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

Dear Attorney General Bonta —

The Board of Trustees of Santa Clara University, as fiduciary of a non-profit educational institution, is bound by the laws of California to promote the well-being of Santa Clara's students and community and to further the University's commitment to educational excellence. Santa Clara's mission and values are "creating an academic community that educates the whole person within the Jesuit, Catholic tradition . . . and serving the communities of which we are a part in Silicon Valley and around the world," and "to build a more humane, just, and sustainable world."[1]

Under the California Uniform Prudent Management of Institutional Funds Act, the Board of Trustees has a fiduciary duty to invest with consideration for the University's charitable purposes — a duty that distinguishes non-profit institutions from other investors. It may be problematic, then, that the Board of Trustees has invested a portion of the University's one billion dollar endowment in the fossil fuel industry — damaging the world's natural systems, disproportionately harming youth, low-income people, and communities of color, and imperiling the University's financial and physical condition. In the midst of the climate crisis, powerful institutions must take responsibility for their contributions to global warming. As concerned students, faculty, alumni, civic groups, and community members, we ask that you investigate this conduct and use your enforcement powers to bring the Board's investment practices into compliance with its fiduciary obligations.

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

The values that should guide the Board of Trustees' investments are clear. According to its Vision statement, the University "prize[s] scholarship and creative work that advance human understanding, improve teaching and learning, and add to the betterment of society by illuminating the most significant problems of the day."[2] The Board recognizes its "responsibility to provide leadership in developing a more sustainable way of living," and aims to "[r]eshape our

---

[1] Mission, Vision, Values, Santa Clara University (2022).
[2] *Id.*

work to address environmental justice issues or prioritize them in our research agenda."[3] As a Catholic and Jesuit institution, the University commits itself to upholding and promoting the Catholic Church's teachings on and guidelines for care of the environment. But, despite Pope Francis's recent directive to Catholic institutions to divest from fossil fuels and a former University president's commitment to "respond to the Pope's call to be advocates for the earth and our marginalized neighbors"[4] — and despite the successful divestment efforts of hundreds of Catholic universities — the Trustees have remained steadfast in their support of an industry whose business model is based on environmental destruction and social injustice.

It is now widely recognized that climate change is an existential threat to humanity and our environment. In addition to sea level rise, extreme weather events, and species die-off, climate change causes injuries to all members of society, and particularly to the most vulnerable. Pollution from the combustion of fossil fuels results in an estimated 10,000 premature deaths daily. Communities of color disproportionately suffer pollution and health burdens from fossil fuel extraction and combustion. Low-income people bear the brunt of climate-based economic dislocation, as illustrated by the plight of climate migrants and refugees already forced from their homes by drought, flooding, and social conflict. Indigenous communities are regularly invaded and harmed by the spread of fossil fuel infrastructure. And, as a result of the economic precarity and increased burden of care work that results from climate disruptions, women suffer more serious detriments.

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the Board of Trustees has repeatedly refused to apply the University's values to its investment activity. From managers of an institution of higher education, this conduct is especially galling. For over fifty years, fossil fuel companies have engaged in a well-documented campaign to undermine climate science and distort public debate about how to deal with the climate crisis. The industry's spread of scientific misinformation and funding of questionable research undermines the work of Santa Clara faculty and students who are designing solutions for a sustainable future. Likewise, the flow of fossil fuel money to politicians and think tanks has diverted or delayed serious government action to address the climate crisis, placing a special burden on young people whose futures will be most impacted by these investments. Even as the University aims to "become a major center for discussions of environmental justice, and for examining the ethical dimensions of how we treat the physical world,"[5] the Board of Trustees channels funds to an industry committed to winning short-term profits at the expense of the present and future public good.

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

---

[3] Racial and Environmental Justice, Santa Clara University Environmental Justice and the Common Good Initiative (2021).
[4] Sustainability Strategic Plan at 2, Santa Clara University Center for Sustainability (2019).
[5] Michael E. Engh, S.J., Inauguration Address, Santa Clara Magazine (Jul. 15, 2009).

The Board of Trustees is bound by an additional legal duty: the requirement to manage the University'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 Trustees continues to invest in the fossil fuel sector.

The Board cannot plead ignorance of its duty to divest. For years, Santa Clara students and faculty have pushed for investment practices that align with the University's mission. This pressure was instrumental in the Board's 1986 decision to divest from IBM stocks due to the company's presence in apartheid South Africa and its 2009 decision to divest from Massey Energy due to that company's destructive coal mining practices: acknowledgments that its investment activity must comport with the University's missions and values. In recent years, the Faculty Senate has voted for fossil fuel divestment and students and other University community members have repeatedly met with administrators to press the issue. Repeated rallies, letters, and requests for negotiation have alerted the Board of Trustees to its fiduciary responsibilities.

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

We have included below a fuller description of the Board's violations, along with documents and reports supporting the claims made in this complaint. Under the statutes governing charitable corporations, your office may investigate violations of California's charitable contribution laws. We would appreciate the opportunity to have members of our group meet with your staff to discuss legal avenues to address this matter.

Sincerely,

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

Students of Fossil Free SCU

Climate Science and Policy Community

Dr. Alyssa Battistoni, *Assistant Professor of Political Science, Barnard College*
Dr. J. Mijin Cha, LLM, JD, *Assistant Professor of Urban and Environmental Policy, Occidental College*
Dr. Jacquelyn Gill, *Associate Professor of Paleoecology and Plant Ecology, School of Biology and Ecology and Climate Change Institute, University of Maine*
Dr. Jade d'Alpoim Guedes, *Associate Professor in the Department of Anthropology and the Scripps Institution of Oceanography, University of California, San Diego*
Dr. Noel Healy, *Associate Professor of Geography and Sustainability, Salem State University; Contributing Author for Working Group 3 of IPCC AR6*
Dr. Robert W. Howarth, *David R. Atkinson Professor Ecology and Environmental Biology, Cornell University; Co-Editor in Chief, OLAR, journal of Ocean-Land-Atmosphere Research*
Bill McKibben, *Schumann Distinguished Scholar, Middlebury College; Co-founder and Senior Advisor, 350.org*
Dr. Mark Paul, *Assistant Professor of Economics and Environmental Studies, New College of Florida*
Dr. Juliet Schor, *Ecological Economist and Professor of Sociology, Boston College*
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*
Benjamin Zaitchik, *Professor in the Department of Earth and Planetary Sciences, Johns Hopkins University*

Organizations

Sunrise Bay Area Coalition
Santa Clara Sunrise
Silicon Valley Sunrise
SCU Environmental Action (ENACT)
SCU Into the Wild
SCU GREEN Team
Greenaction for Health and Environmental Justice
Santa Clara Community Action Program

Santa Clara University Faculty

Dr. C.J. Gabbe, *Associate Professor in Department of Environmental Studies and Sciences*
Prof. Stephanie Hughes, *Senior Lecturer in Department of Environmental Studies and Sciences*
Dr. Leslie Gray, *Professor in Department of Environmental Studies and Sciences*
Dr. Ted Grudin, *Lecturer in Department of Environmental Studies and Sciences*
Dr. Emily Frankel, *Academic Year Adjunct Lecturer in Department of Spanish*
Dr. Erick Ramirez, *Associate Professor in Department of Philosophy*

Dr. Meilin Chinn, *Associate Professor in Department of Philosophy*
Dr. Jesica S. Fernandez, *Associate Professor in Department of Ethnic Studies*
Dr. Daria Siciliano, *Academic Year Adjunct Lecturer in Department of Environmental Studies and Sciences*
Prof. Jessica Eastburn, *Lecturer in Department of Art and Art History*
Prof. Zsea Bowmani, *Adjunct Lecturer in School of Law and Department of Environmental Studies & Sciences*
Dr. Iris Stewart-Frey, *Professor in the Department of Environmental Studies and Sciences*
Dr. Edwin Maurer, *Professor and Chair of Civil, Environmental, and Sustainable Engineering Department*
Dr. Virginia Matzek, *Professor and Chair of the Department of Environmental Studies and Sciences*
Prof. Kristin Kusanovich, *Senior Lecturer in the Department of Theater and Dance and Department of Child Studies, Founder and Director of the tUrn Climate Crisis Awareness & Action Project*
Dr. Lisa Kealhofer, *Professor in the Department of Environmental Studies and Sciences*
Prof. David Sloss, *John A. and Elizabeth H. Sutro Professor of Law*
Dr. Chad Raphael, *Professor in the Department of Communication*
Dr. Rita Madarassy, *Lecturer in Department of Economics*
Dr. Chris Bacon, *Associate Professor in the Department of Environmental Studies and Sciences*

Alumni and Community Members

Tess Rosenberg, *Teaching Assistant, Meddeas Lingua Foundation (SCU '21)*
Sophia Smith (*SCU '21)*
Blair Libby, *Wetlands Program Coordinator, Confederated Salish and Kootenai Tribes (SCU '16)*
Thomas Wheeler, *Master's of Environmental Science and Management Candidate, Bren School of Environmental Science and Management, University of California, Santa Barbara (SCU '16)*
Lisa McMonagle, *Policy Associate at CUNY Institute of State and Local Governance (SCU '15)*
Meredith Anderson, *Climate Planning Technician at Sierra Business Council (SCU '18)*
Sami Lama, *Research And Development Engineer at Meditrina Inc (SCU '20)*
Nasrine Lakabi, *Office Of Vice Mayor Jones at City of San Jose Council Aide (SCU '21)*
Hiwad M. Haider, *Assembly District Delegate, California Democratic Party (SCU '21)*
Galilea Silva, (*SCU '16)*
Kevin Patel, *Founder of OneUp Action and Climate Activist*
Chloe Gentile-Montgomery, *Graduate Student of Education, Stanford University (SCU '21)*
Kayleigh Limbach, *Environmental Planner at Rincon Consultants, Inc. (SCU '21)*
Ethan Hayden, esq., *Attorney, Legal Program Manager, iBridge LLC (SCU '17)*
Claire Parchem, *Data Content Operations Director at Orbital Insight (SCU '16)*
Ian McCluskey, *Product Manager, Group14 Technologies (SCU '15)*
Brevin Vent, *Account Manager at Collabera, (SCU '21)*
Ciara Moezidis, *Harvard MTS Candidate, IHRL Fellow for the External Office of the U.N. Special Rapporteur on FoRB (SCU '21)*
Javier Ortega, *Policy Organizer at Sacred Heart Community Service (SCU '20)*
Vasudha Kumar, *Research Analyst @ Stanford University (SCU '21)*

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

Prepared with assistance from attorneys at Climate Defense Project.

SUPPORTING DOCUMENTATION

Table of Contents

I. The Trustees' violation of California law

The Board of Trustees of Santa Clara University is a non-profit corporation organized under California law; it was founded as a college in 1851 on the grounds of the Mission Santa Clara de Asís.[6] The University's purpose is "to engage in collegiate education and it may pursue such other purposes as are necessary or useful in furthering its primary purpose. The University will be publicly identified as a Jesuit, Catholic university. The Board of Trustees . . . as a whole and individually, acknowledge their responsibility to enhance and advance the purposes, identity and mission of Santa Clara as a Jesuit, Catholic university, and that the University will conduct itself in harmony with its distinctive purposes and mission."[7]

The Board of Trustees is the governing body of the University; its functions include: "regularly monitor the University's financial condition, and establish policy guidelines affecting all institutional assets, including investments and the physical plant."[8] The Office of Finance and Administration oversees investment of the University's assets.[9]

- Continued investment in fossil fuels by the Board of Trustees *violates the fiduciary duties spelled out in the California Uniform Prudent Management of Institutional Funds Act (CUPMIFA)*.
    - CUPMIFA states that, "[s]ubject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund."[10] The model UPMIFA drafting committee describes consideration of "charitable purposes" as a "fundamental duty,"[11] and this requirement distinguishes charitable investors like the Board of Trustees from other entities such as pension funds.
    - CUPMIFA further requires that, "[i]n addition to complying with the duty of loyalty imposed by law other than this part, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances."[12]
    - CUPMIFA lists several factors that must be considered in managing and investing an institutional fund, including: "General economic conditions . . . The role that each investment or course of action plays within the overall investment portfolio of the fund . . . The expected total return from income and the appreciation of investments . . . [and] An asset's special relationship or special value, if any, to the charitable purposes of the institution."[13]

---

[6] History, Santa Clara University (2022).
[7] University Bylaws, Santa Clara University, Art. 1 (2022).
[8] *Id.* at Art. 2.
[9] About, Santa Clara University of Finance and Administration (2022).
[10] Cal. Prob. Code § 18503(a).
[11] National Conference of Commissioners on Uniform State Laws at 15, Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments (2006).
[12] Cal. Prob. Code § 18503(b).
[13] Cal. Prob. Code § 18503(e)(1).

