

HOW TO FILE A LEGAL COMPLAINT FOR FOSSIL FUEL DIVESTMENT

A Guide for Divestment Activists



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INTRODUCTION

Today, the case for fossil fuel divestment is overwhelming. Since its inception over a decade ago, the divestment movement has seen tremendous success. At present, over 1,320 institutions controlling nearly \$15 trillion worth of assets have committed either fully or partially to divestment. They have divested out of a strong moral conviction that when the planet is on fire, it is unjustifiable to invest in the arsonists. They have divested out of an understanding that as the economy decarbonizes (and oil and gas companies refuse to do so with it), fossil fuels are a fiscally irresponsible bet to make. And soon, they may divest out of a recognition that the law demands it. As leading climate scientists call for imminent action to decarbonize the world's economies and save our futures, it is clear that divestment is the only ethical and prudent choice for investors and institutions of any size.

However, some institutions (many universities included) remain invested in the fossil fuel industry. At any scale, these investments signal an acceptance of the industry's legacy of climate deception and ongoing efforts to obstruct a swift and just transition off fossil fuels. With indisputable evidence of fossil fuel companies' persistent climate denial and ongoing efforts to stall climate action, the choice to continue such investments is willfully ignorant at best, carrying deadly consequences for us all.

That's why students and other university community members across the United States are using a bold new strategy to advance a fossil fuel-free future: filing legal complaints asserting that these investments aren't just illegal, but also immoral. There are already laws on the books that exist to prevent reckless and immoral investing — and in the midst of a climate emergency, it's vital that they are enforced.

The purpose of a complaint is to seek investigations that could compel an end to this dangerous investing, in turn moving these universities, and the country, towards climate justice. As of the time this guide was written, students from four universities — Boston College, Cornell University, Harvard University, and the University of Wisconsin-Madison — have taken this course of action. Already, the existence of these complaints alone has helped shine a spotlight on the role that U.S. universities are playing, or refusing to play, in a just transition. And if successful, any single one of their complaints has the potential to help reshape institutional investing nationwide.

The divestment complaint strategy builds on a rich history of legal activism to advance climate action and environmental justice. In 2014, Harvard students filed the first-ever lawsuit to compel a university to divest its endowment from fossil fuels: *Harvard Climate Justice Coalition v. President and Fellows of Harvard College*. The students' case was ultimately dismissed on the grounds that students lacked the legal right to sue Harvard over its endowment practices. Nonetheless, it had lasting implications for divestment activism. At Cornell University, amid growing frustration over their university's refusal to divest in 2019, divestment student activists searched for a new legal strategy that would advance divestment while avoiding the potential pitfalls of a conventional lawsuit. They connected with some of the Harvard students who had launched the 2014 divestment lawsuit and since founded their own nonprofit legal practice, Climate Defense Project (CDP). With assistance from CDP, the Cornell student activists filed a complaint with the New York State attorney general, calling for an investigation into Cornell's fossil fuel investments. Cornell ultimately divested in May 2020 before the attorney general took any public action, but the complaint laid critical groundwork for future student organizers.

Inspired by the actions at Cornell and following a decade-long campaign that had encountered significant resistance from their university, students at Boston College filed a complaint of their own with the Massachusetts attorney general in December 2020. Only a few months later in March 2021, students at Harvard filed a complaint against their university over its fossil fuel investments, garnering significant media attention and helping launch a nationwide push for divestment complaints. Following suit, student divestment organizers at the University of Wisconsin-Madison filed a complaint in April 2021. Students at all three universities received assistance from CDP in preparing their complaints. As of this guide's release, all three campaigns are awaiting a determination from their states' relevant legal agencies about whether they will open investigations into the universities' conduct and ultimately, compel the universities' divestment from fossil fuels.

In the meantime, these students are excited to support their peers at universities across the country in filing complaints of their own. A number of us at Harvard University and at Boston College have compiled this guide as a resource for these peers and for anyone affiliated with a nonprofit or charitable institution that is considering filing a complaint, which can be shared and referred to at any time. In this guide, readers will find further explanation of the purpose of divestment complaints, including the legal basis, and detailed suggestions for approaching the complaint-writing and filing processes. At the end, readers can find a list of additional resources and relevant templates for complaint-related work.

We hope that the information and resources included here will make complaints feel like an accessible and impactful strategy for any individual or campaign seeking to hold a nonprofit or charitable institution to account for its fossil fuel investments, as well as provide new insights and ideas even for those in the divestment movement who pursue other strategies.

A Brief Technical Note from the Authors

Before we begin, we want to outline a few important considerations.

First, it is important to understand that a complaint is not a lawsuit. Rather, it is a request for oversight and corresponding action by a relevant regulatory or enforcement agency. For this reason, complaints avoid some of the challenges faced by past student divestment organizers seeking to sue their universities.

