-South. Risk to these regions is gradually increasing compared to the

⁷⁸ *Id.* at 19.

⁷⁹ *Id.* at 10.

⁸⁰ [Fourth National Climate Assessment, Volume II](#), U.S. Global Change Research Program at 25 (2018).

⁸¹ *Id.* at 26.

⁸² *Id.* at 25.

⁸³ *Id.* at 28.

⁸⁴ *Id.*

⁸⁵ *Id.* at 36.

⁸⁶ Rebecca Lindsey, [Climate Change: Global Sea Level](#), Climate.gov (Jan. 25, 2021).

Plains states.⁸⁷ A new study shows that as temperatures increase, so do key ingredients for severe weather outbreaks.⁸⁸

- According to the Environmental Protection Agency, climate change effects in Tennessee will include: increased flooding, especially from extreme weather events; increased droughts and challenges to water availability for navigation and hydroelectric power; disruptions in ecosystems and wildlife populations; and increased adverse outcomes for human health, including heat stroke, dehydration, and increased incidence of respiratory diseases such as asthma.⁸⁹
 - The EPA report finds that heavy precipitation events have increased by twenty-seven percent in the Southeast since 1958, and that increasingly heavy rainstorms and increasingly frequent droughts are likely to continue in Tennessee.⁹⁰
 - Climate change will continue to cause severe problems in Nashville, where Vanderbilt is located, with more severe impacts expected under high-emissions scenarios. While many projections of harm extend only to 2100, Vanderbilt — as a nearly 150-year old institution — must also consider more-dramatic harms that will extend beyond this date.
 - According to the City of Nashville Sustainability Advisory Committee Report, the City of Nashville is at imminent risk of climate-related damages, which will adversely affect human and environmental health in Davidson County.⁹¹ The City is exploring various measures to keep global warming below two degrees Celsius so as to mitigate these challenges.
 - The report estimates that between 2025 and 2035, the City will face “myriad” climate risks, including increased frequency of intense storms, tornadoes, flooding, and extreme heat days, and forecasts that economic and social disruptions related to climate change events in the United States and other parts of the world will adversely affect the City.⁹²
 - The report makes an explicit goal for the City to contribute to limiting global warming to two degrees Celsius as part of its membership commitments to the Global Covenant of Mayors for Climate and Energy and to protect the City,⁹³ a goal at odds with fossil fuel producers’ plans for continued exploitation of reserves.

⁸⁷ Michael Tippet, Chiara Lepore, & Joel Cohen, [More tornadoes in the most extreme U.S. tornado outbreaks](#), 354 (6318) Science 1419 (2016).

⁸⁸ Chiara Lepore, Ryan Abernathy, Naomi Henderson, John T. Allen, & Michael K. Tippet, [Future Global Convective Environments in CMIP6 Models](#), Earth’s Future (2021).

⁸⁹ [What Climate Change Means for Tennessee](#), US E.P.A. (Aug. 2016).

⁹⁰ *Id.*

⁹¹ Linda Breggin, Eric Kopstain, *et. al.*, [Mayor Cooper’s Sustainability Advisory Committee Report 2021](#), Nashville.gov (Apr. 2021). The report is chaired by Vanderbilt Professor Linda Breggin and Vice Chancellor Eric Kopstain. See [Kopstain, Breggin to co-chair Mayor’s Sustainability Advisory Committee](#), Vanderbilt University (last visited Jan. 18, 2022). The report cites Vanderbilt Professors Jonathan Gilligan and Micahel Vandenburgh as national climate experts and advisors to the committee’s findings. The Committee membership also includes the following Vanderbilt professors and employees: Janey Camp, Andrea George, Erin Hafkenschiel, Daniel Joranko, Geoff MacDonald, and David ter Kuile. See [Sustainability Advisory Committee Members](#), Metro Nashville (last visited Jan. 18, 2022).

⁹² *Id.* at 4.

⁹³ [Nashville, TN is taking action on climate change](#), Global Covenant of Mayors for Climate and Energy (Jan. 14, 2021).

- The report suggests that, to best enact the City’s climate action plan, local philanthropies and private foundations should reduce greenhouse gas emissions and risks by directing their investments to renewable utilities, green bonds, and philanthropic initiatives, even at the expense of immediate returns.
 - The report states that foundations can “make program-related investments in pursuit of their own charitable missions rather than to generate income,” in support of the climate action plan.⁹⁴
 - The report elaborates on this point, stating, “[Middle Tennessee Foundations] also could consider accepting concessionary (below market) returns for investments that have clear greenhouse gas reducing potential but are not yet market competitive.”⁹⁵ However, to be clear, fossil fuel divestment does not lead to lower returns.⁹⁶
- According to a Nashville Climate Adaptation and Sustainability Report submitted to NashvilleNext, the general planning group for the Metropolitan Government of Nashville and Davidson County, Nashville has already experienced climate-related damages and can expect more in the future.⁹⁷
 - In May of 2010, a thirty-six-hour historic rainfall event caused massive flooding across the Cumberland River basin, inundating much of downtown Nashville. The event, which was exacerbated by climate change, claimed twenty-six lives.⁹⁸
 - Total rainfall exceeded seventeen inches, setting the all-time high record in the 140 years of local recorded history, and more than doubling the previous two-day rainfall record set in 1979.⁹⁹
 - Reports estimate that total damage to private property surpassed two billion dollars, with 2,733 businesses and 14,499 works impacted.¹⁰⁰ Hundreds of Nashville businesses never reopened.¹⁰¹
 - 12,903 Individual Assistance Projects were authorized to help rebuild after the flood event.¹⁰²
 - The report projects additional changes to Middle Tennessee, including the introduction of diseases, changes in basic nutrient cycles and crop pollination, decreased forest biodiversity, and altered air and water temperatures.¹⁰³

⁹⁴ Linda Breggin, Eric Kopstain, *et. al.*, [Mayor Cooper’s Sustainability Advisory Committee Report 2021](#), *supra* at note 91.

⁹⁵ *Id.* at 12.

⁹⁶ *See infra* at Parts IX, X.

⁹⁷ Dodd Galbreath & Tom McCormick, [Adaptation and Sustainability](#), Nashville.gov (Mar. 2013).

⁹⁸ *Id.* at 5. See Appendix A-1 for a map of the total damage to Nashville surrounding Vanderbilt’s campus.

⁹⁹ *Id.* at 5.

¹⁰⁰ *Id.* at 5.

¹⁰¹ Karen Grigsby, [20 things to know about the 2010 Nashville flood](#), The Tennessean (May 3, 2016).

¹⁰² Galbreath & McCormick, [Adaptation and Sustainability](#), *supra* at note 97.

¹⁰³ *Id.* at 5.

- According to the Tennessee Emergency Management Agency, massive damages from a March 2021 flash flood event caused federal major disaster relief to be authorized for Nashville-Davidson and twenty-two other Tennessee counties.¹⁰⁴
 - On March 27 and March 28, between seven and nine inches of rainfall blanketed Nashville and Middle Tennessee in twenty-four hours, causing seven fatalities and disrupting power to 15,000 customers.¹⁰⁵
 - The March floods, when combined with the subsequent August Waverly flood event, made 2021 the deadliest year in recorded history for Tennessee flood fatalities. Of the twenty-eight total flood fatalities in Tennessee this year, twenty-seven occurred in Middle Tennessee near Nashville,¹⁰⁶ and one of the deceased was a Vanderbilt employee.¹⁰⁷

V. 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 Tennessee residents, including those in the Vanderbilt community, violating the Vanderbilt Board of Trust's duties to *consider the charitable purposes* of Vanderbilt 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.¹⁰⁸ In general, those who have contributed the least to the climate crisis by virtue of their economic position stand to suffer the most from dislocation and natural disasters caused by increased warming.
 - Climate change exacerbates racial inequality by focusing health and economic injuries on people of color, who tend to have fewer economic resources to adjust to rising temperature and tend to receive less government assistance to deal with emergencies.¹⁰⁹
 - 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

¹⁰⁴ [March Flooding Brings Tennessee a 2nd Federal Disaster Declaration in 2021](#), Tennessee Emergency Management Agency (May 10, 2021).

¹⁰⁵ *Id.*

¹⁰⁶ Davis Nolan, [2021 sees more flood deaths in Tennessee since records began](#), WKRN (Sept. 17, 2021).

¹⁰⁷ Mike Christen, [Maury County woman dies after being swept through culvert flood water](#), Columbia Daily Herald (Mar. 31, 2021).

¹⁰⁸ [The Geography of Climate Justice](#), Mary Robinson Foundation (last visited Feb. 10, 2021).

¹⁰⁹ 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).

prospects in sectors such as agriculture and tourism as the climate crisis accelerates.¹¹⁰

- The spread of fossil fuel infrastructure has had a particularly harmful effect on Indigenous peoples, whose communities are often invaded and polluted by private companies working in concert with state actors. According to the United Nations Department of Economic and Social Affairs, “[c]limate change exacerbates the difficulties already faced by indigenous communities including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.”¹¹¹
- 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.¹¹²
- According to a recent study, 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.¹¹³
- In a 2018 paper, Vanderbilt faculty Brooke Acklerly, Jonathan Gilligan, and Steven Goodbred cite the human rights implications of climate change, quoting from Kyung-wha Kang, the UN Deputy High Commissioner for Human Rights: “Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people. . . . [U]ltimately, climate change may affect the very right to life.”¹¹⁴
- The Tennessee Department of Public Health predicts that state residents will suffer increased exposure to Lyme disease, respiratory illnesses, cardiovascular disease, water-related infections, and mental health stresses, among other impacts, as a result of rising global temperatures.¹¹⁵
- Tennessee businesses and residents, including Vanderbilt’s own staff and property, are already being impacted by climate change, particularly by flooding. These events are costly: the third National Climate Assessment finds that damage from inland floods costs more than damage from any other severe weather event.¹¹⁶
 - In March 2021, a Vanderbilt employee and six others were killed by flash flooding in Tennessee.¹¹⁷ This included Maria Melton, forty-five years old, who was the Director of Service Learning and Measurement at Vanderbilt University Medical Center. Melton died attempting to prevent damage to her home by

¹¹⁰ 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).

¹¹¹ United Nations Department of Economic and Social Affairs — Indigenous Peoples, [Climate Change](#) (2020).

¹¹² 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).

¹¹³ Karn Vohra, Alina Vodonos, Joel Schwartz, Eloise A. Marais, Melissa P. Sulprizio, & Loretta Mickley, [Global mortality from outdoor fine particle pollution generated by fossil fuel combustion](#), 195 *Env’tl Res.* 110754 (2021).

¹¹⁴ Brooke Acklerly, Mujibul Anam, Jonathan Gilligan, & Steven Goodbred, [Climate and community: the human rights, livelihood, and migration impacts of climate change](#) at 2 (2018).

¹¹⁵ [Climate Change and Public Health](#), Tennessee Department of Health (last visited Feb. 14, 2022).

¹¹⁶ [Inland Flooding](#), US Climate Resilience Toolkit (Mar. 25, 2020).

¹¹⁷ Mike Christen, [Maury County woman dies after being swept through culvert by flood water](#), *Tennessean* (Mar. 31, 2021).

- clearing a property drain. She ultimately was swept through a calvert by fast flowing water.¹¹⁸
- In August 2021, flooding in the city of Waverly decimated local infrastructure, claimed lives, and directly and adversely impacted the well-being of Vanderbilt students and faculty. Streets turned into rivers as they were inundated with up to seventeen inches of rain in less than twenty-four hours. Homes and businesses were destroyed, twenty-one people were killed, and more were missing.¹¹⁹
 - The Waverly floods were the second major flooding event in Tennessee last year.¹²⁰ “The amount of rain falling during the heaviest storms increased by almost a third in the Southeast U.S. between 1958 and 2016, according to the most recent National Climate Assessment.”¹²¹
 - Vanderbilt Professor Samar Ali, who maintains a home in Waverly, experienced flooding to the second story of her house. She described the event as “one of the scariest moments of my life.”¹²² Vanderbilt Junior Jacob Smith, a native of Waverly, also described how major damage “wrecked” his home town and necessitated a massive clean-up and relief effort.¹²³
 - “A lot of that housing there was lower income, and it is a sad fact that those with the least resources often find themselves most vulnerable to these hazards,” Waverly resident Patrick Sheehan told The Associated Press.¹²⁴
 - Hydrologists estimate that, using historical models, Waverly-level flooding has only a 1-in-1000 probability of occurrence.¹²⁵ However, as Vanderbilt Professor Janey Camp states in an article on Vanderbilt’s website linking flooding disasters to climate change, the fact that “a warmer atmosphere that holds more water... is turning once-rare disasters into common occurrences.”¹²⁶
 - In Tennessee, there are 137,079 residential (1-4 unit) properties at substantial flood risk, which are expected to incur a collective loss of 436.8 million dollars this year.¹²⁷ Over the next thirty years, an additional 1,915 properties in

¹¹⁸ [Vanderbilt employee killed in flood water](#), WKRN (Apr. 1, 2021).

¹¹⁹ Nell Clark, [This is The Devastation The Deadly Flooding Wrought In Tennessee](#), NPR (Aug. 23, 2021).

¹²⁰ Rachel Treisman, [At Least 4 Dead, 130 Rescued As Nashville Sees Worst Flooding In Over A Decade](#), NPR (Mar. 28, 2021).

¹²¹ Rebecca Hersher, [The Floods In Tennessee Aren't Freak Accidents. They're A New Reality](#), NPR (Aug. 23, 2021). See also Carter, L., et al., *Southeast*, In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II (Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart, eds.) 743–808, U.S. Global Change Research Program (2018).

¹²² Alexa Sullivan & Matthew Shipley, [‘One of the scariest moments of my life’: Waverly, TN flood affects Vanderbilt community](#), Vanderbilt Hustler (Sept. 11, 2021).