    - Although the directors of charitable institutions may delegate investment authority to an external agent,[14] such delegation does not suspend the duty of each director to act in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."[15]
- The Board of Trustees has *failed to consider the charitable purposes of the institution and the purposes of the institutional fund* by financially supporting the degradation of the climate, widespread damage to ecological and human health, and massive injuries to environmental and social equity. The duty to consider the charitable purposes for which Santa Clara University was established distinguishes the Board of Trustees from other investors, imposing a special legal responsibility to screen assets for their possible interference with the university's goals. Yet the outcomes of the Board of Trustees's fossil fuel investments are directly contrary to the University's mission to promote "service not only to those who study and work at Santa Clara but also to society in general and to its most disadvantaged members as we work with and for others to build a more humane, just, faith-filled, and sustainable world,"[16] as well as its commitment as a Jesuit institution "to climate action, responsible resource consumption, and quality education for our students . . . respond[ing] to the Pope's call to be advocates for the earth and our marginalized neighbors."[17] The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene the University's mission to "support scholarship that advances our understanding and practice of sustainability."[18] As such, continued investment in fossil fuel holdings *violates the Board of Trustees's duty to consider an asset's special relationship or special value, if any, to the charitable purposes of the institution.*
- The Board of Trustees has *violated its duty of loyalty* to the Santa Clara University 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 Trustees have also violated their duty of loyalty by indulging conflicts of interest with the fossil fuel industry, maintaining personal, professional, and financial ties to oil, gas, and coal companies even as these companies harm the University.
- The Board of Trustees has *violated its duty to act in good faith* by refusing to abide by their previous commitments to socially responsible investing; by ignoring the warnings of students, faculty, alumni, and regulators that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus groups to push the university's investment practices toward a more consistent and sustainable approach.
- The Board of Trustees has *violated its duty of care* by investing the university's endowment in financially risky fossil fuel stocks, which have underperformed for years and are currently at risk of a general collapse in value. This violation is exacerbated by

[14] Cal. Prob. Code § 18505.
[15] Cal. Corp. Code § 5231(a).
[16] Mission, Vision, Values, Santa Clara University (2022).
[17] Sustainability Strategic Plan, Santa Clara University Center for Sustainability at 2 (2019).
[18] Sustainability Policy, Santa Clara University (2004).

the Board of Trustees's failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.

- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the original UPMIFA, has called for the application of the prudence standard to the threats of climate change. As Longstreth writes, the risks posed by fossil fuel investments are so serious that institutional investors will be hard-pressed to justify continued holdings in the industry: "The prudence standard of the Act can easily support a decision not to continue to hold or invest in fossil fuel companies. The risks and rewards now offered by such securities are asymmetric, in the sense that the foreseeable rewards are not likely to be equal to the foreseeable risks. The risk that, at some unknown and unknowable, yet highly likely, point in the future, markets will begin to adjust the equity price of fossil fuel company securities downward to reflect the swiftly changing future prospects of those companies, is as serious as it is immense. Moreover, the possibility of that adjustment being a swift one is also a serious risk. A decision to linger in an investment with such an overhanging risk, and expect to time one's exit before the danger is recognized in the market, is a strategy hard to fit within the concept of prudence."[19]
- In a report analyzing fiduciary duties owed by public pension funds, the Center for International Environmental Law concludes that "climate change should be considered an independent risk variable when making investment decisions, and it will trigger the obligations of pension fund fiduciaries . . . If pension fund fiduciaries do not take the financial risks posed by climate change seriously, they may be subject to liability. A failure to properly consider climate change as a risk factor could result in lawsuits under various theories of liability for breaches of fiduciary duties."[20]
    - The report identifies four categories of risk to the value of fossil fuel assets: 1) impact risk (the risk of loss due to the physical effects of global warming, such as sea level rise and wildfires); 2) carbon asset risk (the risk that fossil fuel reserves will never be exploited and remain unprofitable; 3) transition risk (the risk that regulation and the growth of renewable energy will render fossil fuel products too expensive for or unappealing to consumers); and 4) litigation risk (the risk of financial penalties from lawsuits and other legal actions).
    - As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that "[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings."[21]
- The public benefit purpose of non-profits like Santa Clara University 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

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

the case of a charitable trust, property is devoted to purposes the law deems appropriately beneficial to the public . . . unlike in the case of a private trust in which fiduciary duties are owed to the beneficiaries, *in the case of a charity, fiduciary duties are owed to the charity's purposes rather than to a specific person or persons* . . . the fiduciaries of a charity owe the duty of loyalty to the charity's purposes rather than the entity."[22]

- In the context of investment, the standard prudent investor rule carries the additional burden of considering charitable purposes. "[T]he test of prudence evaluates the care, diligence, and skill demonstrated by the actor considering the relevant circumstances, as well as whether the person acted in good faith . . . *In the case of charities, however, the most relevant circumstance is the purpose to which the funds must be devoted*."[23]
- Santa Clara's total energy holdings are approximately 60 million dollars; an undetermined portion of this is invested in fossil fuel companies.[24]

II. Santa Clara's social and environmental commitments

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

- Santa Clara University's mission is "creating an academic community that educates the whole person within the Jesuit, Catholic tradition, making student learning our central focus, continuously improving our curriculum and co-curriculum, strengthening our scholarship and creative work, and serving the communities of which we are a part in Silicon Valley and around the world." Its vision statement reads: "Santa Clara University will educate citizens and leaders of competence, conscience, and compassion and cultivate knowledge and faith to build a more humane, just, and sustainable world." This mission and value are expressed in "fundamental values," including:
    - "Search for Truth, Goodness, and Beauty: We prize scholarship and creative work that advance human understanding, improve teaching and learning, and add to the betterment of society by illuminating the most significant problems of the day and exploring the enduring mysteries of life. In this search, our commitment to academic freedom is unwavering";
    - "Engaged Learning: We strive to integrate academic reflection and direct experience in the classroom and the community, especially to understand and improve the lives of those with the least education, power, and wealth";
    - "Service to Others: We promote throughout the University a culture of service—service not only to those who study and work at Santa Clara but also to society in general and to its most disadvantaged members as we work with and for others to build a more humane, just, faith-filled, and sustainable world"; and

---

[22] Restatement of the Law for Charitable Nonprofit Organizations, § 2.02, cmt. (2021) (emphasis added).
[23] *Id.* at § 2.04 ("Management, Investment, and Expenditure of a Charity's Assets), cmt. (emphasis added).
[24] Personal correspondence from Santa Clara University Chief Investment Officer John Kerrigan (Mar. 2, 2022).

    - "Jesuit Distinctiveness: We treasure our Jesuit heritage and tradition, which incorporates all of these core values. This tradition gives expression to our Jesuit educational mission and Catholic identity while also welcoming and respecting other religious and philosophical traditions, promoting the dialogue between faith and culture, and valuing opportunities to deepen religious beliefs."[25]
- The University's 2004 Sustainability Policy states: "As a Jesuit and Catholic University, we have the responsibility to provide leadership in developing a more sustainable way of living. By embracing sustainability, the University furthers its mission to act as a voice of reason, conscience, and service to society." The Policy includes the following commitments:
    - "We seek ways to reduce our use of non-renewable resources, minimize pollution, and live more lightly on the land. We are mindful of the need to share equitably the natural resources on which all life depends";
    - "We consider the economic, social, and environmental consequences of our actions";
    - "We seek to support scholarship that advances our understanding and practice of sustainability";
    - "We recognize our role in educating the university community about the importance of both individual and institutional environmental responsibility"; and
    - "Encouraging the University community to build upon this policy statement by identifying opportunities, formulating strategies, and implementing initiatives to further the move toward a more sustainable future."[26]
- In the University's 2019 Sustainability Strategic Plan, then-University President Father Michael Engh notes that "[t]his plan embodies our commitment to carbon neutrality in the scope of our values as a Jesuit institution. I invite you to celebrate our accomplishments as a nationally-recognized leader in sustainability as well as contemplate our duty to care for our common home . . . By committing to climate action, responsible resource consumption, and quality education for our students, we can respond to the Pope's call to be advocates for the earth and our marginalized neighbors."[27]
- In his 2009 Inauguration Address, Father Engh stated: "I propose that we become a major center for discussions of environmental justice, and for examining the ethical dimensions of how we treat the physical world . . . I see an immense opportunity for Santa Clara to champion environmental justice, and to do so explicitly for the sake of and alongside the poorest in our world."[28]
- The University's Environmental Justice and the Common Good Initiative states that "[w]e understand these environmental injustices as stemming in large part from structural and institutionalized racism, economic exploitation, and our individual biases and actions." The Initiative calls on the University community to "[r]eshape our work to address environmental justice issues or prioritize them in our research agendas" and to "[s]tudy the history of resistance to the long-term, systemic harm of environmental racism and injustice. Learn about the global violence of climate change, and brown and

[25] Mission, Vision, Values, Santa Clara University (2022).
[26] Sustainability Policy, Santa Clara University (2004).
[27] Sustainability Strategic Plan, Santa Clara University Center for Sustainability at 2 (2019).
[28] Michael E. Engh, S.J., Inauguration Address, Santa Clara Magazine (Jul. 15, 2009).

Black activists' and scholars' work in the climate justice movement in the United States and around the world."[29]
- In 1986, Santa Clara University announced that it had quietly divested from IBM, the only company in their stock portfolio that did business in South Africa, after community pressure to pull its resources from the apartheid regime.[30]
- In 2009, after the Ignatian Center's Appalachian retreats and reporting on the company's numerous safety and environmental violations, the University responded to student demands by divesting from coal mining company Massey Energy. Then-University President Michael Engh, S.J., stated that the University had "contradicted our ethical guidelines for investment" by holding stock in the company.[31]

III. The scientific reality and risks of climate change

The current and future effects of climate change jeopardize the physical integrity of the Santa Clara campus and the safety of its students, faculty, and staff, undermining the Trustees' *charitable purposes.* By investing in companies disproportionately responsible for the climate crisis, the Trustees expose the Santa Clara community and society at large to severe injury, thus failing to act in the best interests of the institution and violating their *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.[32]
- 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.[33] 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."[34]
- There is a near-linear relationship between the cumulative amount of carbon dioxide emitted and the amount of global warming it causes.[35] Every one-half degree Celsius of

---

[29] Racial and Environmental Justice, Santa Clara University Environmental Justice and the Common Good Initiative (2021).
[30] Elise Banducci, University sold IBM stocks months ago, The Santa Clara (Apr. 24, 1986).
[31] Sue Sturgis, Congressmen, Jesuits and Ashley Judd target mountaintop removal, Facing South (Mar. 5, 2009).
[32] *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).
[33] 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.
[34] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (July 2017).
[35] IPCC, Summary for Policymakers, *supra* at note 32, at 37.

further global warming results in discernible increases in intensity and frequency of temperature extremes, heavy precipitation and agricultural, hydrological and ecological droughts in some regions.[36] As a result of human-caused warming, climate change is already affecting every inhabited region across the globe, leading to observed changes in weather and climate extremes.[37]

- 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."[38] The USGRCP report concluded that, as a result of climate change, "annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states."[39]
- 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.[40]
- According to the Environmental Protection Agency, climate change effects in California will include: decreased water availability and more severe droughts by extension; reduced yield rates for grain and other water-intensive crops; threats to livestock health; increased severity, frequency, and extent of wildfires; increased incidence of heat-related diseases; and sea level rise between one and four feet.[41]
- Historical data from NOAA show that Santa Clara County's annual average maximum temperature increased by 2.5 degrees Fahrenheit between 1950 and 2019.[42]
- Climate change will continue to cause severe problems in Santa Clara County, where SCU is located, with more severe impacts expected under high-emissions scenarios. According to the County's 2021 Climate Action Plan:
    - "The County is expected to see an increase in annual average temperature of 2-4°F by 2050 and 4-6°F by 2100." That temperature increase "will cause more heat-related illness and hospitalizations. Increased allergens and harmful air pollutants due to higher temperatures will put people with asthma and other vulnerable populations at higher risk for health complications."[43]

---

[36] *Id.* at 19.
[37] *Id.* at 10.
[38] Fourth National Climate Assessment, Volume II at 25, U.S. Global Change Research Program (Mar. 2021).
[39] *Id.* at 26.
[40] Rebecca Lindsey, Climate Change: Global Sea Level, Climate.gov (Jan. 25, 2021).
[41] What Climate Change Means for California, Environmental Protection Agency (Aug. 2016).
[42] Neeta Bijoor, Lydia Dadd, Kirsten Struve, Cris Tulloch, Rachel Barrales, Nick Mascarello, & Maggie O'Shea, Draft Climate Change Action Plan at 14, Santa Clara Valley Water District (2021).
[43] City of Santa Clara Draft Climate Action Plan at 18, City of Santa Clara (Apr. 2022).