¹²³ *Id.*

¹²⁴ Jonathan Mattise & Travis Loller, [Flooded Tennessee town wrestles with how, where to rebuild](#), AP News (Oct. 1, 2021).

¹²⁵ Sarah Kaplan, [Tennessee floods show a pressing climate danger across America: ‘Walls of water’](#), The Washington Post (Aug. 23, 2021).

¹²⁶ [Tennessee flash floods are an example of climate change impacts to come](#), Vanderbilt University (Sept. 15, 2021).

¹²⁷ [The Cost of Climate: America’s Growing Flood Risk](#), First Street Foundation (2021).

Tennessee are expected to experience financial loss from flood damage.¹²⁸ For properties currently at risk of financial loss, First Street Foundation projects the average expected annual loss per property to be 3,186 dollars in 2021.¹²⁹

- As the largest private employer in the Nashville region and the second-largest private employer based in Tennessee, Vanderbilt has a special duty to consider how its investments impact the property and business of its neighbors and the well-being of its 33,200 academic and medical employees.¹³⁰
- Nashville incurred a 21.63 million dollar loss as a result of flooding in 2021, which is projected to increase to 22.4 million dollars by 2050.¹³¹
- Vanderbilt is not immune to these losses. The university owns over three million square feet of property in the Hillsboro and Midtown neighborhoods of Nashville.¹³² A particularly at-risk property is Vanderbilt's LASIR research center, which is located in the Cumberland River flood plain.¹³³
 - The Vanderbilt Laboratory for Systems Integrity and Reliability (LASIR) is a 20,000 square-foot facility featuring at least eight million dollars' worth of high-value equipment, including an CH-53A Super Stallion heavy-lift helicopter experimental airframe, an Army-style Humvee and associated electro-hydraulic vehicle simulator, and a 550-square-foot wind turbine test chamber.¹³⁴
 - According to FEMA, the LASIR Center resides in a 500-year floodplain protected by a levee.¹³⁵
 - The floodplain and levee in which LASIR resides were only narrowly spared inundation during the 2010 Nashville flood. Had Old Hickory Dam been overtopped — as it was inches away from doing, according to a U.S. Army Corps of Engineers After Action Report¹³⁶ — four additional feet of water would have cleared the Cumberland levee and flooded the North Metrocenter area where LASIR is located.¹³⁷
- Damage to state and public infrastructure, such as public transportation and electric utilities, is expected as a result of increased temperatures, affecting the areas where Vanderbilt owns property and causing the effects of climate change to be borne by the general public. “An extreme weather vulnerability assessment conducted by the Tennessee Department of Transportation found that the urban areas of Memphis and Nashville had the most at-risk transportation infrastructure in the state,” researchers of the Fourth National Climate Assessment wrote.¹³⁸

¹²⁸ *Id.* at 102.

¹²⁹ *Id.*

¹³⁰ Vanderbilt reports record \$11.9 billion economic impact in Tennessee, Vanderbilt University News (Dec. 12, 2019).

¹³¹ First Street Foundation, [The Cost of Climate: America's Growing Flood Risk](#) at 102 (Feb. 2021).

¹³² [Vanderbilt University Real Estate](#), Vanderbilt University (last visited Feb. 14, 2022).

¹³³ See Appendices A-2 and A-3 for LASIR property flood mapping.

¹³⁴ [Military helicopter creates spectacle at massive new engineering lab](#), Vanderbilt University (Mar. 31, 2014).

¹³⁵ See Appendix A-3.

¹³⁶ [After Action Report: May 2010 Flood Event Cumberland River, US Army Corps of Engineers](#) at v (Nov. 2010).

¹³⁷ Brad Schrade & Anne Paine, [Corps Struggled with Dams, Forecasts](#), Tennessean (May 9, 2010).

¹³⁸ Tennessee Department of Transportation, [Assessing the Vulnerability of Tennessee Transportation Asserts to Extreme Weather](#) (May 28, 2015).

- 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.”¹³⁹ 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.¹⁴⁰

VI. 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 directly contravene Vanderbilt’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.”¹⁴¹
 - Coal industry publications suggested as early as 1966 that the release of fossil fuels could cause “vast changes in the climates of the earth.”¹⁴² 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.¹⁴³
 - 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.”¹⁴⁴
 - Shell internally reached similar conclusions by at least the 1980s,¹⁴⁵ as did Mobil (then separate from Exxon).¹⁴⁶ By the 1980s, major fossil fuel companies had

¹³⁹ Intergovernmental Platform on Biodiversity and Ecosystem Services, [IPBES Workshop on Biodiversity and Pandemics: Workshop Report](#) (Oct. 29, 2020).

¹⁴⁰ 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).

¹⁴¹ 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).

¹⁴² Elan Young, [Exxon knew -- and so did coal](#), *Grist* (Nov. 29, 2019).

¹⁴³ Oliver Milman, [Oil industry knew of ‘serious’ climate concerns more than 45 years ago](#), *The Guardian* (Apr. 13, 2016).

¹⁴⁴ Shannon Hall, [Exxon Knew about Climate Change almost 40 years ago](#), *Sci. Am.* (Oct. 26, 2015).

¹⁴⁵ John H. Cushman Jr., [Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show](#), *Inside Climate News* (Apr. 5, 2018).

¹⁴⁶ Nicholas Kusnetz, [Exxon Turns to Academia to Try to Discredit Harvard Research](#), *Inside Climate News* (Oct. 20, 2020).

“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.”¹⁴⁷

- A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all industrial global greenhouse gas emissions since 1988 “can be traced to just 100 fossil fuel producers.”¹⁴⁸
- 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.¹⁴⁹ That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.¹⁵⁰
 - 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 2020.¹⁵¹ 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.”¹⁵²
 - The most recent assessment by shareholder advocacy group Climate Action 100+ found that no oil and gas companies have fully committed to long-term alignment with the goals of the Paris Agreement.¹⁵³ A 2021 study from the University of Sussex found that fossil fuel executives’ compensation packages are structured as to incentivize violation of the Paris Agreement.¹⁵⁴
- 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.¹⁵⁵ As recently as November 2020, BP was buying up Canadian offshore oil parcels.¹⁵⁶
 - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.¹⁵⁷ The 2018 investment plan by ExxonMobil, one of the world’s largest oil companies, predicted that the firm’s expanded oil and gas

¹⁴⁷ Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 141, at 15.

¹⁴⁸ [New report shows just 100 companies are source of over 70% of emissions](#), Carbon Disclosure Project (Jul. 2017).

¹⁴⁹ [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).

¹⁵⁰ Ron Bousso, [Big Oil spent 1 percent on green energy in 2018](#), Reuters (Nov. 11, 2018).

¹⁵¹ Anjali Raval, [Big fossil fuel groups all failing climate goals, study shows](#), Financial Times (Oct. 6, 2020).

¹⁵² [Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans](#), Oil Change International (Sept. 2020).

¹⁵³ [Oil and Gas](#), Climate Action 100+ (2020).

¹⁵⁴ Jonathan Watts, [Oil firm bosses’ pay ‘incentivises them to undermine climate action’](#), The Guardian (Apr. 15, 2021).

¹⁵⁵ 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 . . .”).

¹⁵⁶ Julianne Geiger, [From Billions To Millions: Canada’s Offshore Oil Disappointment](#), OilPrice.com (Nov. 5, 2020).

¹⁵⁷ 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).

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.¹⁵⁸ The fine print of Exxon’s “emissions reduction” plans to date actually allows for an increase in oil and gas spending and an increase in overall emissions.¹⁵⁹

- Several leading executives from Shell’s renewable energy sectors recently quit in response to the company’s lackluster efforts to decarbonize.¹⁶⁰ The company’s former chair has called divestment the “rational approach” given the industry’s “distressing” lack of progress on climate.¹⁶¹ Although Shell claims to possess emissions reduction goals, the company has itself disclosed that “Shell’s operating plans and budgets do not reflect Shell’s Net-Zero Emissions target.”¹⁶² The company remains actively engaged in litigation in the Netherlands in which it argues that those commitments should not be legally binding.¹⁶³ In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.¹⁶⁴
- Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.¹⁶⁵ In September 2021, Chevron’s CEO stated in an interview that the company has no plans to meaningfully invest in renewables, and that Chevron would instead encourage investors to plant trees if concerned about climate risk.¹⁶⁶
- The American Petroleum Institute (API) recently asserted that the oil industry remains essential to the American economy and promised to resist President Biden’s climate agenda.¹⁶⁷ At an October 2021 congressional hearing, executives from Exxon, BP, Chevron, and Shell were asked if they would pledge to terminate their API membership if the organization continues to lobby for policies that run counter to these companies’ own purported commitments on climate. All witnesses refused to do so.¹⁶⁸

¹⁵⁸ Crowley & Rathi, *supra* at note 157. ExxonMobil’s growth strategy has since changed in light of the Covid-19 pandemic.

¹⁵⁹ Miranda Green & Siri Chilukuri, [The dark secrets behind big oil’s climate pledges](#), The Guardian (Nov. 4, 2021).

¹⁶⁰ Anjali Raval & Leslie Hook, [Shell Executives Quit Amid Discord Over Green Push](#), Financial Times (Dec. 8, 2020).

¹⁶¹ Damian Carrington, [Fossil fuel divestment is rational, says former Shell chair\[man\]](#), The Guardian (Jun. 4, 2015).

¹⁶² Shell, [Shell accelerates drive for net-zero emissions with customer-first strategy](#), (Feb. 11, 2021).

¹⁶³ Jillian Ambrose, [Oil giant Shell set to appeal against ruling on carbon emissions](#), The Guardian (Jul. 20, 2021).

¹⁶⁴ Jillian Ambrose, [Shell to expand gas business despite pledge to speed up net zero carbon drive](#), The Guardian (Feb. 11, 2021).

¹⁶⁵ Carolyn Davis, [Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities](#), Natural Gas Intelligence (Dec. 3, 2020).

¹⁶⁶ Molly Taft, [Chevron CEO: ‘Let Them Plant Trees,’](#) Gizmodo (Sept. 17, 2021).

¹⁶⁷ Nicholas Kusnetz, [American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy](#), Inside Climate News (Jan. 14, 2021).

¹⁶⁸ House Oversight Committee, [At Historic Hearing, Fossil Fuel Executives Admit Climate Crisis Is an “Urgent” Threat](#) (Oct. 28, 2021).

- Given the commitment of the fossil fuel industry to increased emissions, their business practices are 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.”¹⁶⁹
 - In another recent report, the United Nations Environment Programme and partners concluded that fossil fuel producers’ current plans wholly contradict the aims of the Paris Agreement and IPCC report, with governments currently allowing nearly twice as much fossil fuel production as is compliant with a 1.5 degree Celsius limit.¹⁷⁰
 - Christiana Figueres, who was the lead architect of the Paris Agreement and head of the United Nations Framework Convention on Climate Change, has warned that given these misalignments, a university which remains invested in fossil fuels is “at the point of breaching its true fiduciary responsibility.”¹⁷¹
- Shareholder engagement alone 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.¹⁷²
 - A 2021 analysis of academic literature from the University of Cambridge concluded that “[b]y any threshold one could devise as to the efficacy of a tactic for action on climate change and other social and environmental issues, it would be difficult to deem shareholder engagement a success” in the context of fossil fuel companies.¹⁷³
 - Data from 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.¹⁷⁴
 - 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.¹⁷⁵
 - A number of large-scale institutional investors have initially attempted to change the industry’s business models via engagement alone, and have subsequently

¹⁶⁹ International Energy Agency, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#) at 21 (July 2021).

¹⁷⁰ Stockholm Environment Institute et. al., [The Production Gap Report](#) (2021).

¹⁷¹ Fossil Fuel Divest Harvard, [Christina Figueres on Divestment](#), Facebook (Apr. 23, 2021).

¹⁷² See, e.g., Tom Sanzillo, [Months after tumultuous ExxonMobil annual meeting, no substantial change expected, IEEFA](#) (Aug. 6, 2021) (noting that, even in the wake of the largest shareholder rebellion in industry history, Exxon has shown no signs of altering its core business model).

¹⁷³ Ellen Quigley, Emily Bugden, & Anthony Odgers, [Divestment: Advantages and Disadvantages for the University of Cambridge](#) (2021).

¹⁷⁴ Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, [Fossil fuel companies and climate change: the case for divestment](#), 350 Brit. Med. J. (June 2015).

¹⁷⁵ 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 151.

turned to divestment after realizing that an engagement-only strategy is ineffective and insufficient to manage climate risk.¹⁷⁶

- The fossil fuel sector continues to undermine climate-friendly policymaking.
 - In the three years following the Paris Agreement, the five largest public fossil fuel companies “invested over \$1 [billion] of shareholder funds on misleading climate-related branding and lobbying.”¹⁷⁷
 - 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.”¹⁷⁸
 - 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.¹⁷⁹
 - In June 2021, a top Exxon lobbyist was caught in leaked video admitting that the company continues to bet on long-term fossil fuel reliance, has funded scientific misinformation campaigns, and actively undermines policies like a carbon tax and other steps that might encourage an energy transition.¹⁸⁰
 - As a 2013 article by environmental sociologists explained: “[a]lthough many factors have contributed to the failure to enact strong international and national climate change policies... a powerful and sustained effort to deny the reality and significance of human-induced climate change has been a key factor.”¹⁸¹
- 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.¹⁸² 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.¹⁸³
 - The majority of enacted “critical infrastructure” laws contain provisions for organizational as well as individual criminal liability.¹⁸⁴

¹⁷⁶ Anne Barnard, [New York’s \\$226 Billion Pension Fund Is Dropping Fossil Fuel Stocks](#), The New York Times (Dec. 9, 2021).

¹⁷⁷ [Big Oil’s Real Agenda on Climate Change](#), InfluenceMap (Mar. 2019).

¹⁷⁸ 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.*

¹⁷⁹ Amy Harder, [With deep pockets, energy industry notches big midterm wins](#), Axios (Nov. 7, 2018).

¹⁸⁰ Lawrence Carter, [Inside Exxon’s playbook: How America’s biggest oil company continues to oppose action on climate change](#), Unearthed (Jun. 30, 2021).

¹⁸¹ 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).

¹⁸² 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, 2022).

¹⁸³ [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).

¹⁸⁴ 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 182.

- 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.¹⁸⁵
- 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.¹⁸⁶
- There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing climate protest, and the use of heavy-handed tactics to suppress protest against fossil fuel infrastructure projects such as Energy Transfer Partners’ Dakota Access pipeline.
 - In response to protests at the Standing Rock reservation in 2016 and 2017, Energy Transfer Partners hired TigerSwan, a military contractor with experience in Iraq and Afghanistan. In collaboration with local police, TigerSwan used legally questionable tactics against protesters, including digital surveillance.¹⁸⁷ Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.¹⁸⁸
 - 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.¹⁸⁹
 - 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.”¹⁹⁰
 - In 2019, the Canadian pipeline company Enbridge used digital and aerial surveillance, along with embedded informants, against nonviolent protesters targeting the company’s Line 3 pipeline in Minnesota, attempting to follow the same playbook used by law enforcement at Standing Rock.¹⁹¹
- 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,

¹⁸⁵ Nicholas Kusnetz, [More States Crack Down on Pipeline Protesters, Including Supporters Who Aren’t Even on the Scene](#), Inside Climate News (Mar. 28, 2019); Susie Cagle, [‘Protesters as terrorists’: growing number of states turn anti-pipeline activism into a crime](#), The Guardian (Jul. 8, 2019).

¹⁸⁶ 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.

¹⁸⁷ Antonia Juhasz, [Paramilitary security tracked and targeted DAPL opponents as ‘jihadists,’ docs show](#), Grist (Jun. 1, 2017).

¹⁸⁸ Alleen Brown, [Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons](#), The Intercept (Nov. 21, 2016).

¹⁸⁹ Alleen Brown, Will Parrish & Alice Sperr, [Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet](#), The Intercept (Aug. 26, 2017).

¹⁹⁰ *Id.*

¹⁹¹ Will Parrish & Alleen Brown, [How Police Are Preparing for a Standoff Over Enbridge Line 3](#), The Intercept (Jan. 30, 2019).

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.”¹⁹²

VII. 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 of Trust contravenes Vanderbilt’s core *charitable purposes* as an educational institution and violates its *duty of loyalty*. The Board also harms society at large, since misinformation about climate change corrodes democratic discourse and distorts public policy.

- Beginning in the 1980s, and 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 2007 testimony to the U.S. House of Representatives Committee on Science and Technology, Harvard’s Dr. James McCarthy described a network of forty-three organizations funded by ExxonMobil whose goal was to “distort, manipulate and suppress climate science, so as to confuse the American public about the reality and urgency of the global warming problem, and thus forestall a strong policy response.”¹⁹⁵
 - 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.¹⁹⁶
 - Over about the last three decades, “five major U.S. oil companies have spent a total of at least \$3.6 [billion] on advertisements.”¹⁹⁷ These ads, along with other public communications, have promoted narratives the companies know to be

¹⁹² Bill McKibben, [Shake Harvard Free of Oil Stock](#), The Boston Globe (Apr. 7, 2015).

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 *Id.*

¹⁹⁵ Second Amended Complaint, [Massachusetts v. ExxonMobil](#), *supra* at note 225, at ¶195.

¹⁹⁶ 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).

¹⁹⁷ Emily Holden, [How the oil industry has spent billions to control the climate change conversation](#), The Guardian (Jan. 8, 2020).

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.¹⁹⁸

- These activities were summarized in an amicus brief by academics and researchers as part of the ongoing tort litigation by California counties against fossil fuel companies,¹⁹⁹ and by Massachusetts’s complaint against ExxonMobil in its deceptive advertising litigation.²⁰⁰
- 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.”²⁰¹
- Undermining the work of academics and scholars has been a key tactic of the fossil fuel industry, and researchers at a number of institutions, particularly prominent universities, 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.²⁰²
 - Following publication of his famous “hockey stick graph,” climate scientist Michael E. Mann faced years of efforts to discredit him and his work, and “many [of these] attacks . . . trace directly to involvement by the fossil fuel industry.”²⁰³
 - In 2012, Kerry Emanuel, a current MIT professor of atmospheric science who has published research on the connections between climate change and tropical cyclone intensity, received emails containing threats to harm him and his family after his personal email address was revealed by the website Climate Depot.²⁰⁴ Climate Depot is a self-described “special project” of Committee for a Constructive Tomorrow, an organization that previously received over 500,000 dollars in funding from ExxonMobil and several other organizations with connections to various fossil companies as well as Charles Koch.²⁰⁵
 - In 2013, the Harvard Law School Environmental Law Program Policy Initiative released a report suggesting that existing disclosure regulations were insufficient

¹⁹⁸ Geoffrey Supran & Naomi Oreskes, [Assessing ExxonMobil’s climate change communications \(1977–2014\)](#), 12(8) Env’tl. Res. Letters (Aug. 2017).

¹⁹⁹ See Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 141.

²⁰⁰ See Second Amended Complaint, *Massachusetts v. ExxonMobil*, *supra* at note 225, at Part IV.B.

²⁰¹ 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).

²⁰² David Hasemyer & John H. Cushman Jr., [Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty](#), Inside Climate News (Oct. 22, 2015).

²⁰³ Union of Concerned Scientists, [How the Fossil Fuel Industry Harassed Climate Scientist Michael Mann](#) (Oct. 12, 2017).

²⁰⁴ James West, [US climate scientist’s wife suffers email ‘frenzy of hate’](#), The Guardian (Jan. 13, 2012).

²⁰⁵ [Committee for a Constructive Tomorrow \(CFACT\)](#), DeSmog (last visited Jan. 27, 2022).

- to regulate the fracking industry's behavior.²⁰⁶ An industry-funded website accused the study of being “fundamentally and transparently flawed.”²⁰⁷
- In 2015, an industry-funded group sought to win access to the private correspondence of University of Arizona climate scientists in order to cast doubt on their work.²⁰⁸
 - In 2017, Harvard researcher Geoffrey Supran and professor Naomi Oreskes published a peer-reviewed study analyzing ExxonMobil's climate communications.²⁰⁹ Exxon's response included commissioning and paying for a (non-peer-reviewed) academic analysis that accused Supran and Oreskes of bias,²¹⁰ running a Twitter ad calling its conclusions “manufactured,”²¹¹ urging the European Parliament to ignore the study's conclusions,²¹² and suggesting on a website known to take editorial direction from Exxon²¹³ that the study was written for the purpose of “suppressing free speech.”²¹⁴
 - The fossil fuel industry has also sought to legitimize its policy positions by funding research and programs at prominent universities, calling into question the intellectual independence of those activities and the balance of perspectives within the academy.²¹⁵
 - 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.”²¹⁶
 - Vanderbilt's Sponsored Programs Administration, which administers industry-sponsored research funding, publishes very little information about its activities.²¹⁷
 - At least one fossil fuel company has sought to influence the outcome of ongoing litigation by funding academic research, again undermining the institutional integrity of universities.
 - In 1989, the Exxon Valdez oil spill led to a 5.3 billion dollar verdict against the oil giant by an Alaskan jury in *In re Exxon Valdez*. By the 1980s Exxon had

²⁰⁶ [Legal Fractures in Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool](#) (Apr. 23, 2013).

²⁰⁷ John Krohn, [Four Things to Know about the Harvard FracFocus Study](#), Energy in Depth (April 25, 2013).

²⁰⁸ Michael Halpern, [Arizona Superior Court Protects Academic Freedom in Climate Email Disclosure Case](#), Union of Concerned Scientists (Mar. 30, 2015).

²⁰⁹ Geoffrey Supran & Naomi Oreskes, [Assessing ExxonMobil's climate change communications](#), *supra* at note 198.

²¹⁰ Nicholas Kusnetz, [Exxon Turns to Academia to Try to Discredit Harvard Research](#), Inside Climate News (Oct. 20, 2020).

²¹¹ [Just today, @exxonmobil ran Twitter ads](#), Fossil Fuel Divest Harvard (Jun. 16, 2020).

²¹² [ExxonMobil refused to attend a hearing](#), Food & Water Action Europe (Mar. 21, 2019).

²¹³ Hiroko Tabuchi, [How One Firm Drove Influence Campaigns Nationwide for Big Oil](#), The New York Times (Nov. 11, 2020).

²¹⁴ Spencer Walrath, [Activists Admit Climate Campaign Is About Attacking Free Speech](#), Energy In Depth (Aug. 22, 2017).

²¹⁵ See Benjamin Franta & Geoffrey Supran, [The fossil fuel industry's invisible colonization of academia](#), The Guardian (Mar. 13, 2017).

²¹⁶ Wen Stephenson, [Other Universities Are Divesting From Fossil Fuels—but Harvard Is Doubling Down on Them](#), The Nation (May 4, 2016).

²¹⁷ [Vanderbilt Sponsored Programs](#), Sponsored Programs Administration (last visited Feb. 15, 2022).

embraced an aggressive form of philanthropy known as “venture philanthropy,”²¹⁸ 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”²¹⁹

- The upshot of the research was that juries’ punitive damage awards in cases that involve “normative judgments” are “arbitrary,” “unpredictable,” “erratic,” and “incoherent,” and ought to be replaced with a schedule-based system of fines.²²⁰ One professor called for the total abolishment of punitive damages.²²¹
- 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.”²²² The same study found that courts cited industry-funded studies more often.²²³

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 Vanderbilt Board of Trust has persisted in buying industry securities, violating its *duty of care*.

²¹⁸ 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.*

²¹⁹ 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.

²²⁰ 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.

²²¹ McGarity, *supra* at note 220, 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)).

²²² McGarity, *supra* at note 220, 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.*

²²³ *Id.* at 56.

- 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 2015,²²⁴ and a matter of common knowledge for investors in Massachusetts since at least 2019.
 - 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.”²²⁵
 - 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.²²⁶
 - 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.²²⁷
 - The Attorney General concluded that ExxonMobil’s value will fall precipitously in coming years, thanks in large part to an expected transition to renewable energy that will make the companies’ oil and gas reserves valueless: “When those reserves cease to have future value, other things being equal, ExxonMobil securities are likely to decline in value as well, perhaps dramatically, much as the market value of coal companies has collapsed in recent years as the deployment of cleaner, more efficient fuel sources has reduced expected future coal demand.”²²⁸
 - 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]

²²⁴ 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).

²²⁵ Second Amended Complaint, Massachusetts v. ExxonMobil, No. 1984-CV-03333-BLS1(Mass. Sup. Ct. June 5, 2020) at 1.

²²⁶ *Id.* at 5.

²²⁷ *Id.* at 9, 50-51.

²²⁸ *Id.* at 8.

- business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors.”²²⁹
- The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the Vanderbilt Board of Trust 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.”²³⁰
 - 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.”²³¹
 - 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.”²³²
 - 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.”²³³
 - Also in September 2020, Hoboken became the first New Jersey City to sue fossil fuel companies for climate change damages. Hoboken “seeks to recover the cumulative cost of hundreds of millions of dollars to compensate the city for past, current and future costs associated with climate change adaptation, remediation, and economic losses.” Hoboken alleges violations of the New Jersey Consumer Fraud Act and claims for negligence and common law remedies “to prevent and abate hazards to public health, safety, welfare and the environment.”²³⁴
 - 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 — fraudulently inflating the company’s worth to investors by as much as fifty-six billion dollars.²³⁵

²²⁹ *Id.* at 65, 80-81.

²³⁰ *Id.* at 138.

²³¹ Complaint, Connecticut v. ExxonMobil, No. HHDCV206132568S (Conn.. Super. Ct. Spe. 14, 2020) at 1.

²³² *Id.*

²³³ *Id.* at 2.

²³⁴ [Hoboken becomes first NJ city to sue Big Oil companies, American Petroleum Institute for climate change damages](#), Hoboken City Hall (Sept. 2, 2020).

²³⁵ Nick Cunningham, [Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years](#), Desmog Blog (Feb. 2, 2021).

- 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.²³⁶ 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.²³⁷
- In June 2021, an Exxon lobbyist admitted that ExxonMobil was engaged in a concerted effort to block climate change and deceive the public.²³⁸ 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.²³⁹
- 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.²⁴⁰

IX. The financial prudence of fossil fuel divestment

Despite the frequent claim that removing a sector 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 returns, nor does it impact portfolio diversity and flexibility. The Vanderbilt Board of Trust 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.

- Fossil fuels have been among the worst performing investments in the last decade.
 - In the public equity context, whereas the S&P 500 has gained approximately 73.76 percent in value at a 14.25 percent annual growth rate in the past ten years, the S&P Oil and Gas Exploration and Production Index has lost approximately 97.14 percent of its value, contracting at a -7.01 percent annual decline. In the

²³⁶ [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).

²³⁷ Nick Cunningham, [Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years](#), Desmog Blog (Feb. 2, 2021).

²³⁸ Hiroko Tabuchi, [In Video, Exxon Lobbyist Describes Efforts to Undercut Climate Action](#), The New York Times (Jun. 30, 2021).

²³⁹ Timothy Gardner, [U.S. House panel to probe oil companies over climate disinformation](#), Reuters (Sept. 16, 2021).

²⁴⁰ Dana Drugman, [Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk](#), The Climate Docket (Jan. 29, 2020).