    - The Plan also predicts that "[t]he probability of a 100-year flood event in Santa Clara County could be 10-20% higher by 2050 and 30-40% higher by 2100." Moreover, the Plan finds that "the San Francisco Bay is projected to rise: 6 inches by 2030… 11 inches by 2050… 36 inches by 2100."[44]
    - Wildfires also pose an increased threat. According to the Plan, "the Bay Area is one of the more risk prone areas in the state. Regional wildfires threaten Santa Clara's air quality, supply chain and distribution channels, and water quality."[45]
    - These changing environmental conditions threaten the area. The Plan finds that "wildfires, warming temperatures, and changing precipitation patterns will disrupt forests, streams, and other critical habitats that are home to important local species," and that "[m]ore extreme temperatures and weather patterns threaten agriculture and food security, tourism, outdoor recreation and other seasonal and climate-dependent industries."[46]
- According to the Santa Clara Valley Water District: "Precipitation could increase in overall volume. Extreme heat and precipitation events are likely to increase in frequency. Santa Clara County may also experience more frequent and severe droughts, increased risk of wildfire, increased threats to surface water quality, and sea level rise. California's snowpack, a source of Valley Water's imported water supply, is expected to decline as a result of climate change."[47]
- The California Department of Public Health's Climate Change and Health Profile Report for Santa Clara County finds that Santa Clara County will experience significant negative effects as a result of climate change, although how negative depends on efforts to curb greenhouse gas emissions.
    - According to the Report, "the temperature increases projected in the higher emissions scenario are approximately twice as high as those projected in the lower emissions scenario," pointing to the necessity of restricting emissions from fossil fuels.[48]
    - The Report also finds that "the area projected to be threatened for a 55-inch sea level rise, which is consistent with a high carbon emissions scenario," will significantly increase in high-emissions scenarios.[49] This is a conservative estimate, as the Report notes that "[c]limate change models indicate that California may see up to a 66 inch (167 cm) rise in sea level within this century."[50]
    - Flooding and sea level rise are already being recorded. Santa Clara Valley Water's Climate Action Plan states that "[s]ea level in the San Francisco Bay Area, including Santa Clara County, has risen nearly eight inches in the last 100

[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] Bijoor, *et al.*, Draft Climate Change Action Plan, *supra* at note 42, at iv.
[48] Neil Maizlish, Dorette English, Jacqueline Chan, Kathy Dervin, & Paul English, Climate Change and Health Profile Report, Santa Clara County at 6, Office of Health Equity, California Department of Public Health (Feb. 2017).
[49] *Id.* at 10.
[50] *Id.*

years and continues to rise."[51] Valley Water's Report details that in the highest-emissions scenario, "a rise between 1.6 and 3.4 feet is projected."[52]

- Effects may be worse than predicted, given that "these projections may underestimate the possibility of extensive loss from Antarctic ice sheets… In an extreme scenario, the OPC projects that the San Francisco tidal gauge could see [sea level rise] of ten feet."[53]
- According to the Report, environmental changes caused by climate change harm human health in three main ways: direct exposures, indirect exposures, and socioeconomic disruption.[54]
    - Direct exposure to extreme weather events cause "fatal and nonfatal injuries from drowning, being struck by objects, fire, explosions, electrocution, or exposure to toxic materials," as well as destroying schools and causing "post-traumatic stress, depression, and increased risk of suicide."[55]
    - Extreme heat can cause heat-related illnesses and "the exacerbation of pre-existing conditions in the medically fragile, chronically ill, and vulnerable," as well as reduced air quality, which contributes to respiratory disease.[56]
    - Drought increases wildfire risk, causing "sediment in run-off that reduce[s] water quality" and "smoke, ash, and fine particles [that] increases respiratory and cardiovascular risks."[57]
    - Sea level rise will reduce water quality and cause mold contamination, which is detrimental to indoor air quality.[58]
    - Finally, climate change causes socio-economic disruption through infrastructure damage. "Health care facilities, water treatment plants, and roads for emergency responders and transportation for health care personnel can be damaged in climate-related extreme weather events. Increased burden of disease and injury will test the surge capacity of health care facilities. Economic disruption can lead to income loss, income insecurity, food insecurity, housing insecurity, and mental health problems, which in turn may increase substance abuse, suicide, and other health problems."[59]

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

Mounting evidence demonstrates that fossil fuel investments create disproportionate burdens on people of color, Indigenous communities, and low-income communities. Fossil fuel investments

---

[51] Bijoor, *et al.*, Draft Climate Change Action Plan, *supra* at note 42, at 21.
[52] *Id.*
[53] *Id.*
[54] Maizlish, *et al.*, *supra* at note 48.
[55] *Id.*
[56] *Id.* at 13.
[57] *Id.*
[58] *Id.*
[59] *Id.* at 14.

also harm the public health and property of California residents, including those in the Santa Clara community, violating the Trustees' duties to *consider the charitable purposes* of Santa Clara and to act with *loyalty* toward their community and property.

- Climate change heavily impacts "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.[60] 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.[61]
    - According to a study from the Program for Environmental and Regional Equity at the University of Southern California, racial minorities will disproportionately suffer from an inability to pay for basic necessities and from decreased job prospects in sectors such as agriculture and tourism as the climate crisis accelerates.[62]
    - According to the United Nations, "[c]limate change exacerbates the difficulties already faced by Indigenous communities, including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment."[63] Indigenous communities are also vulnerable to climate change impacts because of the enduring legacy of colonialism, forced relocations, the loss of cultural practices, and other harms, which create health burdens.[64]

---

[60] The Geography of Climate Justice, Mary Robinson Foundation (last visited Feb. 10, 2021).
[61] 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).
[62] 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).
[63] United Nations Department of Economic and Social Affairs — Indigenous Peoples, Climate Change (last visited Oct. 5, 2021).
[64] Jantarasami, L.C., *et al.*, Chapter 15: Tribes and Indigenous Peoples at 582. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II, U.S. Global Change Research Program (2018) ("A number of health risks are higher among Indigenous populations due in part to historic and contemporary social, political, and economic factors that can affect conditions of daily life and limit resources and opportunities for leading a healthy life. Many Indigenous peoples still experience historical trauma associated with colonization, removal from their homelands, and loss of their traditional ways of life, and this has been identified as a contributor to contemporary physical and mental health impacts. Other factors include institutional racism, living and working circumstances that increase exposure to health threats, and limited access to healthcare services. Though local trends may differ across the country, in general, Indigenous peoples have disproportionately higher rates of asthma, cardiovascular disease, Alzheimer's disease or dementia, diabetes, and obesity. These health disparities have direct linkages to increased vulnerability to climate change impacts, including changes in the pollen season and allergenicity, air quality, and extreme weather events. For example, diabetes prevalence within federally recognized tribes is about twice that of the general U.S. population. People with diabetes are more sensitive to extreme heat and air pollution, and physical health impacts can also influence mental health.").

    - 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.[65]
- In September 2021, The Lancet published a Comment co-signed and co-published by the editors of more than 200 leading medical journals worldwide.[66] The authors noted that "[h]ealth institutions have already divested more than $42 billion of assets from fossil fuels" and urged others to join them, since "[t]he greatest threat to global public health is the continued failure of world leaders to keep the global temperature rise below 1.5°C and to restore nature."[67]
- 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.[68]
- Children bear especially heavy burdens from the impacts of climate change and fossil fuel extraction.
    - According to UNICEF, one billion children live at extreme risk of climate and environmental hazards, shocks, and stresses.[69] The United States ranks among the countries in which children face at least five major climate and environmental shocks (extremely high category).[70]
    - Children are more vulnerable than adults to extreme weather. They are less able to regulate their body temperature during heat waves,[71] breathe at twice the adult rate,[72] and are at crucial stages of brain and organ development.[73] Exposure to toxins has more potential to harm their cognitive ability and lung capacity,[74] and they suffer these deficits their entire lives. Climate change-caused disasters, air pollution extremes, and environmental degradation also disrupt education, and excessive heat interferes with learning capacity.[75]
    - UNICEF concludes that "the climate crisis affects or will affect all children, everywhere, in often significant, life-changing ways, throughout their lives" and "undermines the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child."[76]
- Climate change presents significant challenges to human and environmental health in California.

---

[65] 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).
[66] Lukoye Atwoli, *et al.*, Call for emergency action to limit global temperature increases, restore biodiversity, and protect health, 398 (10304) The Lancet 939 (2021).
[67] *Id.*
[68] K. Vohra, A. Vodonos, J. Schwartz, E. Marais, M.P. Sulprizio, & L.J. Mickley, Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem, Environmental Research (in press 2021).
[69] UNICEF, The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index (Aug. 2021).
[70] *Id.* at 80.
[71] *Id.* at 110.
[72] *Id*.
[73] *Id*. at 20.
[74] *Id*.
[75] *Id.* at 110; Joshua Goodman, Michael Hurwitz, Jisung Park, & Jonathan Smith, Heat and Learning, National Bureau of Economic Research (May 2018).
[76] *Id*.

- Climate change causes sea level rise through thermal expansion in the ocean and melting of the earth's ice. California's sea level rise assessment from 2017 shows that the San Francisco bay is likely to rise by 0.6 to 1.1 feet by 2050 and 1.6 to 3.4 feet by the end of the century.[77]
- Many areas that will be heavily impacted by sea level rise are populated by communities of color, such as Bayview Hunters Point (BVHP) and Treasure Island, two San Francisco neighborhoods.[78] Because BVHP and Treasure Island are both ranked by CalEnviroScreen as two of the communities in California most at risk from pollution, sea level rise would be especially disastrous in those areas.[79]
- "Increases are also expected in the number of extreme heat days, which are days when the daily maximum temperature is above the extreme heat threshold of 93.1°F. An average of model projections shows that the annual number of extreme heat days is projected to rise by 2.7 days per year by 2050 and by an additional 1.7 days per year by 2100 under RCP (Representative Concentration Pathway) 4.5 (Figure 4; Cal-Adapt, 2020). Under RCP 8.5, the annual number of extreme heat days is projected to rise by 5.6 per year by 2050 and by an additional 4.4 days per year by 2100."[80]
- Researchers used temperature and census data to inspect the distribution of heat islands — areas of cities with higher average temperatures than their surroundings — and found that in the summer of 2017, all but six of the country's 175 large urban areas had immense racial disparities in who was most likely to live in an area with a higher heat island intensity.[81]
- California's ongoing drought has revealed varying drought preparedness across socioeconomic classes in California. A study by the Public Policy Institute of California found that drought caused by anthropogenic warming has burdened already disadvantaged low-income rural communities the most with job-losses, decreasing water availability and quality, land subsidence, and particulate air pollution.[82]
    - According to a recent study by Stanford researchers published in the Science of the Total Environment journal, the drilling and operation of oil wells in California emits dangerous levels of pollution and puts the health of nearby residents at risk of respiratory illnesses and death by Covid-19. Additionally the study found over two million Californians live within a

---

[77] Gary Griggs, Joseph Árvai, Dan Cayan, Robert DeConto, Jenn Fox, Helen Amanda Fricker, Robert E. Kopp, Susi Moser, Claudia Tebaldi, & Liz Whiteman (California Ocean Protection Council Science Advisory Team Working Group), Rising Seas in California: An Update on Sea-Level Rise Science at 26, California Ocean Science Trust (Apr. 2017). The authors note that "[t]hese projections may underestimate the probability of extreme Antarctic ice loss, an outcome that is highly uncertain but, given recent observations and model results, cannot be ignored." *Id.* at 24.
[78] "Sea Level Rise Vulnerability and Consequences Assessment," page E.1 City and County of San Francisco (Feb. 2020).
[79] CalEnviroScreen 4.0 at 149, 203, California Office of Environmental Health Hazard Assessment (Oct. 2021).
[80] Neeta Bijoor, Lydia Dadd, Kirsten Struve, Cris Tulloch, Rachel Barrales, Nick Mascarello, & Maggie O'Shea, Draft Climate Change Action Plan at 18, Santa Clara Valley Water District (July 2021).
[81] Drew Costley, People of color more exposed to heat islands, study finds, AP News (May 25, 2021).
[82] E. Hanak, J. Mount, C. Chapelle, J. Lund, J. Medellin-Azuara, P. Moyole, & N. Seavy, What if California's Drought Continues?, Public Policy Institute of California (Aug. 2015).

mile of an oil or gas well and are most commonly Black or Latinx individuals.[83]