- same time period, the S&P Oil and Gas Equipment Select Industry Index lost 83.59 percent of its value at an annual loss of -16.82 percent.²⁴¹
- In the private equity context, the median internal rate of return for oil and gas funds has been about five percentage points lower than those of comparable buyout firms.²⁴²
 - Divestment from fossil fuels does not threaten the profitability nor diversification of investment portfolios 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 been shown to match or outperform portfolios containing fossil fuel investments.
 - In March 2021– in comprehensive research undertaken at the request of New York City's comptroller – BlackRock, the world's largest asset manager, and Meketa Investments Group separately found that divesting portfolios either match or outperform non-divesting portfolios, concluding that divestment does not have negative financial impacts.²⁴³ Some of the core findings include:
 - All divestment actions, ranging from coal divestment to full fossil fuel divestment, by hundreds of funds worldwide passed the prudence tests required of fiduciaries and have proven to be financially sound.²⁴⁴
 - Forward-looking analysis shows that fossil fuel stocks are exposed to significant regulatory, technological and market risks, which may continue the trend of underperformance.²⁴⁵
 - A report by The Sightline Institute and the Institute for Energy Economics and Financial Analysis notes that “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.”²⁴⁶
 - 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.²⁴⁷
 - A comprehensive 2020 study on university endowments' performance found that divestment does not have a negative effect on investment returns.²⁴⁸

²⁴¹ Data from [S&P Dow Jones Indices](#), S&P Global (retrieved Jan. 4, 2022).

²⁴² Rachel Adams-Herd, [Private Equity Can't Escape the Pain of Shale Country's Collapse](#), Bloomberg (Apr. 1, 2020).

²⁴³ Tom Sanzillo, [Major investment advisors BlackRock and Meketa provide a fiduciary path through the energy transition](#), Institute for Energy Economics and Financial Analysis (Mar. 22, 2021).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Tom Sanzillo, *et. al.*, [The Financial Case for Fossil Fuel Divestment](#), Institute for Energy Economics and Financial Analysis (July 2018).

²⁴⁷ *Id.* at 38.

²⁴⁸ Christopher Ryan & Christopher Mariscano, [Examining the Impact of Divestment from Fossil Fuels on University Endowments](#), 17 NYU J. L. and Business, Roger Williams Univ. L. Studies Paper No. 195 (June 23, 2020).

- Another 2020 study 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.²⁴⁹
- A 2018 London School of Economics analysis led by Jeremy Grantham 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.”²⁵⁰
- A 2019 study of university endowments that adopt “socially responsible investment” (SRI) policies concluded that such policies benefit the universities. Surveying SRI endowment returns from 2010 to 2019, the study reported that “donations are 33.3% per year higher among universities that incorporate SRI policies into their endowments” and that “SRI policies predict greater university donations, higher student enrollment, and more extensive risk management practices by the endowment fund.”²⁵¹ A 2021 study found statistically significant evidence that divestment materially improves a college or university’s status among peers in rankings, due to factors such as the reputational benefit.²⁵²
- 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.²⁵³

X. The financial risk of fossil fuel investments

As an asset manager, the Vanderbilt Board of Trust 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 whose mission “lies in the quest to bring out the best in humanity” and “working diligently in the service of others,”²⁵⁴ Vanderbilt 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.

²⁴⁹ Auke Plantinga & Bert Scholtens, [The financial impact of fossil fuel divestment](#), 21 Climate Policy 1 (2020).

²⁵⁰ Jeremy Grantham, [The mythical peril of divesting from fossil fuels](#), London School of Economics (June 13, 2018).

²⁵¹ George O. Aragon, Yuxiang Jiang, Juha Joenväärä, & Cristian Ioan Tiu, [Socially Responsible Investments: Costs and Benefits for University Endowment Funds](#) at 5 (July 21, 2020).

²⁵² Gregory M. Mikkelsen, *et. al.*, [Mutual reinforcement of academic reputation and fossil fuel divestment](#), 4 Global Sustainability 20 (2021).

²⁵³ Toby A.A. Heaps, [Divestment would have made NY pension fund \\$22B richer](#), Corporate Knights (Oct. 4, 2018).

²⁵⁴ [About](#), Vanderbilt University (last visited Feb. 2, 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.²⁵⁵ 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.²⁵⁶
 - From the fourth quarter of 2019 to August 2020, seven of the world’s largest oil companies lost eighty-seven billion dollars in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.²⁵⁷
 - 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.²⁵⁸
- 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.²⁵⁹
- In February 2021, ExxonMobil reported quarterly losses of 20.1 billion dollars.²⁶⁰
- 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.²⁶¹
- 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 2019.²⁶²
- 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

²⁵⁵ Data from [S&P Dow Jones Indices](#), S&P Global (Dec. 23, 2021).

²⁵⁶ Kevin Stankiewicz, [There’s no more money to be made in oil and gas stocks, Jim Cramer says](#), CNBC (Feb. 3, 2020).

²⁵⁷ Jillian Ambrose, [Seven top oil firms downgrade \\$87bn in nine months](#), The Guardian (Aug. 14, 2020).

²⁵⁸ 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).

²⁵⁹ Avi Salzman, [Why Exxon Is Being Dropped From the Dow](#), Barron’s (Aug. 25, 2020).

²⁶⁰ [ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans](#), ExxonMobil (Feb. 2, 2021).

²⁶¹ Clark Williams-Derry, Tom Sanzillo, & 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).

²⁶² 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.²⁶³

- 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.”²⁶⁴
- 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.”²⁶⁵
- 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.”²⁶⁶
- Due to the rise of renewable energy sources and electric vehicles, the quality of economic growth is rapidly shifting toward lower energy intensity²⁶⁷ and low carbon energy, fundamentally threatening the financial viability of the fossil fuel sector.
 - Wind and solar are now the cheapest sources of electricity²⁶⁸ and will continue to steal market share from traditional fossil fuels.²⁶⁹
 - 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 2019.²⁷⁰

²⁶³ Tom Sanzillo, Kathy Hipple, & Clark Williams-Derry, [The Financial Case for Fossil Fuel Divestment](#), Sightline Institute and the Institute for Energy Economics and Financial Analysis (July 2018).

²⁶⁴ *Id.* at 4.

²⁶⁵ *Id.* at 1.

²⁶⁶ *Id.* at 38.

²⁶⁷ U.S. Energy Information Agency, [Global energy intensity continues to decline](#) (July 12, 2016).

²⁶⁸ Lazard, [Lazard’s Levelized Cost of Energy Analysis, Version 15.0](#) (Oct. 2021).

²⁶⁹ US Energy Information Agency, [New electricity generation in 2020 will come primarily from wind and solar](#) (Jan 14, 2020).

²⁷⁰ Fred Pearce, [As Investors and Insurers Back Away, the Economics of Coal Turn Toxic](#), Yale Environment 360 (Mar. 10, 2020).

- The auto industry, a key driver of oil demand, is rapidly transitioning to electric vehicles. Eighteen of the twenty largest automobile manufacturers have committed to increasing the offer and sales of electric vehicles, and some companies, such as General Motors, have committed to halt all sales of internal combustion engine vehicles by a future target date.²⁷¹
- The fossil fuel industry remains committed to a business model that is fundamentally incompatible with the Paris Agreement.
 - 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.²⁷²
 - According to a 2019 study by the Mercer consulting firm, investment portfolios will be greatly affected by future global warming. If warming is held to two degrees Celsius — the target set by the 2015 Paris Agreement and one which will still result in widespread harm — the global economy will suffer significant damage from climate change while also transitioning to a renewable energy base. In this scenario, according to the study, portfolio assets in the coal industry will suffer cumulative impacts of 58.9 percentage points by 2030 and 100 percentage points by 2050, while assets in oil and gas will suffer cumulative impacts of 42.1 and 95.1 percentage points, respectively.²⁷³
 - Other studies have concluded that major energy companies that continue to rely on fossil fuels would lose between thirty and sixty percent of their value.²⁷⁴
 - 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.²⁷⁵
 - In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz, former Secretary of Labor Robert Reich, and Harvard faculty Dani Rodrik, Richard Parker, Stephen Marglin, and John Womack, identified the 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

²⁷¹ International Energy Agency, [Global EV Outlook 2021](#) (2021).

²⁷² Carbon Tracker Initiative, [Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink](#) (Nov. 1, 2019).

²⁷³ Mercer LLC, [Investing in a Time of Climate Change: The Sequel 2019](#) at 34 (2019).

²⁷⁴ European Green Party, [The Carbon Bubble: The financial risk of fossil fuels and need for divestment](#) at 7 (2020).

²⁷⁵ 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).

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.”²⁷⁶

- Fossil fuel companies are facing increasing regulation and scrutiny from policymakers and financial regulators.
 - Financial regulatory bodies around the world are increasing climate risk disclosure and reporting requirements.²⁷⁷
 - In its most recent financial stability report, the Federal Reserve reported that “climate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks.”²⁷⁸
 - 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.”²⁷⁹
- The financial sector as a whole is trending towards divestment from the fossil fuel sector.
 - Over 1,500 institutions, representing over thirty-nine trillion dollars in assets under management, have publicly committed to some form of divestment.²⁸⁰ This list continues to grow rapidly.
 - Several large (more than ten billion dollars in assets under management or outstanding loans) banks and insurers/reinsurers, including JP Morgan and Citi, have announced their divestment/finance restrictions from coal mining and/or coal-fired power plants.²⁸¹ A significant number of the same financial institutions are restricting lending to oil, LNG, gas, oil sands and arctic drilling.²⁸²
 - 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.²⁸³
- The financial impact of the divestment movement has materially harmed fossil fuel interests, thereby generating further risk for market laggards that remain exposed to the industry.
 - The cost of capital for fossil fuel companies has been rising precipitously in recent years, even as it has been falling for other sectors such as renewables.²⁸⁴

²⁷⁶ Jeffrey Sachs, Joseph Stiglitz, Mariana Mazzucato, Clair Brown, Indivar Dutta-Gupta, Robert Reich, Gabriel Zucman, et al, [Letter from economists: to rebuild our world, we must end the carbon economy](#), The Guardian (Aug. 4, 2020).

²⁷⁷ Ernst & Young, [Global Climate Risk Disclosure Barometer](#) (June 2021).

²⁷⁸ Board of Governors of the Federal Reserve System, [Financial Stability Report](#) at 58 (Nov. 2020).

²⁷⁹ Commissioner Rostin Behnam, David Gillers, Bob Litterman, Leonardo Martinez-Diaz, Jesse M. Keenan, Stephen Moch, [Managing Climate Risk in the U.S. Financial System](#), Climate-Related Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission (Sept. 2020).

²⁸⁰ [The database of fossil fuel divestment commitments made by institutions worldwide](#), Global Fossil Fuel Divestment Commitments Database (Dec. 27, 2021).

²⁸¹ [Finance is leaving thermal coal](#), Institute for Energy Economics and Financial Analysis (Dec. 27, 2021).

²⁸² [Finance is leaving thermal oil and gas](#), Institute for Energy Economics and Financial Analysis (Dec. 27, 2021).

²⁸³ 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).

²⁸⁴ Tim Quinson, [Cost of Capital Spikes for Fossil-Fuel Producers](#), Bloomberg Quint (Nov. 9, 2021).

- Numerous fossil fuel companies have themselves attributed this phenomenon in part to the successes of the divestment movement. For example:
 - In a 2017 annual report, Shell noted 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.”²⁸⁵
 - Prior to its bankruptcy declaration, 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.”²⁸⁶
 - In a 2021 Dallas Fed Survey, oil and gas leaders expressed concern about access to capital, with one noting that “We have relationships with approximately 400 institutional investors and close relationships with 100. Approximately one is willing to give new capital to oil and gas investment. The story is the same for public companies and international exploration.”²⁸⁷
- 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.”²⁸⁸
 - A recent American Bar Association summary noted that “Since 2017, more than 20 suits have been filed against oil and gas companies by governmental entities across the United States, including seven by state attorneys general,” and that Europe has seen a wave of efforts seeking injunctions against fossil fuel companies on the grounds of international treaties and legal frameworks.”²⁸⁹
 - One example of this growing trend is *Milieudefensie et al. v. Royal Dutch Shell*, in which a Dutch court ruled that Shell has failed to align with the Paris agreement, and that it has a legal obligation to do so regardless of harms to its revenue stream. The ruling is notable for its potential to strand significant

²⁸⁵ Shell, [Annual Report and Form 20-F 2017](#) at 13 (2017).

²⁸⁶ Peabody Energy Corporation, [Form 10-K: Annual Report](#), at 30 (2014).

²⁸⁷ Federal Reserve Bank of Dallas, [Dallas Fed Energy Survey](#) (2021).

²⁸⁸ Clyde & Co LLP, [Climate change: Liability risks](#) at 37 (Mar. 2019).

²⁸⁹ Benjamin Franta, [Climate litigation rising: Hot spots to watch](#), American Bar Association (Dec. 22, 2021).

amounts of the company’s assets, thereby destroying large sums of shareholder wealth.²⁹⁰ The ruling is also notable for the replicability of the case’s arguments and legal theories in the context of other companies and jurisdictions.²⁹¹

- 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.²⁹²
- Following the *Milieudefensie et al. v. Royal Dutch Shell* ruling, a legal analysis published in the *Harvard Law School Forum on Corporate Governance* concluded that corporate directors who fail to seek Paris alignment face increasing likelihood of litigation and liability — and that institutional investors who fail to account for the climate litigation risks facing companies in their portfolio may breach their own fiduciary duties.²⁹³
- Former S.E.C Commissioner Bevis Longstreth, who was involved in UPMIFA’s drafting, has written that the confluence of litigation risk, market and regulatory shifts, and other financial uncertainties facing the fossil fuel industry makes investment in it not just “misguided,” but at high probability of being found “negligently wrong as a matter of law.”²⁹⁴

XI. 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 Vanderbilt. Their reasoning applies

²⁹⁰ [Investor Briefing: Milieudefensie et al. v Royal Dutch Shell – Six takeaways for business climate plans](#), ClientEarth (Jun. 7, 2021).

²⁹¹ Tessa Khan, [Shell’s historic loss in The Hague is a turning point in the fight against big oil](#), The Guardian (Jun. 1, 2021) (“Given the replicability of the arguments and the international standards and common facts that comprise the basis of the case, it will inspire a wave of similar actions around the world.”).

²⁹² Michael Slezak, [Rest super fund commits to net-zero emission investments after Brisbane man sues](#), ABC News (Nov. 2, 2020).

²⁹³ Cynthia A. Williams et al, [What the Shell Judgment Means for US Directors](#), The Harvard Law School Forum on Corporate Governance (Jul. 22, 2021) (“Investors too should take note of the Shell judgment as a sign of a broader trend towards climate-related tort liability, rather than an aberration... investors should take a forward-looking approach to the direct and indirect financial consequences that could arise if their investee companies face litigation or liability for tort claims. Investors should expect directors of their investee companies to be cognizant of these legal risks and ask what steps they are taking to avoid being next in the firing line. And for some investors, the imperative comes not just from financial and reputational risks, but from their own legal duties. For example, pension fund investors—who are also subject to fiduciary duties—may need to consider liability risks to investee companies within their portfolios in order to meet their own fiduciary duties.”).

²⁹⁴ Bevis Longstreth and Connor Chung, [Finance Must Combat Climate Change – or Else](#), Project Syndicate (Nov. 9, 2021).

to Vanderbilt's circumstances as well as their own, and thus the Vanderbilt Board of Trust 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.²⁹⁵
 - 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.”²⁹⁶
 - 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.”²⁹⁷
 - 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.”²⁹⁸
 - 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

²⁹⁵ See, e.g., [How falling demand for oil is set to transform international relations](#), World Economic Forum (Aug. 20, 2019) (citing the “global campaign in support of divestment from fossil fuels” as one of the key factors in the ongoing energy transition worldwide); Gunther Thallinger, [The zero that every investment portfolio needs](#), World Economic Forum (Jan. 14, 2021) (“To address climate change effectively, investors must steer their entire portfolios towards climate neutrality. . . . [I]t could become necessary to reduce assets with a non-satisfactory sustainability approach. In the extreme case of non-existence of such approaches, divestment is the ultima ratio.”).

²⁹⁶ Prem Thakkar, [Reading the Fine Print of University Fossil Fuel Divestment Pledges](#), The American Prospect (Mar. 1, 2021).

²⁹⁷ Second Amended Complaint, *Massachusetts v. ExxonMobil*, *supra* at note 225, at 108-09.

²⁹⁸ Royal Dutch Shell PLC, [Annual Report and Form 20-F 2017 — Strategic Report](#) at 13 (2017).

adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets.”²⁹⁹

- 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.”³⁰⁰
- Institutions elsewhere have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. The Association of Big Ten Students, representing over 500,000 students and 5.7 million alumni, recently called on all Big Ten schools to divest from fossil fuels.³⁰¹ Such institutions have often chosen divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals. Many of Vanderbilt’s peer institutions have also committed to meaningful climate action on a much more rapid timescale.
 - On September 9, 2021, Harvard University divested from fossil fuels.³⁰²
 - Harvard’s President Lawrence Bacow stated: “Given the need to decarbonize the economy and our responsibility as fiduciaries to make long-term investment decisions that support our teaching and research mission, we do not believe such investments are prudent.”³⁰³
 - President Bacow also noted that “[c]limate change is the most consequential threat facing humanity... without concerted action, this dire situation is only going to get worse.”³⁰⁴
 - In late September 2021, the University of Minnesota announced its plans to fully divest its endowment from fossil fuels over the next five to seven years.³⁰⁵
 - In September of 2021, Boston University announced that it would immediately begin divesting from fossil fuels, moving their more than three billion dollar endowment away from investments in the crude oil and natural gas industry. This is in addition to the 2016 board decision to divest from coal and tar sands.³⁰⁶
 - Boston University President Robert A. Brown affirms that “this is putting us on the right side of history” and Richard Reidy, the head of the board’s Advisory Committee on Socially Responsible Investing claims, “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.”³⁰⁷
 - As of April 2021, Macalester College committed to divest all dedicated, publicly traded oil and gas assets and implement a policy that prohibits new investments

²⁹⁹ Peabody Energy Corporation, [Form 10-K: Annual Report](#) at 30 (2014).

³⁰⁰ Emma Howard, [A beginner’s guide to fossil fuel divestment](#), The Guardian (Jun. 23, 2015).

³⁰¹ Emma Stein and Brayden Hirsch, [Big Ten student body presidents demand universities divest from fossil fuels](#), Michigan Daily (Jan. 28, 2020).

³⁰² Anemona Hartocollis, [Harvard Says It Will Not Invest in Fossil Fuels](#), The New York Times (Oct. 13, 2021).

³⁰³ [Harvard Office of the President](#), Harvard University (last visited Feb. 8, 2022).

³⁰⁴ *Id.*

³⁰⁵ [University announces plans to divest from fossil fuels](#), The Minnesota Daily (October 8th, 2021).

³⁰⁶ Jessica Colarossi, [Boston University to divest from fossil fuel industry](#), BU Today (Sept. 23, 2021).

³⁰⁷ *Id.*

solely within oil and gas assets. This includes divesting from shares of Enbridge Energy and denouncing the company's Line 3 tar sands pipeline replacement project.³⁰⁸

- In March of 2021, Rutgers University announced its intentions to divest from passive index funds with fossil fuels investments, exit all currently held fossil fuel investments in the next ten years, and cease all new investments in fossil fuels.³⁰⁹
 - Board of Governors chair Mark Angelson lauded the decision for the role it will play in “ensur[ing] a sustainable environment for future generations of students, while continuing their access to an affordable education.”³¹⁰
- On January 26, 2021, Columbia University's Board of Trustees announced their commitment to refrain from directly investing in publicly-traded oil and gas companies or in private funds that largely benefit oil and gas companies.³¹¹
 - University President Lee C. Bollinger cited the “undeniable obligation binding upon Columbia and other universities to confront the climate crisis across every dimension of our institutions.”³¹²
- 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 2038.³¹³
 - 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.³¹⁴
 - 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.³¹⁵
 - 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.”³¹⁶
- 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

³⁰⁸ [Macalaster College Board of Trustees announces policies that reduce oil and gas investments](#), Macalester College Newswire (Aug. 23, 2021).

³⁰⁹ Dory Devlin, [Rutgers to divest from fossil fuels](#), Rutgers Today (Mar. 9, 2021).

³¹⁰ *Id.*

³¹¹ Talia Abrahamson, [Columbia formalizes non-investment policy for some oil and gas companies](#), Columbia Spectator (Jan. 26, 2021).

³¹² [University Announcement on fossil fuel investments](#), Columbia News (Jan. 22, 2021).

³¹³ Matthew Taylor, [Cambridge University to divest from fossil fuels by 2030](#), The Guardian (Oct. 1, 2020).

³¹⁴ *Id.*

³¹⁵ [Cambridge to divest from fossil fuels with ‘net zero’ plan](#), University of Cambridge (Oct. 1, 2020).

³¹⁶ *Id.*

existing investments in that area, effectively divesting the endowment from the fossil fuel industry.³¹⁷

- 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.³¹⁸
- In April of 2020, American University eliminated the remaining 12.9 million dollars of fossil fuel-related funds within their public endowment after seven years of having no direct investments in fossils. This included a sale of 350 million dollars in commingled and index funds which were reinvested in non-fossil fuel-related holdings.³¹⁹
 - Jeff Sine, chair of AU's Finance and Investment Committee and Partner, The Raine Group LLC, asserted that this action was "exercising [AU's] fiduciary responsibility for ensuring the financial health of a great university."³²⁰
- In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.³²¹
 - 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.³²²
 - 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."³²³
 - 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

³¹⁷ Kathryn Stamm, [Cornell to Effectively Divest from Fossil Fuels](#), Trustees Vote, Cornell Daily Sun (May 22, 2020).

³¹⁸ James Dean, [Cornell announces moratorium on fossil fuel investments](#), Cornell Chronicle (May 22, 2020).

³¹⁹ [American University Eliminates all public fossil fuel investments from endowment](#), American University Communications (Apr. 20, 2020).

³²⁰ *Id.*

³²¹ [University of Oxford cuts ties to fossil fuels industry](#), BBC News (Apr. 28, 2020).

³²² [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)).

³²³ [Oxford announces historic commitment to fossil fuel divestment](#), University of Oxford (Apr. 27, 2020).

announcing its divestment pledge, Oxford released drafts of a sustainability plan to achieve net-zero carbon and biodiversity net gain by 2035³²⁴ — fifteen years before Vanderbilt’s commitment to neutralize its greenhouse gas emissions.

- In March of 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.³²⁵
 - Paxson explained the move as aligning with “the view that, as the world shifts to sustainable energy sources, investments in fossil fuels carry too much long-term financial risk.”³²⁶
- In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.³²⁷
 - 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.”³²⁸
 - Georgetown President John J. DeGioia also identified moral concerns as important to the decision, noting that “caring for our environment is one of the most urgent moral and practical concerns of our time.”³²⁹
- In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.³³⁰
 - In an op-ed in the Los Angeles Times, fund managers cited their fiduciary duty to the long-term financial wellbeing of the institution, writing that “[t]he reason we sold some \$150 million in fossil fuel assets from our endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC’s diversified portfolios.”³³¹
 - 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.”³³²

³²⁴ [Aiming for zero carbon and biodiversity net gain by 2035](#), University of Oxford (Nov. 20, 2020).

³²⁵ Christina Paxson, [Letter from President Paxson: Brown’s actions on climate change](#), Brown University, (Mar. 4, 2020).

³²⁶ *Id.*

³²⁷ [Fossil Fuels Divestment Continues Georgetown’s Commitment to Sustainability](#), Georgetown University (Feb. 6, 2020).

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ 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).

³³¹ *Id.*

³³² *Id.*

- In May 2016, the University of Massachusetts system announced the divestment of its endowment from all fossil fuel assets.³³³
 - 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.”³³⁴
 - Fund managers also stressed the compatibility of moral and fiduciary duties in divesting, with UMass Foundation Treasurer and Investment Committee Chairman Edward H. D’Alelio stating that the fact “we took this step reflects not just our comfort as fiduciaries but the seriousness with which we see climate change.”³³⁵
- 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).³³⁶
 - Other major funds that have divested include the eight billion dollar MacArthur Foundation,³³⁷ five-billion-dollar Rockefeller Foundation,³³⁸ Norway’s 1.1 trillion dollar sovereign wealth fund (oil and gas exploration and production)³³⁹ and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).³⁴⁰

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

The Vanderbilt Board of Trust has failed to act in *good faith* or with *due care* by ignoring repeated efforts by Vanderbilt students and faculty to align the university’s investment practices with its charitable mission.

- Members of the Vanderbilt 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.

³³³ [UMass Becomes First Major Public University to Divest from Direct Fossil Fuel Holdings](#), University of Massachusetts (May 25, 2016).

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ [1000+ Divestment Commitments](#), GoFossilFree.org (updated Dec. 9, 2020).

³³⁷ Jordan Wolman, [Harvard cracks on fossil fuels and a dam breaks](#), Politico (Sept. 28, 2021).

³³⁸ *Id.*

³³⁹ Terje Solsvik, [Norway sovereign wealth fund to divest oil explorers, keep refiners](#), Reuters (Oct. 1, 2019).

³⁴⁰ Jillian Ambrose, [Major investment firm dumps Exxon, Chevron and Rio Tinto stock](#), The Guardian (Aug. 24, 2020).

- In January 2013, the Vanderbilt Student Government passed a resolution calling on the Office of Investments to gradually divest from the fossil fuel industry and reinvest in sustainable technologies.³⁴¹ The Vanderbilt Divestment Campaign, launched by a student group called Reinvest Vanderbilt, was founded shortly thereafter.³⁴²
- In spring and fall 2013, Vanderbilt professors, PhD candidates, and students released a series of opinion pieces in the *Tennessean*, the *Vanderbilt Hustler*, and the *Vanderbilt Torch* advocating for divestment at Vanderbilt.³⁴³ Per the *Tennessean* article, “We are asking the Board of Trust to make a formal pledge to strive for a socially responsible endowment, including a promise to no longer invest directly in fossil-fuel stock.”³⁴⁴
- In 2014, despite a petition that amassed 2,000 signatures and numerous formal requests, Vanderbilt University leadership refused to meet with the Vanderbilt Divestment Campaign or release any formal statements on the subject.³⁴⁵
- On March 20, 2018, the Vanderbilt Student Government Environmental Affairs Committee Chair released an opinion piece in the *Vanderbilt Political Review* stating that Vanderbilt should divest from fossil fuels to align with the environmental goals of the University’s “FutureVU” program.³⁴⁶
- On September 27, 2020, students from the Vanderbilt Divestment Campaign hosted a poster demonstration for the annual Global Climate Strike,³⁴⁷ relaunching the movement with a new petition, op-ed, and coalition of student groups.³⁴⁸ These groups included Does Divest, DivestVU, and Students Promoting Environmental Awareness and Responsibility (SPEAR).
- On November 1, 2020, the Vanderbilt Student Government unanimously passed two resolutions supporting immediate fossil fuel divestment and formally recognizing the Vanderbilt Divestment Campaign.³⁴⁹
- On November 13, 2020, the Vanderbilt Graduate Student Council passed a resolution supporting immediate fossil fuel divestment and formally recognizing the Vanderbilt Divestment Campaign.³⁵⁰
- On November 17, 2020, the Vanderbilt Divestment Campaign hosted Vanderbilt professor of environmental sociology and environmental justice Dr. Patrick

³⁴¹ [VSG narrowly passes legislation urging for ‘greener’ university investments](#), Reinvest Vanderbilt (Dec. 7, 2013).

³⁴² Diamond, Ullman, & Hutto, [Reinvest Vanderbilt Official Statement](#), Reinvest Vanderbilt (Jan. 25, 2013).

³⁴³ [Reinvest Vanderbilt In the Tennessean](#), Reinvest Vanderbilt (Nov. 14, 2013).

³⁴⁴ *Id.*

³⁴⁵ [Petition: Divest Vanderbilt from Fossil Fuels](#), Divest Vanderbilt (last visited Jan. 18, 2022).