        - A paper published by Berkeley researchers notes that "[c]limate change will likely reinforce and amplify current as well as future socioeconomic disparities, leaving low-income, minority, and politically marginalized groups with fewer economic opportunities and more environmental and health burdens." The paper goes on to state: "In California, the five smoggiest cities are also the locations with the highest projections of climate change induced ambient ozone increases as well as the highest densities of people of color and low-income residents."[84]
    - Burning fossil fuels has altered ocean chemistry, making it more acidic.[85] Acidification has caused serious economic harm to the global fishing industry and also threatens coral reefs and other marine ecosystems.[86] California stands to be particularly impacted by these harms, with more jobs in the seafood industry than any other state.[87]
    - Plastic waste — a direct by-product of fossil fuel extraction, with ninety-eight percent of plastics made from fossil fuels — further damages marine ecosystems.[88] The United Nations Environment Programme estimates that damage to marine ecosystems from plastic waste causes thirteen billion dollars' worth of damage every year.[89] Fossil fuel companies rely on plastic production to shore up profits.[90]
- 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."[91] 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.[92]

---

[83] D. Gonzalez, C. Francis, G. Shaw, M. Cullen, M. Baiocchi, & M. Burke, Upstream oil and gas production and ambient air pollution in California, Science of the Total Environment (Feb. 1, 2021).
[84] Rachel Morello Frosch, Manuel Pastor, Jim Sadd, & Seth Shonkoff, The climate gap: environmental health and equity implications of climate change and mitigation policies in California, 109 Climatic Change S485, S491 (2011).
[85] Scott Doney, Oceans of Acid: How Fossil Fuels Could Destroy Marine Ecosystems, Public Broadcasting Service (Feb. 12, 2014).
[86] *Id.*
[87] *See* National Oceanic and Atmospheric Administration, The Economic Importance of Seafood (Oct. 21, 2020) (estimating that California's seafood industry provided 152,508 jobs in 2017).
[88] Marty Mulvihill, Gretta Goldenman, & Arlene Blum, The Proliferation of Plastics and Toxic Chemicals Must End, The New York Times (Aug. 27, 2021).
[89] United Nations Environment Programme, Plastic Waste Causes Financial Damage of US$13 Billion to Marine Ecosystems Each Year as Concern Grows over Microplastics (June 23, 2014).
[90] Mulvihill, *et al.*, *supra* at note 88.
[91] Intergovernmental Platform on Biodiversity and Ecosystem Services, IPBES Workshop on Biodiversity and Pandemics: Workshop Report (Oct. 29, 2020).
[92] Renee N. Salas, James M. Shultz, & Caren G. Solomon, The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response, New Eng. J. Med. (2020).

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

The fossil fuel industry remains resolutely committed to a business model that produces and exacerbates climate change, and to the suppression of nonviolent protest. Investments that promote these activities directly contravene the Trustees' *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."[93]
  - Coal industry publications suggested as early as 1966 that the release of fossil fuels could cause "vast changes in the climates of the earth."[94] 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.[95]
  - 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."[96]
  - Shell internally reached similar conclusions by at least the 1980s,[97] as did Mobil (then separate from Exxon).[98] By the 1980s, major fossil fuel companies had "internally acknowledged that climate change was real, it was caused by fossil fuel consumption, and it would have significant impacts on the environment and human health."[99]
- 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."[100]
- No major fossil fuel company has established itself as a willing participant in the transition to renewable energy.

[93] 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).
[94] Elan Young, Exxon knew -- and so did coal, Grist (Nov. 29, 2019).
[95] Oliver Milman, Oil industry knew of 'serious' climate concerns more than 45 years ago, The Guardian (Apr. 13, 2016).
[96] Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, Sci. Am. (Oct. 26, 2015).
[97] John H. Cushman Jr., Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show, Inside Climate News (Apr. 5, 2018).
[98] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[99] Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 93, at 15.
[100] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (Jul. 2017).

- In 2018, all fossil fuel majors approved projects that are noncompliant with the Paris Agreement goals.[101] That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.[102]
- 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.[103] 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."[104]

- 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.[105] As recently as November 2020, BP was buying up Canadian offshore oil parcels.[106]
    - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.[107] The 2018 investment plan by ExxonMobil, one of the world's largest oil companies, predicted that the firm's expanded oil and gas production would release an additional twenty-one million tons of carbon dioxide annually by 2025. When added to the emissions released by "end uses" of the company's products, the total additional emissions of ExxonMobil's growth strategy would amount to around 100 million tons of carbon dioxide per year. This figure — which represents only the anticipated *expansion* of ExxonMobil's business — is roughly equivalent to the entire annual emissions of the country of Greece.[108]
    - Several leading executives from Shell's renewable energy sectors recently quit in response to the company's lackluster efforts to decarbonize.[109] In December 2020, the company was actively engaged in litigation in the Netherlands in which it argued that emissions reduction commitments should not be legally binding.[110] In

[101] 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).
[102] Ron Bousso, Big Oil spent 1 percent on green energy in 2018, Reuters (Nov. 11, 2018).
[103] Anjli Raval, Big fossil fuel groups all failing climate goals, study shows, Financial Times (Oct. 6, 2020).
[104] Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans, Oil Change International (Sept. 2020).
[105] 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 . . . .").
[106] Julianne Geiger, From Billions To Millions: Canada's Offshore Oil Disappointment, OilPrice.com (Nov. 5, 2020).
[107] 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).
[108] Crowley & Rathi, *supra* at note 107. ExxonMobil's growth strategy has since changed in light of the Covid-19 pandemic.
[109] Anjli Raval & Leslie Hook, Shell Executives Quit Amid Discord Over Green Push, Financial Times (Dec. 8, 2020).
[110] Laurel Wamsey, Climate Case Against Shell Begins In The Netherlands, NPR (Dec. 1, 2020).

February 2021, the company revealed that it planned significant expansion of its gas export and production operations.[111]
    - Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.[112]
    - The American Petroleum Institute recently asserted that the oil industry remains essential to the American economy and promised to resist President Biden's climate agenda.[113]
- The commitment of the fossil fuel industry to increased emissions makes fossil fuel investment incompatible with international targets to reduce greenhouse gas emissions. In a recent report, the International Energy Agency concluded that, in order to reach net zero emissions by 2050, "[t]here is no need for investment in new fossil fuel supply in our net zero pathway."[114]
- Shareholder engagement has not been an effective tactic for changing the industry's core business model, with recent attempts by shareholders to persuade fossil fuel companies to address climate risks going largely unheeded.
    - The Interfaith Center on Corporate Responsibility found that "150 requests from various responsible shareholders asking fossil fuel companies to evaluate financial risk from climate change regulation [between 1992 and 2015] were ignored or met with a dismissive reply," with leaders of companies including ExxonMobil and Shell explicitly stating their intentions to continue producing fossil fuels without interruption.[115]
    - 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.[116]
    - In August 2021, ExxonMobil announced that it had made a new oil discovery off the coast of Guyana. In the words of the Institute for Energy Economics and Financial Analysis, the announcement "reflects a business-as-usual approach for ExxonMobil. Earlier this year, the International Energy Agency warned there should be no new oil field developments if the planet is to mitigate catastrophic climate change… the new discovery (and maybe more importantly, the announcement of the new discovery) is a signal that drilling remains ExxonMobil's primary business, now and for the future."[117]

---

[111] Jillian Ambrose, Shell to expand gas business despite pledge to speed up net zero carbon drive, The Guardian (Feb. 11, 2021).
[112] Carolyn Davis, Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities - Natural Gas, Natural Gas Intelligence (Dec. 3, 2020).
[113] Nicholas Kusnetz, American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy, Inside Climate News (Jan. 14, 2021).
[114] International Energy Agency, Net Zero by 2050: A Roadmap for the Global Energy Sector at 21 (July 2021).
[115] Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, Fossil fuel companies and climate change: the case for divestment, 350 Brit. Med. J. (Jun. 2015).
[116] 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 103.
[117] Tom Sanzillo, IEEFA: Months after tumultuous ExxonMobil annual meeting, no substantial change expected, Institute for Energy Economics and Financial Analysis (Aug. 6, 2021).

- 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."[118]
  - Each year, "the world's five largest publicly owned oil and gas companies spend approximately $200 million on lobbying designed to control, delay or block binding climate-motivated policy."[119]
  - 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.[120]
- 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."[121]
- Finally, the fossil fuel industry has engaged in a sustained effort to silence climate protesters and increase the severity of criminal punishment for their activities.
  - Since 2017, the industry has pushed for the passage of numerous "critical infrastructure" bills in U.S. state legislatures to criminalize protests at oil and gas infrastructure sites, thirteen of which have become law.[122] 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.[123]
    - The majority of enacted critical infrastructure laws contain provisions for organizational as well as individual criminal liability.[124]
    - 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.[125]

---

[118] Big Oil's Real Agenda on Climate Change, InfluenceMap (Mar. 2019).
[119] 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.*
[120] Amy Harder, With deep pockets, energy industry notches big midterm wins, Axios (Nov. 7, 2018).
[121] 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).
[122] Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws, Institute for Policy Studies (Oct. 2020). The states in which bills have passed into law are Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. U.S. Protest Law Tracker, International Center for Not-for-Profit Law (last visited Feb. 10, 2021).
[123] New Report Details Impact of Secretive American Legislative Exchange Council on Communities of Color, Center for Constitutional Rights (Dec. 23, 2019); Gabrielle Cochette & Basav Sen, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws (Oct. 2020) at 8-9.
[124] 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 122.
[125] 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).

- 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.[126]
- There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing protest against fossil fuel infrastructure projects, most notoriously Energy Transfer Partners' Dakota Access pipeline.
  - In response to protests at the Standing Rock reservation in 2016 and 2017, Energy Transfer Partners hired TigerSwan, a military contractor with experience in Iraq and Afghanistan. In collaboration with local police, TigerSwan used legally questionable tactics against protesters, including digital surveillance.[127] Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.[128]
  - 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.[129]
  - 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."[130]
  - 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.[131]
- The militarized response to climate protest by fossil fuel companies is at least a decade old. At a 2011 conference attended by members of the fossil fuel industry, an executive of Anadarko Petroleum recommended military-style tactics against citizen groups protesting hydraulic fracturing (also known as fracking): "I want you to download the US Army/Marine Corps counterinsurgency manual because we are dealing with an insurgency here."[132]

---

[126] *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.
[127] Antonia Juhasz, Paramilitary security tracked and targeted DAPL opponents as 'jihadists,' docs show, Grist (Jun. 1, 2017).
[128] Alleen Brown, Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons, The Intercept (Nov. 21, 2016).
[129] Alleen Brown, Will Parrish & Alice Speri, Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet, The Intercept (Aug. 26, 2017).
[130] *Id.*
[131] Will Parrish & Alleen Brown, How Police Are Preparing for a Standoff Over Enbridge Line 3, The Intercept (Jan. 30, 2019).
[132] Bill McKibben, Shake Harvard Free of Oil Stock, The Boston Globe (Apr. 7, 2015).

VI. The financial risk of fossil fuel investments

As asset managers, the Trustees have violated their *duty of care* by failing to adequately consider the risk of continued investment in fossil fuels despite ample evidence of the industry's financial precarity. The untenable value thesis of fossil fuel investments is especially concerning for investors at charitable institutions. As a public charity that claims to work "preparing students to create a more just, humane, and sustainable world.,"[133] Santa Clara is ostensibly committed to mitigating the worst effects of climate change. Such mitigation requires government regulation to reduce greenhouse gas emissions and the growth of the green technology sector — developments that pose an existential threat to the fossil fuel industry. In other words, the Trustees' fiduciary duties oblige them to promote the financial non-viability of the fossil fuel sector, making any continued investment in the sector unreasonable on its face.

- Oil, gas, and coal companies face an extremely uncertain financial future due to mismanagement, the failure to prepare for a renewable energy economy, social pressures and unrest created by the unequally distributed health and economic burdens of fossil fuel products, and the pressures of COVID-19.
    - Oil and gas stocks have greatly underperformed other investments over the last 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 56 percent of its value and the S&P Oil and Gas Equipment Select Industry Index has lost approximately eighty-six percent of its value.[134] 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.[135]
    - From the fourth quarter of 2019 to August 2020, seven of the world's largest oil companies lost eighty-seven billion in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.[136]
    - 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.[137]
    - Recent short-term rallies in fossil fuel stocks due to conflict in Ukraine are not a reason to assume that this long-term trend will reverse.
- 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 350 billion dollars.[138]

---

[133] Jesuit Catholic Tradition, Santa Clara University (last visited Mar. 22, 2022).
[134] Data from S&P Dow Jones Indices, S&P Global (Dec. 23, 2021).
[135] Kevin Stankiewicz, There's no more money to be made in oil and gas stocks, Jim Cramer says, CNBC (Feb. 3, 2020).
[136] Jillian Ambrose, Seven top oil firms downgrade $87bn in nine months, The Guardian (Aug. 14, 2020).
[137] 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).
[138] Avi Salzman, Why Exxon Is Being Dropped From the Dow, Barron's (Aug. 25, 2020).

- In February 2021, ExxonMobil reported quarterly losses of 20.1 billion dollars.[139]
- 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.[140]
- 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.[141]
- As outlined in "The Financial Case for Fossil Fuel Divestment" by the Sightline Institute and the Institute for Energy Economics and Financial Analysis, investment in the fossil fuel sector is now unacceptably risky thanks to price volatility, the rise of renewable energy sources, and government climate regulations. The traditional value thesis that justified investment in the sector — based on the assumptions that demand for oil, gas, and coal will continue to grow and that companies' extensive untapped reserves represent a sure source of future profits — is no longer tenable.[142]
    - 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."[143]
    - 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."[144]

---

[139] ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans, ExxonMobil (Feb. 2, 2021).
[140] 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).
[141] Fred Pearce, As Investors and Insurers Back Away, the Economics of Coal Turn Toxic, Yale Environment 360 (Mar. 10, 2020).
[142] Tom Sanzillo, Kathy Hipple, and Clark Williams-Derry, The Financial Case for Fossil Fuel Divestment, Sightline Institute and the Institute for Energy Economics and Financial Analysis (July 2018).
[143] *Id.* at 4.
[144] *Id.* at 1.

  - 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."[145]
- 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.[146]
- 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.[147] Other studies have concluded that major energy companies who continue to rely on fossil fuels would lose between thirty and sixty percent of their value.[148]
- In its 2020 financial stability report, the Federal Reserve reported that "climate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks."[149]
- 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."[150]
- 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

[145] *Id.* at 38.
[146] Carbon Tracker Initiative, Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink (Nov. 1, 2019).
[147] Mercer LLC, Investing in a Time of Climate Change: The Sequel 2019 at 34 (2019).
[148] European Green Party, The Carbon Bubble: The financial risk of fossil fuels and need for divestment at 7 (2020).
[149] Board of Governors of the Federal Reserve System, Financial Stability Report at 58 (Nov. 2020).
[150] Clyde & Co LLP, Climate change: Liability risks at 37 (Mar. 2019).

support net-zero greenhouse gas emissions by 2050 and the Paris Agreement goal of 1.5 degrees Celsius warming.[151]

- 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."[152]
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz and former Secretary of Labor Robert Reich, identified the continued existence of the fossil fuel economy as "fundamentally incompatible" with long-term social and economic well-being and cited divestment as an essential tactic for bringing about systemic change: "When our largest banks, most influential investors and most prestigious universities place bets on the success of the fossil fuel industry, they provide it with the economic and social capital necessary to maintain the dangerous status quo. Instead, these institutions should divest from fossil fuel companies and end financing of their continued operations while reinvesting those resources in a just and stable future."

VII. The financial prudence of fossil fuel divestment

Despite the frequent claim that removing an asset class like fossil fuels from an endowment would violate the fiduciary duty to maintain a diverse portfolio, fossil fuel divestment poses no risk to a portfolio's diversity and flexibility, nor does it impact returns. The Trustees have violated their *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.

- Two major financial management firms, BlackRock and Meketa, have separately concluded that investment funds have experienced no negative financial impacts from divesting from fossil fuels. Instead, they found evidence that divestment improves returns.[153]
- The problem of stranded assets is a noted risk of fossil fuel investments. A 2019 report from the equity research firm Redburn warned that capital costs for conventional energy projects are rising due to "the growing concern of investors surrounding energy transition."[154]
- A 2018 London School of Economics analysis led by Jeremy Grantham, one of the world's leading asset managers, concluded that removing any one of ten major asset classes such as technology or utilities from a portfolio produced no discernible impact on overall long-term returns. The analysis states that the purported financial peril of fossil

[151] Michael Slezak, Rest super fund commits to net-zero emission investments after Brisbane man sues, ABC News (Nov. 2, 2020).
[152] 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).
[153] Tom Sanzillo, IEEFA: Major investment advisors BlackRock and Meketa provide a fiduciary path through the energy transition, Institute for Energy Economics and Financial Analysis (Mar. 22, 2021).
[154] Fossil fuel angst darkens oil sector funding outlook, S&P Global (last visited Nov. 18, 2021).

fuel divestment was "mythical," and that "[i]nvestors with long-term horizons should avoid oil . . . on investment grounds."[155]

- Divestment from fossil fuels does not threaten the profitability of invested funds and, as such, does not violate a fiduciary's duty to ensure the prudent management of an endowment. In recent years, investment portfolios lacking fossil fuel holdings have matched or outperformed funds containing them.
    - The most comprehensive study to date of the endowment performance at universities that have divested from fossil fuels concludes that divestment does not have a negative effect on investment returns.[156] Other research indicates that fossil fuel divestment does not significantly limit portfolio diversification opportunities, allowing investors to satisfy their fiduciary duty to maintain balanced holdings even as they avoid the risks posed by stranded assets and the energy transition.[157]
    - A 2019 study of university endowments that adopt "socially responsible investment" [SRI] policies concludes that such policies benefit the universities. Surveying SRI endowment returns from 2010 to 2019, the study reports that "donations are 33.3% per year higher among universities that incorporate SRI policies into their endowments" and that "SRI policies predict greater university donations, higher student enrollment, and more extensive risk management practices by the endowment fund."[158]
    - In 2020, the financial research agency Morningstar reported that European sustainable investment funds — defined as "funds that use environmental, social, and governance criteria as a key part of their security selection and portfolio-construction process, and/or indicate that they pursue a sustainability-related theme, and/or seek a measurable positive impact alongside financial return" — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.
    - A 2018 analysis concluded that the New York State Common Retirement Fund would have earned an additional 22.2 billion dollars (137 billion dollars versus 114.8 billion dollars) from 2008 to 2018 had it divested from fossil fuels.[159]

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 Trustees have persisted in buying industry securities, violating their *duty of care*.

[155] Jeremy Grantham, The mythical peril of divesting from fossil fuels, London School of Economics (June 13, 2018).
[156] Christopher Ryan and Christopher Mariscano, Examining the Impact of Divestment from Fossil Fuels on University Endowments, 17 NYU J. L. and Business, Roger Williams Univ. L. Studies Paper No. 195 (June 23, 2020).
[157] Auke Plantinga and Bert Scholtens, The financial impact of fossil fuel divestment, 21 Climate Policy 1 (2020).
[158] George O. Aragon, Yuxiang Jiang, Juha Joenväärä, and Cristian Ioan Tiu, Socially Responsible Investments: Costs and Benefits for University Endowment Funds at 5 (July 21, 2020).
[159] Toby A.A. Heaps, Divestment would have made NY pension fund $22B richer, Corporate Knights (Oct. 4, 2018).

- Fossil fuel companies have allegedly long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This alleged fraud has been a matter of public record since at least 2015, and a matter of common knowledge for investors since at least 2019.[160]
  - 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."[161]
    - 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.[162]
    - 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.[163]
    - 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."[164]
    - 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]

---

[160] 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).
[161] Second Amended Complaint, Massachusetts v. ExxonMobil, No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5, 2020) at 1.
[162] *Id.* at 5.
[163] *Id.* at 9, 50-51.
[164] *Id.* at 8.

business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors."[165]
    - The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the Harvard Corporation in danger of serious financial damage: "ExxonMobil's omissions and misrepresentations put its Massachusetts investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances."[166]
- 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."[167]
    - 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."[168]
    - 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."[169]
- 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.[170]
- 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.[171] 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

---

[165] *Id.* at 65, 80-81.
[166] *Id.* at 138.
[167] Complaint, Connecticut v. ExxonMobil, No. HHDCV206132568S (Conn.. Super. Ct. Spe. 14, 2020) at 1.
[168] *Id.*
[169] *Id.* at 2.
[170] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[171] 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).

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.[172]
    - In June 2021, an Exxon lobbyist admitted that ExxonMobil was engaged in a concerted effort to block climate change and deceive the public.[173] 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.[174]
    - In August 2021, California Attorney General Rob Bonta joined a coalition of seventeen attorneys general to file an amicus brief in support of the State of Minnesota's lawsuit against fossil fuel producing companies.[175] The Minnesota lawsuit asserts that the defendant fossil fuel companies engaged in corporate fraud and deceptive trade, downplayed the role of fossil fuels in causing climate change, and hid the information that, without swift action, it would be too late to stop climate devastation.[176]
- 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.[177]

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

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

- Beginning in the 1980s, in response to mounting evidence of climate risks, fossil fuel companies halted their climate research and "began a campaign to discredit climate science and delay actions perceived as contrary to their business interests."[178] This

---

[172] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[173] Hiroko Tabuchi, In Video, Exxon Lobbyist Describes Efforts to Undercut Climate Action, The New York Times (Jun. 30, 2021).
[174] Timothy Gardner, U.S. House panel to probe oil companies over climate disinformation, Reuters (Sept. 16, 2021).
[175] Attorney General Bonta Supports Minnesota Efort to Hold Big Oil Accountable for Misleading the Public and Exacerbating Climate Change, California Department of Justice (last visited Jan. 14, 2022).
[176] Complaint, State v. American Petroleum Institute, 62-CV-20-3837 (Minn. Dist. Ct. 2020) at 4.
[177] Dana Drugman, Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk, The Climate Docket (Jan. 29, 2020).
[178] 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

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.[179]

- In 2019 testimony to the Senate Special Committee on the Climate Crisis, Dr. Justin Farrell described a decades-old movement "to deceive the American people about the reality of climate change." This movement has been largely successful "sowing seeds of widespread popular doubt, transforming climate change into a sharply politicized issue, infusing climate denial into the highest levels of government, and obstructing policy solutions that are so direly needed to decarbonize our economy and mitigate the impacts of warming." Research shows that fossil fuel companies launched a "multi-pronged manipulation effort" to manufacture uncertainty around climate science by funding climate denial groups as well as creating "fake grassroots efforts" to promote climate misinformation. "Money facilitated coordination between 200 organizations," said Farrell, to create the "appearance of scientific credibility."[180]
- In his analysis of the funding sources of 164 climate denialist organizations, Farrell found that ExxonMobil and the Koch foundations were "the most reliable and theoretically important across-time indicators of corporate involvement."[181]
- 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.[182]
- Since 1997, Koch Industries, through its various foundations and institutes including the Koch Family Foundation, has donated more than 145 million dollars from 1997 to 2018, financing ninety organizations that attack climate science and policy solutions.[183]
- Over about the last three decades, "five major U.S. oil companies have spent a total of at least $3.6 [billion] on advertisements."[184] These ads, along with other public communications, have promoted narratives the companies know to be false: In the case of ExxonMobil, for example, between 1977 and 2014, only twelve percent of ads acknowledged that anthropogenic climate change is real, compared to eighty percent of internal documents.[185]

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).

[179] *See generally id.*

[180] Senate Dems, Senate Dems Special Committee on the Climate Crisis Hearing (Oct. 29, 2019).

[181] Justin Farrell, Corporate Funding and Ideological Polarization, 113(1) Proceedings of the National Academy of Sciences 92-97 (2016).

[182] 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).