³⁴⁶ Simon Silverberg, [Opinion: Time for Vanderbilt to Divest from Fossil Fuels](#), *Vanderbilt Political Review* (Mar. 20, 2018).

³⁴⁷ Matt Mangano, [DivestVU calls for end to Vanderbilt investment in fossil fuel](#), *Vanderbilt Hustler* (Sept. 27, 2020).

³⁴⁸ Miguel Moravec & Emily Irigoyen, [Guest Editorial: Vanderbilt, it’s time to divest from fossil fuels](#), *Vanderbilt Hustler* (Oct. 18, 2020).

³⁴⁹ Jonathan Liu, [VSG Senate unanimously passes two bills supporting fossil fuel divestment](#), *Vanderbilt Hustler* (Nov. 1, 2020).

³⁵⁰ Sally Johnson, [Graduate Student Council passes resolution supporting fossil fuel divestment ‘by wide margin’](#), *Vanderbilt Hustler* (Nov. 15, 2020).

Greiner to discuss the disproportionate impacts of climate change on communities of color.³⁵¹

- On February 23, 2021, over thirty members of the Vanderbilt Divestment Campaign gathered outside of Kirkland Hall to protest the University's fossil fuel investments and present administrators with a petition signed by 1000 community members.³⁵²
- On March 14, 2021, members of the Vanderbilt Divestment Campaign posted flyers in prominent areas around campus in response to the university's decision to suddenly close the Vanderbilt Institute for Energy and Environment (VIEE).³⁵³
- On April 7, 2021, the Vanderbilt Divestment Campaign called on the Vanderbilt community to withhold donations from Vanderbilt to protest the University's continued investments in fossil fuels.³⁵⁴ Initiated by Vanderbilt NAACP, this protest was launched in response to Vanderbilt's "Giving Day" programming.
- On April 22, 2021, members of the Vanderbilt Divestment Campaign held an Earth Day demonstration to protest the lack of administration engagement with the divestment campaign.³⁵⁵ Students poured mock oil on fellow campaign members to symbolize the harm done to students by the university's investments in fossil fuels.³⁵⁶
- On June 16, 2021, members of the Vanderbilt Divestment Campaign met with Anders Hall, vice chancellor for investments and chief investment officer, and Eric Kopstain, vice chancellor for administration, to discuss Vanderbilt's fossil fuel investments and divestment.³⁵⁷ The meeting concluded on the point that only the Chancellor and the Board of Trust can enact the change the students are seeking.³⁵⁸
- On August 22, 2021, thirty members of the Vanderbilt Divestment Campaign silently protested Vanderbilt's fossil fuel investments during Chancellor Diermeier's Founder's Walk address to approximately 1,500 first year students.³⁵⁹
- On September 10, 2021, over 100 student and faculty members of the Vanderbilt Divestment Campaign gathered on the steps of Wyatt Center to protest Vanderbilt's fossil fuel investments. Speakers included a senior professor from Vanderbilt Medical School and a Nashville Climate community leader.³⁶⁰

³⁵¹ Vanderbilt Divestment Campaign, Webinar: The effects of climate change on different communities, (Nov. 17, 2020).

³⁵² Jessica Barker, Justine Del Monte, Immanuel John Milton, & Avery Muir, [DivestVU, Does Divest hold an over 30-person protests at Kirkland Hall](#), Vanderbilt Hustler (Feb. 23, 2021); [Petition: Divest Vanderbilt from Fossil Fuels](#), *supra* at note 345.

³⁵³ Justin Holmes, [Does Divest Protest Vanderbilt Institute for Energy and Environment Closing](#), Vanderbilt Political Review (Mar. 21, 2021).

³⁵⁴ Jonathan Liu, [Vanderbilt NAACP, DivestVU and Does Divest jointly call for Giving Day boycott](#), Vanderbilt Hustler (Apr. 7, 2021).

³⁵⁵ Charlotte Mauger and Rachael Perrotta, [Does Divest hosts Earth Day 'oil spill' demonstration in front of Library Lawn](#), Vanderbilt Hustler (Apr. 22, 2021).

³⁵⁶ *Id.*

³⁵⁷ Brendan O'Reilly, [Members of VSG, Does Divest, DivestVU meet with administrators to discuss fossil fuel divestment](#), Vanderbilt Hustler (July 29, 2021).

³⁵⁸ *Id.*

³⁵⁹ Charlotte Mauger and Rachael Perrotta, [Founder's Walk interrupted by Does Divest demonstration](#), Vanderbilt Hustler (Aug. 23, 2021).

³⁶⁰ Shelby Pybus, [Does Divest hold Sept. 10 protest at Wyatt Center](#), Vanderbilt Hustler (Sept. 11, 2021).

- On September 27, 2021, the faculty-led Robert Penn Warner Center hosted attorney Tara Houska, who criticized the University's fossil fuel investments.³⁶¹
- On October 19, 2021, members of the Vanderbilt Divestment Campaign protested outside L.A. Jackson restaurant where a Vanderbilt alumni event was being held.³⁶²
- On October 27, 2021, the Vanderbilt Divestment Campaign and the Association of Latin American Students hosted an event with Dr. Jonathan Hiskey to discuss the intersection of fossil fuel investments with hispanic population climate impacts.³⁶³
- On November 19, 2021, the Vanderbilt Chapter of the American Association of University Professors (AAUP) voted to support the Vanderbilt fossil fuel divestment campaign.³⁶⁴
- On December 1, 2021, former Vanderbilt Student and Vice President Al Gore publicly endorsed the Vanderbilt Divestment Campaign and called on Vanderbilt to divest its fossil fuel investments during an on-campus visit to the Vanderbilt Unity and American Democracy class.³⁶⁵
- On January 13th, 2022, members of the Vanderbilt Faculty Senate began a debate on a Fossil Fuel Divestment Motion introduced by professors from the Student Life Committee.³⁶⁶
- On January 25th, 2022, the Vanderbilt Divestment Campaign hosted environmental activist Bill McKibben for an educational seminar about fossil fuel divestment. Approximately eighty students and fifteen faculty attended.³⁶⁷
- On January 31st, 2022, fifteen students from the Vanderbilt Divestment Campaign protested outside of the Vanderbilt University Faculty Commons in response to the Nashville Scene article on allegations of the Chancellor's conflicts of interest as a consultant for several oil and gas companies.³⁶⁸
- On February 9th, 2022, members of the Vanderbilt Divestment Campaign organized a demonstration outside of Sarratt Student Center to protest Vanderbilt's lack of transparency regarding Chancellor Diermeier's conflict of interest review.³⁶⁹

³⁶¹ [Events@Vanderbilt](#), Vanderbilt University (last visited Jan. 18, 2022).

³⁶² Charlotte Mauger, [Dores Divest protests outside L.A. Jackson alumni reception](#), Vanderbilt Hustler (Oct. 20, 2021).

³⁶³ DivestVU, [The intersection between the environment, Latin America, and Hispanic populations in the US](#) Instagram (Oct. 19, 2021).

³⁶⁴ Dores Divest, [Report on Fossil Fuel Divestment - Vanderbilt Student Life Committee](#), YouTube.com (Dec. 22, 2021).

³⁶⁵ Duaa Faquih, Aaditi Lele, & Matthew Shipley, [UPDATED: 'Of course': Al Gore endorses Vanderbilt divesting from fossil fuels](#), Vanderbilt Hustler (Dec. 2, 2021).

³⁶⁶ Email Correspondence from Chair of Faculty Senate Executive Committee, on file with Vanderbilt Divestment Campaign.

³⁶⁷ Dores Divest, [Event: McKibben talks Divestment](#), Instagram (Jan. 20, 2022)

³⁶⁸ Emma Whitford, [Vanderbilt Students Press Chancellor's Ties to Fossil Fuels](#), Inside Higher Ed (Feb. 2, 2022); Kelsey Breyer, [Vanderbilt Student Group Claims Chancellor Has Oil-Related Conflicts of Interest](#), Nashville Scene (Jan. 31, 2022); Jessica Barker, Charlotte Mauger, & Rachael Perrotta, [Chancellor Diermeier's ties to fossil fuel industry under review after conflict of interest filing](#), Vanderbilt Hustler (Jan. 31, 2022).

³⁶⁹ Barker, Mauger, & Perrotta, *supra* at note 368.

- Despite the strong support for fossil fuel divestment among members of the Vanderbilt community, Vanderbilt Board of Trust members have refused to engage with the question in good faith. Rather than address the concerns of community stakeholders, the Vanderbilt Administration has frequently resorted to punishing peaceful student activists via the Office of Student Accountability.
 - In 2014, despite a petition that amassed 2,000 signatures and numerous formal requests through the student government, Vanderbilt University leadership refused to meet with the Vanderbilt Divestment Campaign or release any formal statements on the subject of fossil fuel divestment specifically.³⁷⁰
 - From September through November 2020, elected members of the Vanderbilt Undergraduate Student Government and Vanderbilt Graduate Student Council passed resolutions addressed to the Chancellor and Board of Trust regarding divestment.³⁷¹ The administration refused to acknowledge the resolutions and student attempts to engage further.
 - On November 11, 2020, students from the Vanderbilt Divestment Campaign presented to faculty members of the Vanderbilt Institute for Energy and Environment (VIEE) regarding divestment.³⁷² The following month, the VIEE Director received unexpected news from the administration that the Institute would not be refunded, and the VIEE Director announced termination of the program and its staff formally on February 12th.³⁷³
 - In a November 18, 2020, interview with the Vanderbilt Hustler, Chancellor Diermeier stated that he did not support divestment on the grounds that the endowment should not be used as an advocacy tool, and that universities like Vanderbilt should not take advocacy positions on public policy issues.³⁷⁴
 - On January 25, 2021, students from the Vanderbilt Divestment Campaign distributed a mass email to campus community members formally requesting that the Chancellor meet with student government leaders on the subject of divestment.³⁷⁵
 - The email featured a video message from Hollywood actor Brian Baumgartner (a.k.a. Kevin Malone) asking the Chancellor to consider divestment and was opened over 9,000 times.³⁷⁶
 - The administration refused to meet with student government leaders or issue a comment to the student paper regarding the meeting request.³⁷⁷

³⁷⁰ Reinvest Vanderbilt, [VSG Resolution S: 12-13-07](#) (Nov. 22, 2013).

³⁷¹ Jonathan Liu, [VSG Senate unanimously passes two bills supporting fossil fuel divestment](#), Vanderbilt Hustler (Nov. 1, 2020).

³⁷² Email Correspondence with Vanderbilt Institute for Energy and Environment Senior Administrative Assistant, on file with Vanderbilt Divestment Campaign (Nov. 2021).

³⁷³ Annabelle Abbott, [Vanderbilt Institute for Energy and Environment announces closure on June 30](#), Vanderbilt Hustler (Mar. 13, 2021).

³⁷⁴ Jessica Barker, Simon Gibbs, & Immanuel John Milton, [Debrief with Diermeier: Destination Vanderbilt, community in the face of COVID-19, football and more](#), Vanderbilt Hustler (Nov. 19, 2020).

³⁷⁵ Jessica Barker, Immanuel John Milton, & Avery Muir, [Dores Divest impersonates chancellor's email, calls for divestment from fossil fuels](#), Vanderbilt Hustler (Jan. 25, 2021).

³⁷⁶ Dores Divest, [Kevin Malone asks Vanderbilt Chancellor to Divest from Fossil Fuels](#), Instagram.com (Jan. 26, 2021).

³⁷⁷ Jessica Barker, Immanuel John Milton, & Avery Muir, [Dores Divest impersonates chancellor's email, calls for divestment from fossil fuels](#), Vanderbilt Hustler (Jan. 25, 2021).

- The Office of Student Accountability sentenced a first-year student to indefinite disciplinary probation, “until graduation,” for helping send the email.³⁷⁸
- On January 31, 2021, six students from the Vanderbilt Divestment Campaign were charged with vandalism, unlawful advertising, and other violations for hanging stickers related to divestment in a dormitory.³⁷⁹ Rather than engage with the students regarding these subjects, the Office of Student Accountability sentenced the students to various degrees of disciplinary probation.³⁸⁰
- On February, 22, 2021, the Editorial Board of the Vanderbilt Hustler published a Staff Editorial criticizing the University Administration's lack of engagement with the Vanderbilt Divestment Campaign and other student activists.³⁸¹
- On March 2, 2021, students from the Vanderbilt Divestment Campaign sent an email to Dean of Students Mark Bandas and Deputy Dean G. L. Black requesting an official response to an attached petition and the student government resolutions on divestment. The administrators did not reply, despite replying to messages from the same students only a few hours earlier.³⁸²
- On March 14, 2021, students from the Vanderbilt Divestment Campaign hung standard size sheets of paper to protest the University’s fossil fuel investments and the closure of VIEE.³⁸³ The Office of Student Accountability charged eight students with unlawful advertising, found six of them guilty, and threatened disciplinary probation for future violations associated with the Vanderbilt Divestment Campaign.³⁸⁴
- On March 21, 2021, the Vanderbilt Hustler released a podcast episode entitled “Protests, Petitions and Silence,” investigating the Administration’s lack of engagement with the Vanderbilt Divestment Campaign.³⁸⁵
- On April 23, 2021, Chancellor Diermier reiterated his position against fossil fuel divestment, claiming that the role of universities should be to debate the issue of divestment but not “foreclose” the debate by taking a position.³⁸⁶
- On June 16, 2021, during a private meeting with the Vanderbilt Divestment Campaign, Vanderbilt’s Chief Investment Officer and Vice Chancellor of

³⁷⁸ Email to student from the Vanderbilt Office of Student Accountability, Community Standards, & Academic Integrity, on file with the Vanderbilt Divestment Campaign (Feb. 2020).

³⁷⁹ Email to students from the Vanderbilt Office of Student Accountability, Community Standards, & Academic Integrity, on file with the Vanderbilt Divestment Campaign (Feb. 2020).