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

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

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

- 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,[186] and by this office's complaint against ExxonMobil in its deceptive advertising litigation.[187]
- 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."[188]
- Undermining the work of academics and scholars has been another key tactic of the fossil fuel industry. These activities affect researchers everywhere, including at SCU, insofar as they raise the professional and reputational costs of doing climate change research and muddy scientific consensus on the subject.
    - ExxonMobil has repeatedly sought to portray the Intergovernmental Panel on Climate Change — a coordinating body of respected scientists and academics that publishes periodic reports on climate science to aid policymakers — as biased and untrustworthy.[189]
    - 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."[190]
    - 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.[191]
    - In 2018, Former EPA secretary Scott Pruitt moved to adopt rules on public access to data that were widely seen as harmful to academic researchers.[192] These rules had long been sought by the fossil fuel industry.[193]
    - A number of climate change researchers at Harvard University have faced criticism and in some cases personal attacks from the fossil fuel industry.
        - In 2013, the Law School's Environmental Law Program Policy Initiative released a report suggesting that existing disclosure regulations were

[186] *See* Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 178.
[187] *See* Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 161, at Part IV.B.
[188] 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).
[189] David Hasemyer & John H. Cushman Jr., Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty, Inside Climate News (Oct. 22, 2015).
[190] Union of Concerned Scientists, How the Fossil Fuel Industry Harassed Climate Scientist Michael Mann (Oct. 12, 2017).
[191] Michael Halpern, Arizona Superior Court Protects Academic Freedom in Climate Email Disclosure Case, Union of Concerned Scientists (Mar. 30, 2015).
[192] Letter to EPA Administrator Scott Pruitt regarding proposed "Strengthening Transparency in Regulatory Science" rule, Harvard University Office of the President (Jun. 4, 2018).
[193] Marianne Lavelle, Pruitt's Own Scientist Appointees Challenge EPA Science Restrictions, Inside Climate News (May 17, 2018).

insufficient to regulate the fracking industry's behavior.[194] An industry-funded website accused the study of being "fundamentally and transparently flawed."[195]

        - In 2014, professor Naomi Oreskes participated in a documentary film based on the 2010 book she authored with Erik Conway, Merchants of Doubt. Climate denialists associated with the fossil fuel industry coordinated an effort to file complaints with her employer and alma mater and discussed ways to block screenings of the film.[196]
        - In 2017, researcher Geoffrey Supran and professor Oreskes published a peer-reviewed study analyzing ExxonMobil's climate communications.[197] Exxon's response included commissioning and paying for a (non-peer-reviewed) academic analysis that accused Supran and Oreskes of bias,[198] running a Twitter ad calling its conclusions "manufactured,"[199] urging the European Parliament to ignore the study's conclusions,[200] and suggesting on a website known to take editorial direction from Exxon[201] that the study was written for the purpose of "suppressing free speech."[202]
        - In 2020, doctoral student Xiao Wu, professors Rachel Nethery and Francesca Dominici, and others released a study suggesting a correlation between exposure to air pollution and incidence of COVID-19.[203] The American Petroleum Institute lobbied the EPA to reject the study's conclusions, arguing that it could not "be used to draw policy inferences."[204]

- The fossil fuel industry has sought to legitimize its policy positions by funding research at flagship academic institutions, calling into question the intellectual independence of those activities and the balance of perspectives within the academy.[205] These funding streams have shaped leading research for years, including climate and energy research, with potentially far-reaching effects for academic researchers at both the targeted institutions and elsewhere.
    - ExxonMobil has touted its collaborations with Princeton, the Massachusetts Institute of Technology, the University of Texas at Austin, and other institutions

---

194 Legal Fractures in Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool (Apr. 23, 2013).
195 John Krohn, Four Things to Know about the Harvard FracFocus Study, Energy in Depth (Apr. 25, 2013).
196 Email from Marc Morano Regarding the New Warmist Film, UCSF Library Fossil Fuel Industry Documents (June 24, 2019).
197 Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications, *supra* at note 185.
198 Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
199 Just today, @exxonmobil ran Twitter ads, Fossil Fuel Divest Harvard (June 16, 2020).
200 ExxonMobil refused to attend a hearing, Food & Water Action Europe (Mar. 21, 2019).
201 Hiroko Tabuchi, How One Firm Drove Influence Campaigns Nationwide for Big Oil, The New York Times (Nov. 11, 2020).
202 Spencer Walrath, Activists Admit Climate Campaign Is About Attacking Free Speech, Energy In Depth (Aug. 22, 2017).
203 X. Wiu, R. C. Nethery, M. B. Sabath, D. Braun & F. Dominici, Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, 6(45) Sci. Advances (Nov. 2020).
204 Kelsey Tamborrino, Inside carbon capture tax credit claims, Politico (Apr. 30, 2020).
205 *See* Benjamin Franta & Geoffrey Supran, The fossil fuel industry's invisible colonization of academia, The Guardian (Mar. 13, 2017).

on research into alternative energy sources.[206] Columbia University's Center on Global Energy Policy has also received significant funding from ExxonMobil.[207]
    - The Energy Initiative at the Massachusetts Institute of Technology has received funding from Shell and Chevron, in addition to ExxonMobil.[208]
    - Stanford's Precourt Institute for Energy draws research funding from corporate affiliates including Chevron, ExxonMobil, Trafigura, and Shell.[209] Likewise, Stanford's Global Climate and Energy Project receives funding from ExxonMobil and Schlumberger.[210] Three of the four founding members of Stanford's Strategic Energy Alliance are oil and gas companies ExxonMobil, Shell, and Total Energy.[211]
    - A number of important research centers and schools at Harvard currently receive or have recently received fossil fuel funding, including the Harvard Kennedy School,[212] the Harvard Environmental Economics Program,[213] the Harvard Project on Climate Agreements,[214] Resources for the Future,[215] and the Geopolitics of Energy Project.[216]
- These funding relationships have affected SCU, as well.
    - In 2007, SCU's Civil Society Institute — an economics organization — received a five-thousand-dollar donation from the Koch Foundation for "educational programs."[217]
    - In June 2019, the opening of the Ciocca Center for Innovation and Entrepreneurship (CCIE) was announced by then-University President Michael Engh, SJ. This center was funded by the Ciocca family with a supplementary four-million-dollar grant from the Charles Koch Foundation.[218] According to a subsequent news article: "More than 1,000 students, staff and alumni signed a missive denouncing the grant. Professors called it a betrayal of Jesuit values. Student activists hoisted signs demanding that university officials put 'people

---

[206] Collaborating with leading universities to meet global energy demand, ExxonMobil (Nov. 16, 2020).
[207] Steve Horn, Exposed: ExxonMobil Funding Influential Columbia University Center on Global Energy Policy, Desmog (Dec. 1, 2015).
[208] Franta & Supran, The fossil fuel industry's invisible colonization, *supra* at note 205.
[209] *See* Membership Overview, Stanford Energy Corporate Affiliates (last visited Jan. 31, 2022).
[210] *Id.*
[211] *See* Membership, Stanford Strategic Energy Alliance (last visited Jan. 31, 2022).
[212] *Id.*; Donation from Shell Exploration & Production Company to Fund Harvard Energy Policy Research, Harvard Kennedy School (last visited Mar. 8, 2021). The latter page was found using Internet Archive's Wayback Machine.
[213] Enel makes $5 million gift to Environmental Economics Program, The Harvard Gazette (Feb. 8, 2007); Sponsors, Harvard Environmental Economics Program (last visited Mar. 6, 2021); Daniel Bodansky, Seth Hoedl, Gilbert Metcalf, & Robert Stavins, Facilitating Linkage of Heterogeneous Regional, National, and Sub-National Climate Policies Through a Future International Agreement, Harvard Project on Climate Agreements (Sept. 2014), Acknowledgements section (listing funders of Harvard Environmental Economics Program).
[214] Funding & Partnerships, Harvard Project on Climate Agreements (last visited Mar. 6, 2021).
[215] Annual Report 2013, Resources for the Future (Mar. 23, 2014).
[216] Funding & Partnerships, Geopolitics of Energy Project (last visited Mar. 2, 2021).
[217] Nicholas Chan, Koch Grant Sparks Debate at SCU Over Philanthropy, Free Speech, Academic Independence, San Jose Inside (July 3, 2019).
[218] Koch Gift. American Association of University Professors, Santa Clara University Chapter (last visited Mar. 29, 2022).

over profit.' The Faculty Senate Council voted 30-0-2 for a resolution calling on the administration to refuse the money."[219]

- In 2021, The Miller Center at SCU partnered with Chevron to launch the 2021 Miller Center Climate Resilience Asia Pacific Accelerator, which was funded by a 250,000 dollar grant from Chevron.[220]

- 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."[221]
- At least one fossil fuel company has sought to influence the outcome of ongoing litigation by funding academic research, again undermining the independence and institutional integrity of universities.
    - In 1989, the Exxon Valdez oil spill led to a 5.3-billion-dollar verdict against the oil giant by an Alaskan jury in *In re Exxon Valdez*. By the 1980s Exxon had embraced an aggressive form of philanthropy known as "venture philanthropy,"[222] 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 . . . ."[223]
    - 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.[224] One professor called for the total abolishment of punitive damages.[225]

---

[219] Chan, *supra* at note 217.
[220] Miller Center & Chevron Launch Climate Resilience Accelerator In Asia Pacific, Miller Center for Social Entrepreneurship (June 16, 2021).
[221] Wen Stephenson, Other Universities Are Divesting From Fossil Fuels—but Harvard Is Doubling Down on Them, The Nation (May 4, 2016).
[222] 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.*
[223] 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.
[224] 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.
[225] McGarity, *supra* at note 224, 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)).

  - 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."[226] The same study found that courts cited industry-funded studies more often.[227]
- The University's mission is to "creat[e] an academic community that educates the whole person within the Jesuit, Catholic tradition, making student learning our central focus, continuously improving our curriculum and co-curriculum, strengthening our scholarship and creative work, and serving the communities of which we are a part in Silicon Valley and around the world."[228] Continued investment in an industry that undermines scientific knowledge, compromises the integrity of Santa Clara's own research, and threatens young people's future runs directly contrary to this mission.

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

Two SCU leaders maintain significant professional and financial ties to the fossil fuel industry. These apparent conflicts of interest violate the Corporation's *duty of loyalty* because fossil fuel companies' business models are in fundamental tension with the University's espoused values and commitment to decarbonization. This duty extends to those to whom the Board has delegated investment management, and the Board is required to exercise care in its delegation decision to ensure that such conflicts do not arise.

- Santa Clara University's endowment is run by Chief Investment Officer John Kerrigan. Mr. Kerrigan holds leadership positions in BlackRock's iShares Trust,[229] and from 2010 to 2015 served as a director of the iShares MSCI Russia Capped ETF,[230] a fund notable for its heavy investments in Russian oil, gas, and mining companies.[231]
- Board of Trustees member Richard Haughey is a senior consultant at Golder Associates Inc.,[232] which serves the oil and gas industry in a variety of ways, including onshore and offshore exploration and productions; pipeline, liquid natural gas and storage facilities; and refineries, terminals, upgraders, fractionation and gas plants."[233]

---

[226] McGarity, *supra* at note 224, 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.*
[227] *Id.* at 56.
[228] Mission, Vision, Values, Santa Clara University (2022).
[229] Statement of Additional Information, iShares Trust (last visited Mar. 29, 2022). *See also* BlackRock/iShares, Fossil Free Funds (last visited Mar. 29, 2022) (reporting that the fund has 170.18 billion dollars invested in fossil fuels).
[230] *Id.* at 229.
[231] iShares 2021 Annual Report at 14 (last visited Apr. 5, 2022). Note that recent sanctions have affected recent investment decisions.
[232] Board of Trustees, Santa Clara University (last visited Mar. 22, 2022).
[233] Supporting Our Oil and Gas Clients, Golder (last visited Mar. 22, 2022).

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 Santa Clara. Their reasoning applies to Santa Clara's circumstances as well as their own. The Trustees have 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.[234]
  - 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."[235]
  - 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."[236]
    - 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."[237]
    - 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,

---

[234] *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.").

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

[236] Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 161, at 108-09.

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

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."[238]

  - 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."[239]

- Institutions elsewhere have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. Such institutions have often chosen divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals. Many other universities have also committed to meaningful climate action on a much more rapid timescale.
  - On October 18, 2021, Vassar College announced its divestment from fossil fuels.[240]
  - On October 8, 2021, Dartmouth College announced that the Dartmouth Investment Office would let its remaining public investments in the fossil fuel industry expire.[241] The decision was made based on both moral and financial considerations. Dartmouth's statement cited the worsening effects of climate change, saying that the "damaging effects will continue to exacerbate existing threats to global health, nutrition, and biodiversity while also creating new hazards."[242] Dartmouth President Phil Hanlon said the College has noticed "that investments in energy transitions are now comparable or better than the investment opportunities in fossil fuel companies."[243]
  - On October 6, 2021, California State University System, the largest in the US, announced that the system would no longer invest in fossil fuels.[244] The California State University Chancellor said that the move was "consistent with our values" and that "it is an appropriate time to start to transition away from these types of investments, both to further demonstrate our commitment to a sustainable CSU but also to ensure strong future returns on the funds invested by the university."[245]
  - On September 9, 2021, Harvard University divested from fossil fuels.[246]

---

[238] Peabody Energy Corporation, Form 10-K: Annual Report at 30 (2014).
[239] Emma Howard, A beginner's guide to fossil fuel divestment, The Guardian (Jun. 23, 2015).
[240] Larry Hertz, Vassar Trustees Approve Investment Policy Aimed at Combating Climate Change, Vassar (Oct. 18, 2021).
[241] Office of Communications, Darmouth Taking Formal Steps to Address Climate Crisis, Dartmouth College (Oct. 8, 2021).
[242] *Id.*
[243] Taylor Haber, College formally announces plan to divest from fossil fuels, The Dartmouth (Oct. 8, 2021).
[244] California State University Will Not Make Future Fossil Fuel Investments in University Investment Portfolios and Funds, The California State University (Oct. 6, 2021).
[245] *Id.*
[246] Anemona Hartocollis, Harvard Says It Will Not Invest In Fossil Fuels, The New York Times (Sept. 10, 2021).

        - 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."[247]
        - 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."[248]
    - In January 2021, Columbia University announced that it did not hold any direct investments in publicly traded oil and gas companies, and was formalizing this policy of non-investment for the foreseeable future. The university had already divested from thermal coal in 2017.[249] "There is an undeniable obligation binding upon Columbia and other universities to confront the climate crisis across every dimension of our institutions," said Columbia University President Lee C. Bollinger.
    - In March 2020, Brown University made public that it had begun selling its investments in fossil fuel extraction companies in October 2017, arguing that the climate crisis called for serious action beyond teaching and research.
        - "The urgency of the situation calls for additional action," Brown's president Christina Paxson wrote in a letter to the Brown community.[250]
        - 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."[251]
    - On May 22, 2020, the Cornell University Board of Trustees announced a moratorium on new private investments focused on fossil fuels and a phase-out of existing investments in that area, effectively divesting the endowment from the fossil fuel industry.[252] 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.[253]
    - On October 1, 2020, the University of Cambridge announced plans to divest all direct and indirect holdings from the fossil fuel industry and to achieve net-zero greenhouse gas emissions by 2038 — commitments that are more ambitious than Harvard's in both their scope and timescale.[254]
        - 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

---

[247] Harvard Office of the President, Harvard University (last visited Jan. 27, 2022).
[248] *Id.*
[249] University Announcement on Fossil Fuel Investments, Columbia News (last visited Jan. 27, 2022).
[250] Christina Paxson, Letter from President Paxson: Brown's actions on climate change, Brown University (Mar. 4, 2020).
[251] *Id.*
[252] Kathryn Stamm, Cornell to Effectively Divest from Fossil Fuels, Trustees Vote, Cornell Daily Sun (May 22, 2020).
[253] James Dean, Cornell announces moratorium on fossil fuel investments, Cornell Chronicle (May 22, 2020).
[254] Matthew Taylor, Cambridge University to divest from fossil fuels by 2030, The Guardian (Oct. 1, 2020).

to achieve net-zero greenhouse gas emissions across its entire investment portfolio by 2038.[255]

- 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.[256]
- 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."[257]

○ In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.[258]

- 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.[259]
- 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."[260]
- Oxford's divestment pledge was seen as consistent with the university's academic and teaching mission, and administrators did not see divestment as precluding climate- and sustainability-related research or efforts to promote sustainable campus operations. In fall 2020, months after announcing its divestment pledge, Oxford released drafts of a sustainability plan to achieve net-zero carbon and biodiversity net gain by 2035.[261]

○ In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.[262]

---

[255] *Id.*
[256] Cambridge to divest from fossil fuels with 'net zero' plan, University of Cambridge (Oct. 1, 2020).
[257] *Id.*
[258] University of Oxford cuts ties to fossil fuels industry, BBC News (Apr. 28, 2020).
[259] 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)).
[260] Oxford announces historic commitment to fossil fuel divestment, University of Oxford (Apr. 27, 2020).
[261] Aiming for zero carbon and biodiversity net gain by 2035, University of Oxford (Nov. 20, 2020).
[262] Fossil Fuels Divestment Continues Georgetown's Commitment to Sustainability, Georgetown University (Feb. 6, 2020).

        - 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."[263]
        - 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."[264]
    - In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.[265]
        - 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."[266]
        - 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."[267]
- Aside from 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).[268] In September 2021 the Caisse de dépôt et placement du Québec — Canada's second-biggest pension fund at 310 billion dollars — announced it was divesting from oil production investments by the end of 2022.[269]
    - In the fall of 2021, two of America's largest and most prestigious foundations announced their divestment from fossil fuels. The MacArthur Foundation announced that it was divesting from fossil fuels, citing a number of reasons including fiduciary duty.[270] Shortly after, the Ford Foundation announced it was

[263] *Id.*
[264] *Id.*
[265] Jagdeep Singh Baccher & Richard Sherman, Opinion: UC investments are going fossil free. But not exactly for the reasons you may think, The Los Angeles Times (Sept. 17, 2019).
[266] *Id.*
[267] *Id.*
[268] 1000+ Divestment Commitments, GoFossilFree.org (updated Dec. 9, 2020).
[269] CDPQ announces its new climate strategy, Caisse de dépôt et placement du Québec (Sept. 28, 2021).
[270] Our Approach toAchieving Impact with Investment Assets, MacArthur Foundation (Sept. 22, 2021).

divesting its thirteen billion dollar endowment from fossil fuels.[271] The foundation president apologized for not having divested sooner.[272]
    - Other major funds that have divested include the five-billion-dollar Rockefeller Foundation,[273] Norway's 1.1 trillion dollar sovereign wealth fund (oil and gas exploration and production)[274] and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).[275]

XII. The Trustees' refusal to consider divestment from fossil fuels

Ignoring repeated efforts by Santa Clara students and faculty to align the university's investment practices with its charitable mission, the Trustees have failed to act in *good faith* or with *due care*.

- Since 2013, students, alumni, and faculty of Santa Clara University 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.
    - Student divestment activists met with University officials multiple times in the 2013-2014 school year, but discussions yielded no progress. University officials offered no guarantee of moving forward in discussions with SCU's portfolio managers regarding divestment.
    - Members of Fossil Free Santa Clara University (FFSCU) met with Chief Investment Officer John Kerrigan and Vice President for Finance and Administration Mike Hindery on several occasions in 2014 and 2015.[276]
    - In fall 2014, the Markkula Center for Applied Ethics hosted an open panel with CIO John Kerrigan, Markkula director Kirk Hanson, Markkula fellow Krishan Allen, and FFSCU leader Lisa McMonagle to discuss the pros and cons of divestment.[277]
    - In 2014-15, FFSCU conducted educational actions including creating educational videos and staging theatrical performances.[278] The administration failed to respond to these actions.
    - In June 2015, VP for Finance and Administration Mike Hindery sent a campus-wide email that stated that the University would not divest from fossil fuels, citing the inability to screen out fossil fuels from commingled (mutual) funds.[279]

---

[271] Darren Walker, Aligning our investments and our value, Ford Foundation (October 18, 2021).
[272] InvestDivest 2021 Event Video, DivestInvest (last visited Jan. 27, 2022).
[273] *Id.*
[274] Terje Solsvik, Norway sovereign wealth fund to divest oil explorers, keep refiners, Reuters (Oct. 1, 2019).
[275] Jillian Ambrose, Major investment firm dumps Exxon, Chevron and Rio Tinto stock, The Guardian (Aug. 24, 2020).
[276] Emails from Michael Hindery, on file with Fossil Free SCU (Feb. 10, 2016).
[277] S. Boyer, Fossil Free Santa Clara University (FFSCU) is working for Divestment, Department of Environmental Studies and Sciences (Apr. 28, 2015).
[278] Fossil Free SCU, The Fault in Our Funds - A Wedding, YouTube.com (May 21, 2015).
[279] Michael Hindery, SCU Administrative Position, Fossil Free SCU (June 1, 2015).

- In January 2016, FFSCU responded to Mr. Hindery's email, outlining their objections to the decision and reiterating the need for divestment.[280]
- In early 2016, FFSCU worked to persuade the Associated Student Government to vote for divestment.
- In February 2016, an email was sent by FFSCU to many SCCAP (Santa Clara Community Action Program) alumni, including those from the 1970s, encouraging a halt in donations to encourage SCU to go fossil-free.[281] FFSCU decided to end the call for a "financial boycott" due to threats of punishment and retaliation and a desire to focus on a larger goal of Socially Responsible Investing.[282]
- VP for Finance and Administration Hindery, who was more open to the idea of divestment, resigned in the spring of 2016,[283] so students were left only with Chief Investment Officer John Kerrigan to talk to, who was not receptive to the idea of divestment.[284] The last time student Blair Libby '16 met with Kerrigan, after graduating, there was no progress or openness to the idea of creating an SRI committee.[285]
- In May 2016, the Associated Student Government voted to pass a resolution supporting greater financial transparency through the creation of a Socially Responsible Investing committee.[286]
- Throughout 2016, FFSCU organizers published op-eds, circulated petitions, and handed out flyers.
- In the 2017-2018 school year, CIO John Kerrigan told students that creating an SRI committee was out of the question, partly due to the stress caused by the fact that the Vice President of Finance position was unfilled.[287] Following this statement, meetings between FFSCU and the administration temporarily ceased.
- In February 2020, SCU students met with CIO John Kerrigan with the goal of learning about the endowment and creating lines of communication between organizers and the administration.[288] Students found Mr. Kerrigan dismissive and generally unwilling to communicate. One member of the group who held an internship in the SCU Finance office had his hours cut drastically following the meeting. Further attempts to meet were interrupted by the pandemic and general unwillingness from the administration to engage in dialogue with student organizers.
- On February 13, 2020, students in FFSCU tabled for Fossil Fuel Divestment Day, shared their demands, handed out cloth backpack banners, and gathered signatures of support.[289] The administration did not respond.

---

[280] Why SCU Should Divest from Fossil Fuels: A Response from Fossil Free SCU. Fossil Free SCU (Jan. 10, 2016).
[281] Email from Fossil Free SCU, on file with Fossil Free SCU (January 20, 2016).
[282] Emails from Blair Libby, on file with Fossil Free SCU (Jan. 24, 2022).
[283] Sophie Mattson, Breaking: Mike Hindery to Leave Santa Clara, The Santa Clara (Mar. 17, 2016).
[284] Emails from Blair Libby, on file with Fossil Free SCU (March 24, 2022).
[285] Emails from Blair Libby, on file with Fossil Free SCU (Jan. 24, 2022).
[286] Jenni Sigl, ASG Passes Divestment-Related Resolution. The Santa Clara (May 19, 2016).
[287] Emails from Blair Libby, on file with Fossil Free SCU (Jan. 24, 2022).
[288] John Kerrigan meeting notes, on file with Fossil Free SCU (Feb. 2020).
[289] Emma Pollans, Students Ask for Divestment, The Santa Clara (Feb. 20, 2020).

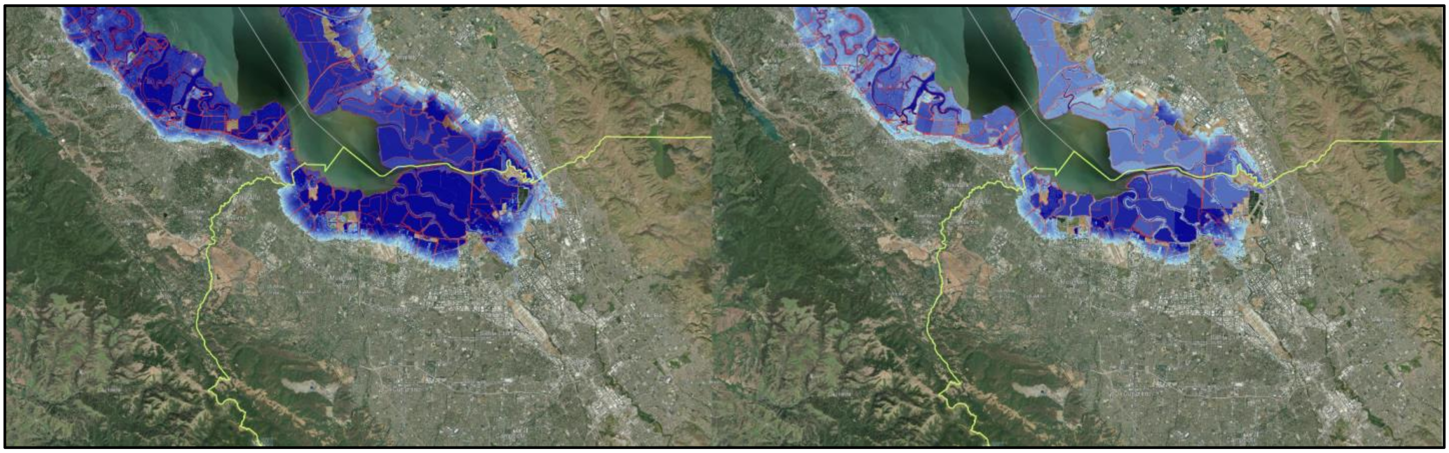
- In October 2021, students staged a protest at the dedication of the new John and Susan Sobrato Discovery and Innovation Building.[290] The administration did not acknowledge the protest.
- In December 2021, the Faculty Senate passed a resolution to support fossil fuel divestment.[291]
- In February 2022, members of Fossil Free SCU delivered letters written by SCU students that called for divestment from fossil fuels to the homes of two members of the Board of Trustees, John A. Sobrato and Larry W. Sonsini.[292]

Conclusion

The Office of the Attorney General 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 Board no longer harms the Santa Clara University community, the State, and the public. We respectfully request a meeting with your offices to discuss this matter further.