³⁸⁰ *Id.*

³⁸¹ Editorial Board, [Change is a Two-Way Street](#), Vanderbilt Hustler (Feb. 22, 2021).

³⁸² Email correspondence to Dean Bandas from Students, “Re: Protest Walk-through Reminder,” on file with Vanderbilt Divestment Campaign (Mar. 2, 2021).

³⁸³ Holmes, [Dores Divest Protest Vanderbilt Institute for Energy and Environment Closing](#), *supra* at note 353.

³⁸⁴ Email to students from the Vanderbilt Office of Student Accountability, Community Standards, & Academic Integrity. On file with the Vanderbilt Divestment Campaign (Mar. 2020).

³⁸⁵ Nandika Chirala, Abhinav Krishnan, & Brynn Jones, [Protests, Petitions, and Silence](#), Vanderbilt Hustler (Mar. 21, 2021).

³⁸⁶ Jonathan Liu, Charlotte Mauger, & Rachael Perrotta, [Debrief with Diermeier: Close of the 2020-21 school year, vaccine protocols, the VSG election and more](#), Vanderbilt Hustler (Apr. 25, 2021).

Administration conceded that they have no power to consider divestment without direction from the Chancellor and the Board of Trust.³⁸⁷

- On August 23, 2021, during an address by the Chancellor, thirty students silently and prominently displayed a four foot sign with the statement “Mr. Chancellor, meet with us — 1,300 concerned students.”³⁸⁸ The Chancellor did not address the students’ request, and University officials responded to a request for comment by publicly calling the demonstration “unproductive” and “disrespectful.”³⁸⁹
- On September 26, 2021, the Vanderbilt Board of Trust announced an end to the student-nominated ‘Young Alumni Leader’ Trustee position. The position was replaced by the ‘Young Alumni Trustee’ position, with candidates nominated internally by the Board of Trust Governance Committee, effectively reducing undergraduate influence on the Board.³⁹⁰
- On October 19, 2021, student and alumni activists attended an open-invitation Vanderbilt alumni reception event at a hotel with the intention of asking the Chancellor about divestment. Despite members RSVPing properly, those wearing clothing indicative of their support of divestment were threatened with “arrest” upon arrival and prevented from attending the event by private security and at least one uniformed Metro Nashville Police Officer.³⁹¹ Alumni inside the event questioned the Chancellor about divestment. The Chancellor replied “We will not be doing that,”³⁹² before reiterating his reasons for not pursuing action on the subject of divestment.
- On December 8th, 2021, in response to Al Gore’s endorsement of Vanderbilt divesting from fossil fuels, Chancellor Diermier restated his view that Vanderbilt will not consider divestment, and that doing so would be endorsing divestment as the “best way to address climate change.”³⁹³
- On January 7th, 2021, Vanderbilt Divestment Campaign member Joshua Doh published a guest editorial in the Vanderbilt Hustler criticizing Chancellor Diermier’s arguments against divestment and failure to meet with students.³⁹⁴
- On January 12th, 2021, a Deputy Editor of the Vanderbilt Hustler published an additional editorial criticizing the University administration’s lack of engagement with the Vanderbilt Divestment Campaign and other activist groups.³⁹⁵
- In summary, rather than engage with the intended beneficiaries of the University endowment in good faith on this topic of significant community interest, the Board of Trust and the Chancellor have disregarded both formal and informal attempts to discuss

³⁸⁷ O’Reilly, [Members of VSG, Dores Divest, DivestVU meet with administrators to discuss fossil fuel divestment](#), *supra* at note 357.

³⁸⁸ Charlotte Mauger & Rachael Perrotta, [Founder’s Walk interrupted by Dores Divest demonstration](#), *supra* at note 359.

³⁸⁹ *Id.*

³⁹⁰ Jonathan Liu, [Board of Trust replaces Young Alumni Leader position with Young Alumni Trustee, effective July 2023](#), Vanderbilt Hustler (Sept. 26, 2021).

³⁹¹ Charlotte Mauger, [Dores Divest protests outside L.A. Jackson alumni reception](#), *supra* at note 362.

³⁹² Dores Divest, [Leaked Video of Chancellor on Divestment](#), Instagram.com (Oct. 22, 2021).

³⁹³ Katherine Oung, Aaditi Lele, & Sally Johnson, [Debrief with Diermeier: Leadership, Al Gore, the omicron variant and more](#), Vanderbilt Hustler (Dec. 8, 2021).

³⁹⁴ Joshua Doh, [Chancellor Diermeier is wrong on fossil fuel divestment](#), Vanderbilt Hustler (Jan. 7, 2022).

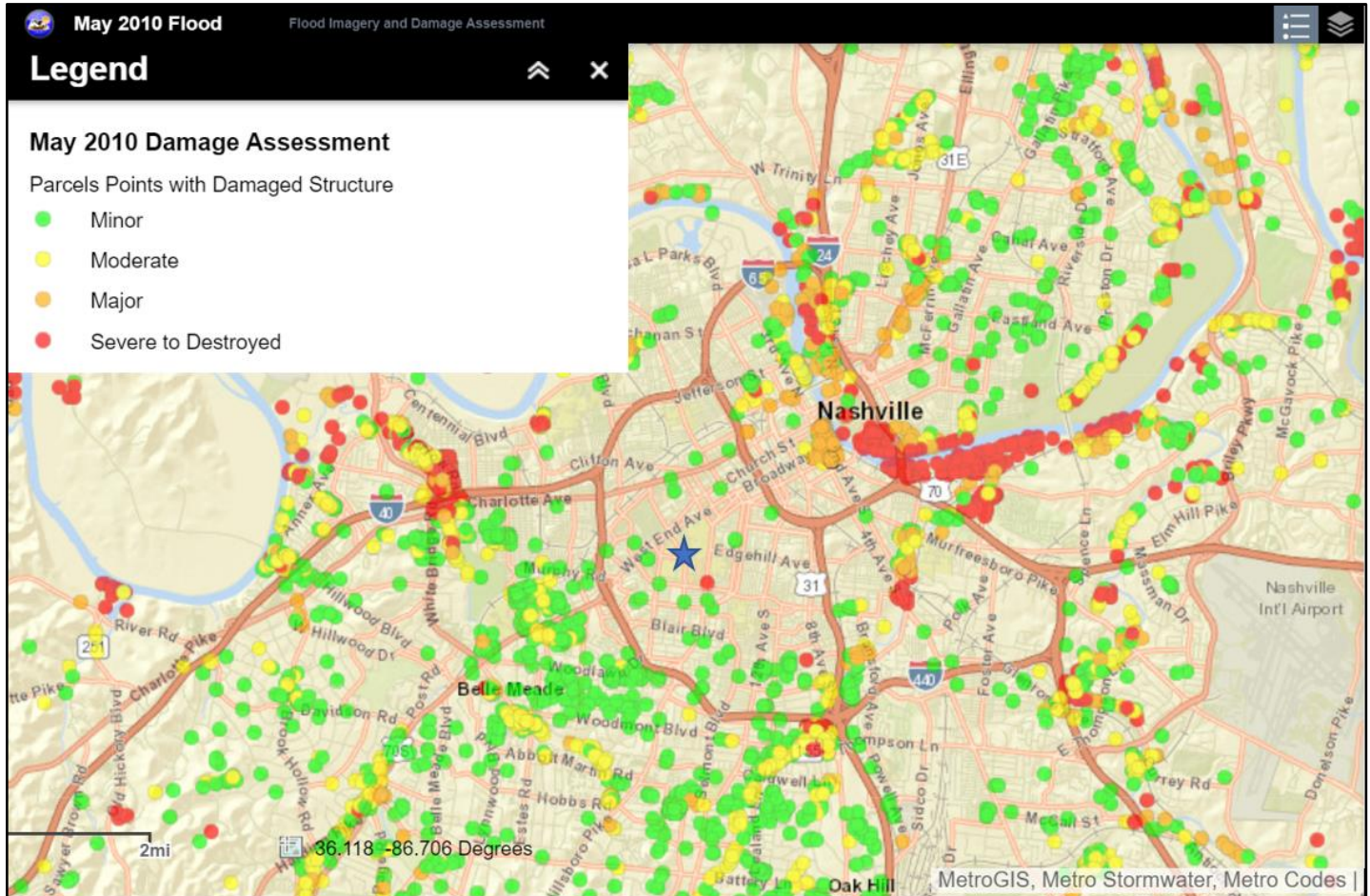
³⁹⁵ Josh Rehders, [Fired Up and Burnt Out](#), Vanderbilt Hustler (Jan. 12, 2022).

divestment since 2013. Occasionally, the Administration has even retaliated against its own community members with disciplinary action and threats of arrest.

Conclusion

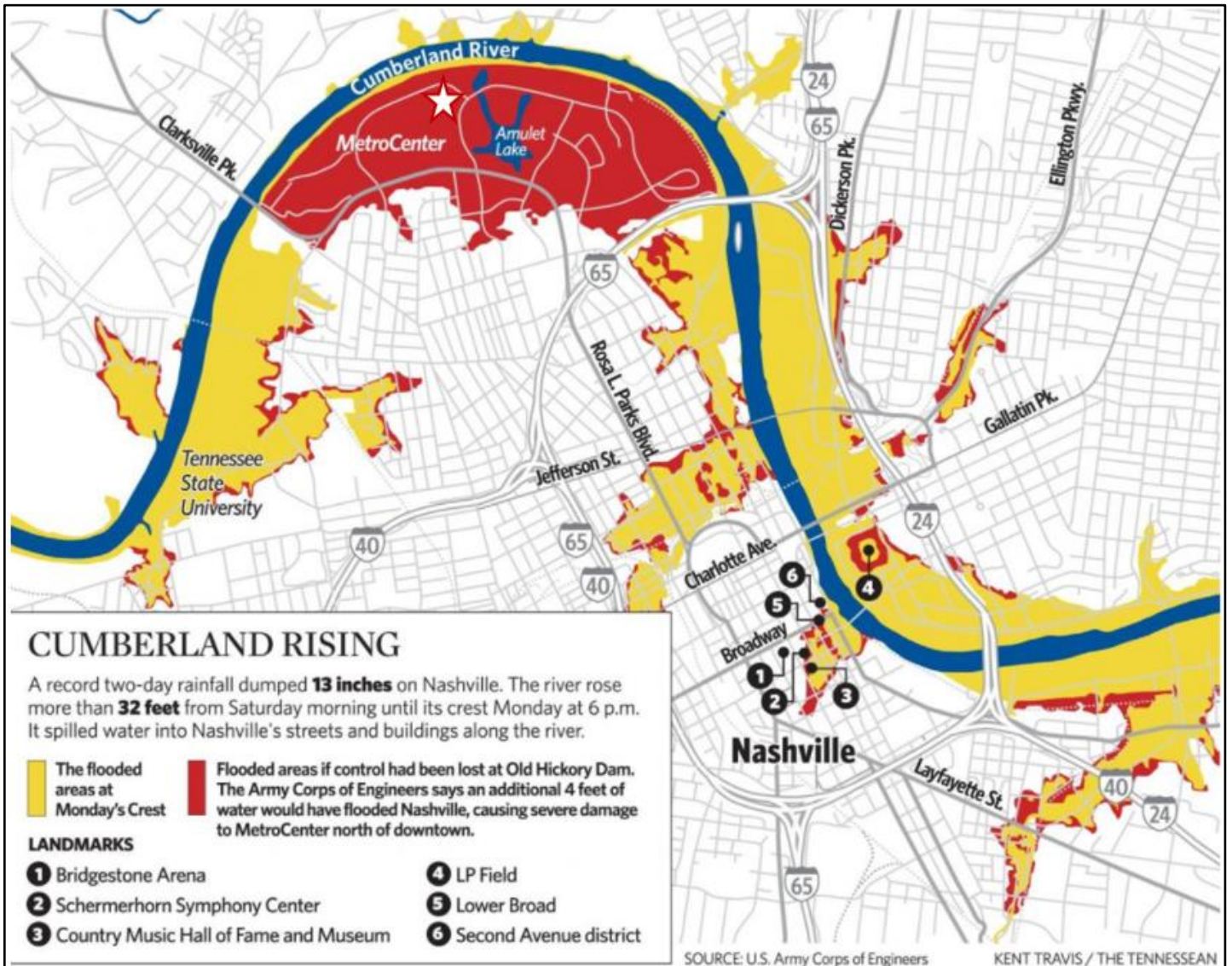
The Public Interest Division is responsible for ensuring that charitable assets are allocated appropriately and for investigating charitable managers' violations of fiduciary duties. We ask that you investigate the violations described above and that you take action to ensure that the investment activity of the Vanderbilt Board of Trust no longer harms the Vanderbilt community, the State of Tennessee, and the public.