[290] Krishna Bheda, Gavin Newsom Helps Celebrate New Building at SCDI Dedication, The Santa Clara (Oct. 25, 2021).
[291] SCU Faculty Senate Minutes, January 8th Meeting. Email from Leslie Gray, on file with Fossil Free SCU (March 14, 2022).
[292] Fossil Free SCU, Photos from delivery of letters to homes of two Board of Trustees members, Instagram.com (Feb. 22, 2022).

Appendix A



Simulated map of the Santa Clara Valley with ten feet (left) and 5.5 feet (right) of sea level rise. Source: ART Bay Shoreline Flood Explorer (last visited Apr. 5, 2022).

Appendix B

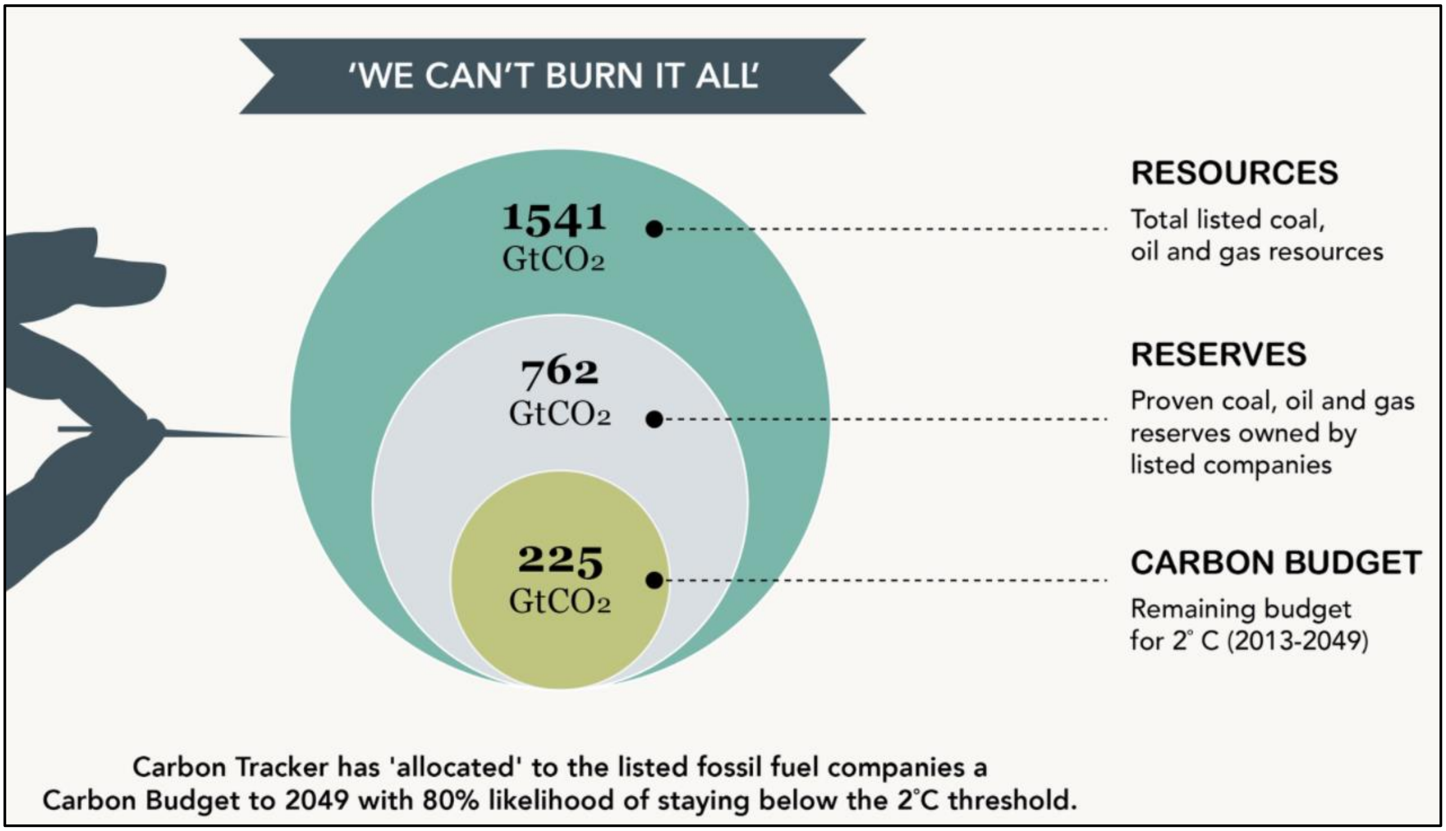


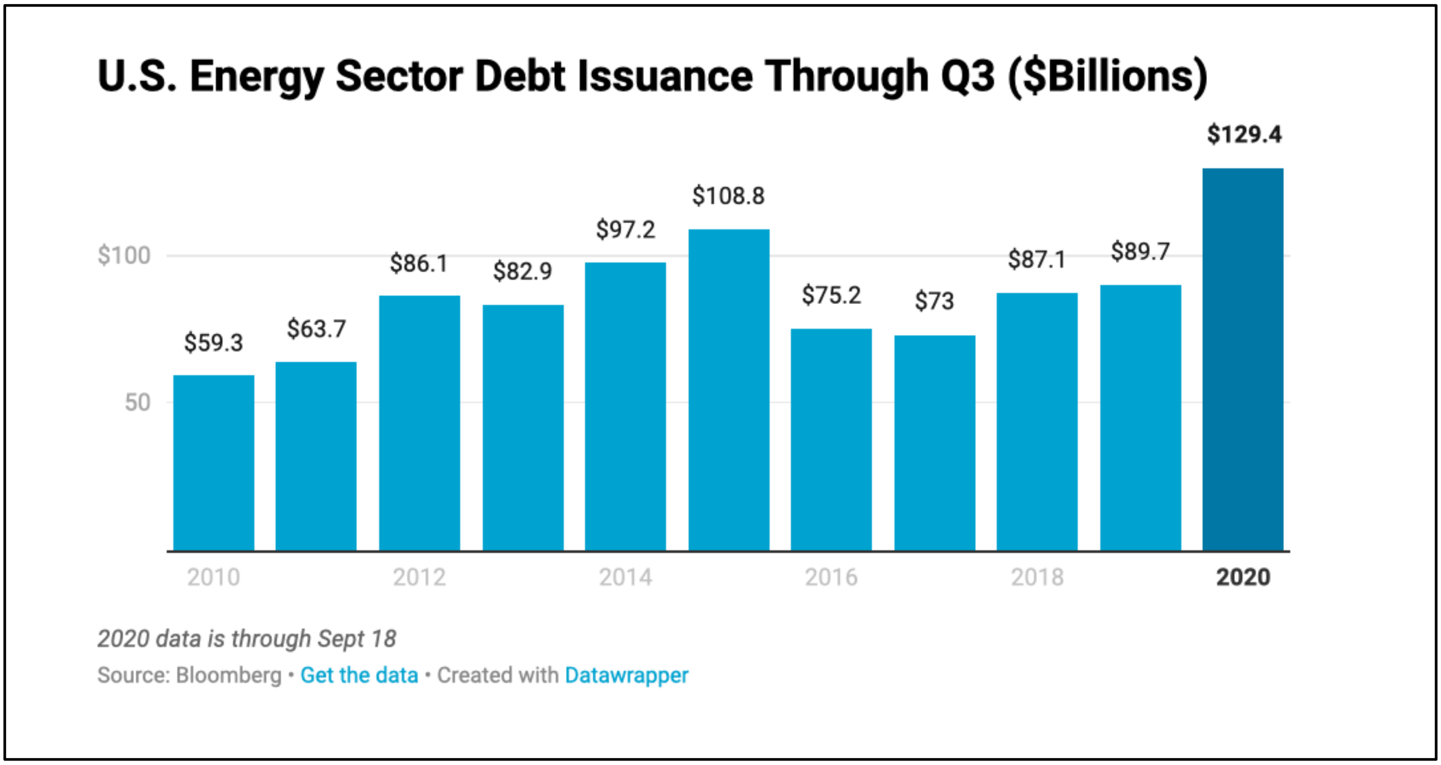
Illustration of Carbon Bubble, as reprinted in Katharine Earley, Carbon Tracker measures oil and coal risk for investors, The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix C

Comparison of ten-year performance of S&P 500 Energy Index[293] (white) with S&P 500 Index (blue).[294] Created using comparison tool at S&P 500 Dow Jones Indices (as of Jan. 3, 2022).

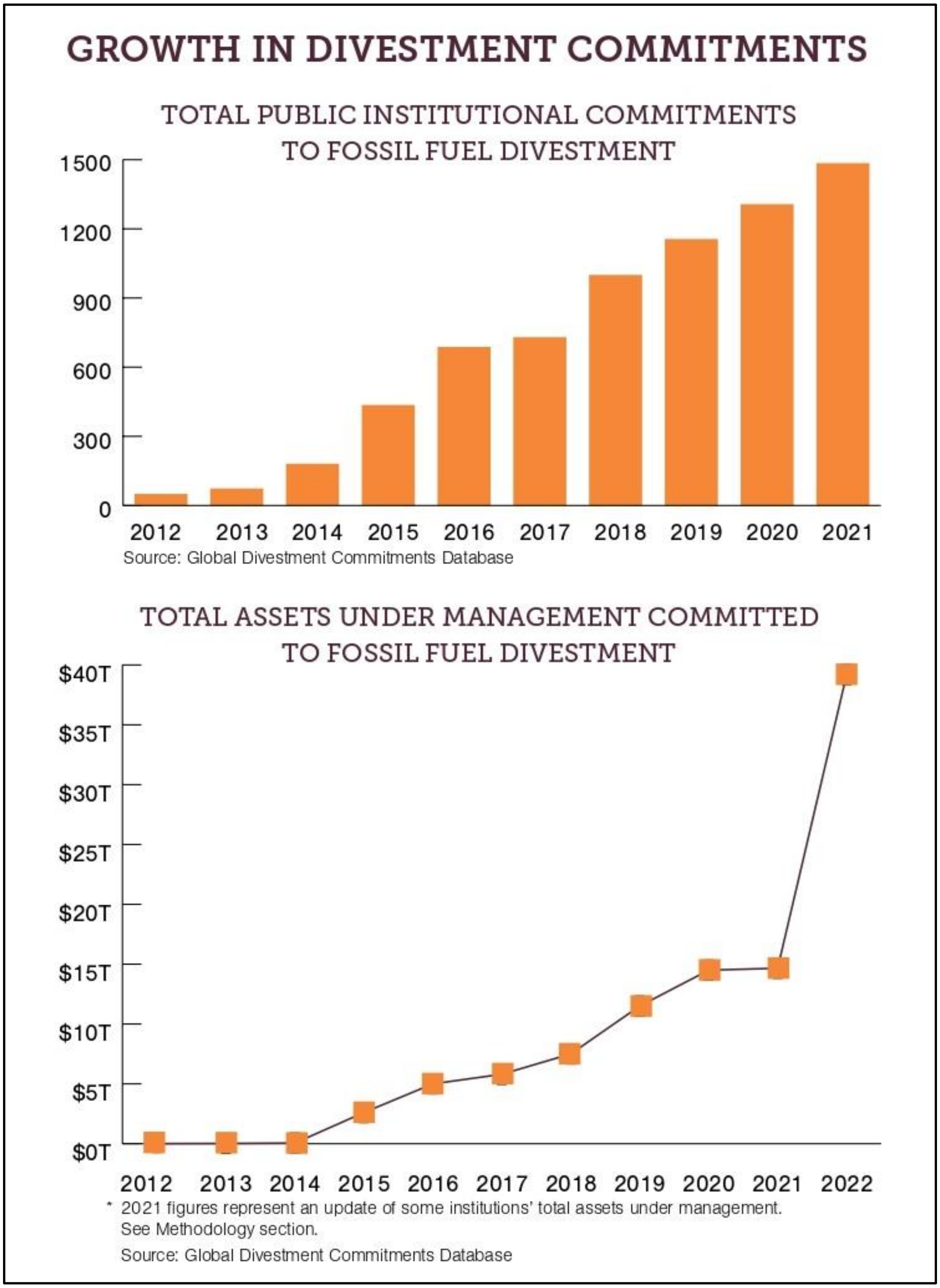
[293] The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.
[294] The energy sector's recovery in late 2020 came in part thanks to a large bailout of corporate debt markets by the federal government. *See* Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke,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

Appendix D



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

Appendix E



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).