Appendix A-1



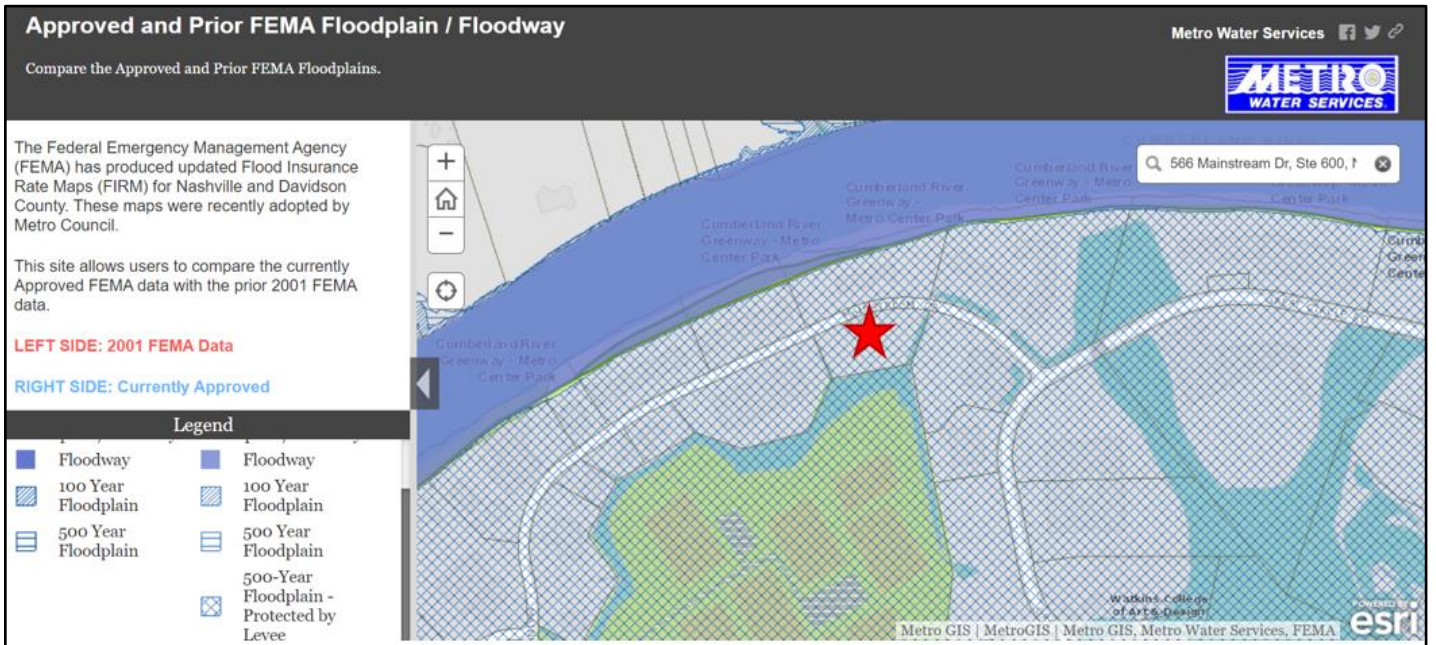
2010 Nashville flood Damage. Source: [May 2010 Flood](#), Metro Water Services, Nashville-Davidson Metro Government (last visited Jan. 14, 2022). The main Vanderbilt University campus is represented by the blue star.

Appendix A-2



Cumberland Rising, as reprinted in Brad Schrade & Anne Paine, [Corps Struggled with Dams, Forecasts](#), Tennessean (May 9, 2010). Source: U.S. Army Corps of Engineers. The map depicts the present location of Vanderbilt's LASIR Facility (represented by the white star), which would be damaged if Old Hickory Dam were overtopped.

Appendix A-3



FEMA map showing Vanderbilt's LASIR Facility (indicated by red star) in Cumberland River Floodplain. Source: [Approved and Prior FEMA Floodplain / Floodway](#), Metro Water Services, Nashville-Davidson Metro Government (last visited Jan. 14, 2022).

Appendix B

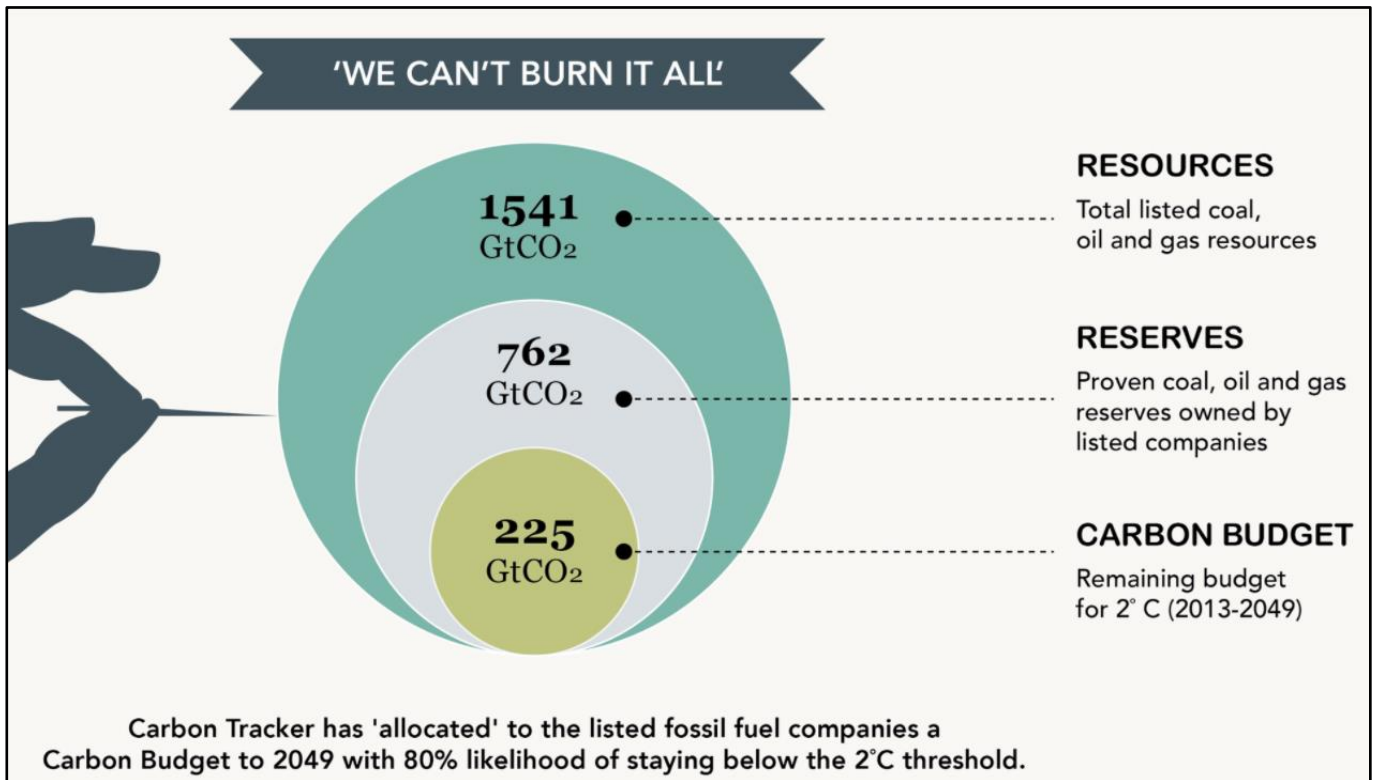


Illustration of carbon bubble, as reprinted in Katharine Earley, [Carbon Tracker measures oil and coal risk for investors](#), The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix C



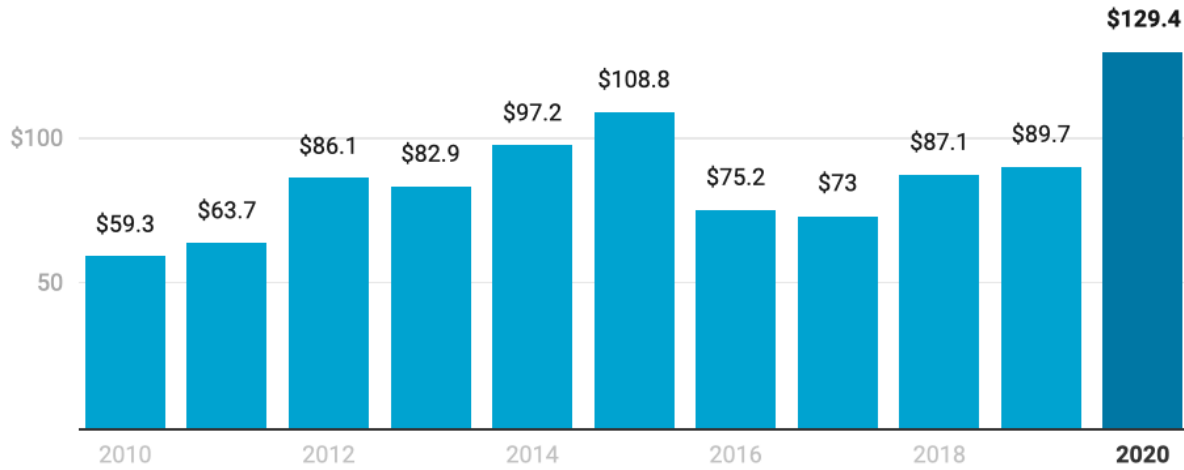
Comparison of ten-year performance of S&P 500 Energy Index³⁹⁶ (white) with S&P 500 Index (blue).³⁹⁷ Created using comparison tool at [S&P 500 Dow Jones Indices](#) (as of Jan. 3, 2022).

³⁹⁶ The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.

³⁹⁷ 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)

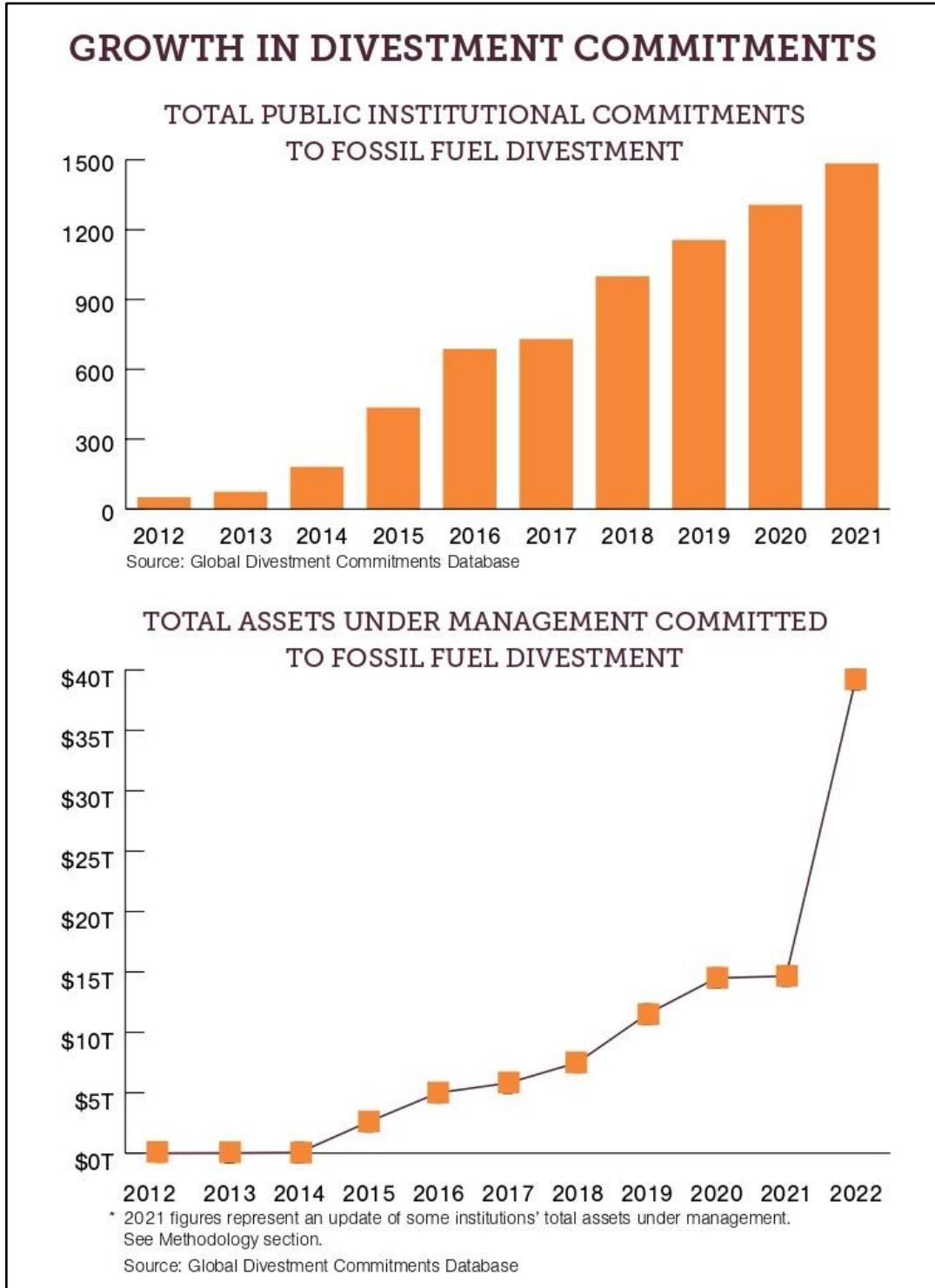


2020 data is through Sept 18

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

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

Appendix E



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).

Appendix F

Vanderbilt Investments	Value (\$)	% Fossil fuels	Fossil fuel exposure (\$)	Assumption notes:
Global equities	\$2,618,367,000	2.7%	\$70,695,909	~2.7% of the S&P500 is classified as "energy", which is mostly composed of major oil and gas companies.
Natural resources	\$495,264,000	88.0%	\$435,832,320	Nearly 90% of private natural resources capital raise from 2015-2017 were committed to energy partnerships (Maketa Investments Group)
				Energy is ~18.5% of the commodity index related instruments investments in BlackRock's Commodity Strategies Fund (BICSX)
Commodities	\$213,498,000	18.5%	\$39,497,130	Energy is ~26.8% of the Parametric Commodity Strategy Fund (EAPCX)
	Estimated fossil fuel exposure (\$USD)		\$506,528,229	
	Fossil fuel exposure % of portfolio		4.62%	
Fossil fuel exposure was not calculated for the remaining asset classes, but there may be additional exposure.				

Estimated fossil fuel exposure of Vanderbilt University endowment. Asset classes and values taken from the [2021 Vanderbilt Financial Report](#), Vanderbilt University. Exposure estimate and assumption notes sources: [S&P Global](#) (as of Jan. 10, 2021), [Maketa Investments Group](#) (July 2018), [BlackRock Commodity Strategies Fund](#) (as of Jan. 10, 2021), and [Eaton Vance Parametric Commodity Strategy Fund](#) (as of Jan. 10, 2021).