Complaints are also being used by parts of the climate movement other than divestment campaigns. For example, in April 2021, three climate and corporate accountability organizations jointly filed a complaint with the Federal Trade Commission against the oil and gas giant Chevron, alleging that the company is engaging in greenwashing or misrepresenting the true climate and racial justice impacts of its business.

The accessibility of this strategy is a huge part of what makes it so exciting and impactful. Anyone can file a complaint, whether they are a university student, faculty member, alumnus, employee, or member of the general public. That's why we've written this guide for a general audience, breaking down the legal basis for such complaints into its most basic components and walking through each step of the complaint process. While this guide is primarily aimed at fossil fuel divestment organizers on college campuses — that means “you,” as we will use the term throughout the guide — it will also offer recommendations for lawyers and legal experts who want to assist in the complaint process based on the experiences of attorneys who helped prepare previous complaints.

In order to build the most impactful case, we highly recommend that anyone looking to file a complaint first seek out advice and support from legal experts. Such assistance can help ensure that you produce a complaint which can effectively hold your university accountable and advance the broader divestment movement — and it may be readily available to you at zero cost. For example, CDP is always happy to speak with campaigns and discuss ways to work together to advance fossil fuel divestment and climate accountability, including but not limited to filing complaints. Again, we encourage researchers to seek legal counsel in order to create the strongest possible complaint.

Although this guide is written primarily for fossil fuel divestment organizers on college campuses, it may also be useful for organizers seeking divestment from institutions other than universities (e.g., non-academic endowments or pension funds). Campaigns or individuals interested in exploring this strategy's applicability in such contexts should consult legal experts. Additionally, this guide may have useful insights for campaigns seeking divestment from morally unjustifiable investments other than fossil fuels.

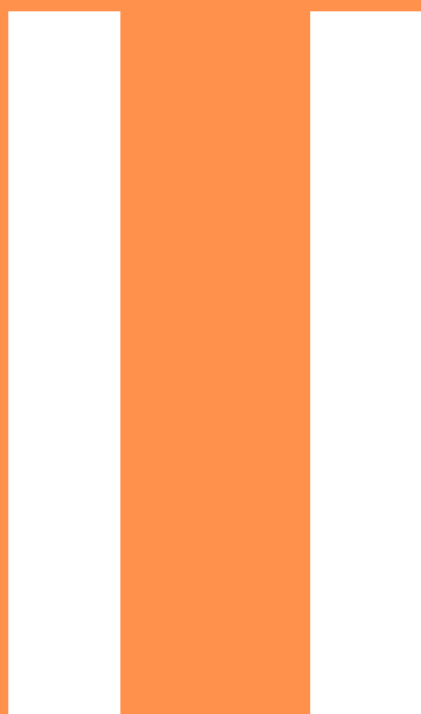
It is also important to note that while this guide seeks to simplify the complaint-writing and filing processes, every complaint is different and is situated within a unique context. An effective complaint requires a grounding in the specific climate harms caused by a university or institution's fossil fuel investments to its constituents and to community members more broadly. It also requires a clear understanding of how such investments contradict the university's or relevant institution's specific mission statements, duties, values, investment principles, and commitments — climate and environmental, academic, investor-related, and otherwise. (See Section III for more details).

Moreover, not every complaint will have the same legal audience. In most states, those filing complaints should direct them to their attorney general's office, which is responsible for considering, and upon making a favorable determination, acting on such complaints. However, in some states, other enforcement agencies will bear this responsibility. (For this reason, we will refer to the attorney general's office frequently in this guide, but such references will have equal application to other enforcement agencies in states where they are the relevant complaint authority, even if they are not explicitly mentioned.)

Finally, we want to note that this guide will frequently refer to the complaints filed against Harvard University and Boston College because they are among the first and most recent examples of such complaints, and because we have drawn upon our personal experiences helping to file these complaints in order to assemble this guide. There are, however, an increasing number of such complaints being filed, into which we hope readers of this guide who decide to pursue complaints of their own will look further.

Readers should feel free to reach out to us at any point after reading this guide with further questions or requests for support in the complaint process and in advocating for fossil fuel divestment more broadly. Attorneys at CDP are also available to anyone who would like to file a complaint and all relevant contact information can be found at the guide's end.

Welcome to the movement!





WHY FILE A COMPLAINT

It's a powerful time to file complaints about fossil fuel divestment. With growing momentum around the recent complaints filed by students at Boston College, Harvard University, and the University of Madison-Wisconsin, your campaign's complaint will contribute to a national push for investor accountability and climate action. Filing a complaint against your university shows that you are not afraid to do what it takes to strip the fossil fuel industry of its social license to operate and dare intransigent institutions to stand on the right side of history in the fight for a more just and sustainable future.

There are two main impacts of filing a complaint: advancing divestment through the legal system and building the political power of the divestment movement. The first is fairly straightforward: If the attorney general's office in your state is compelled by the complaint, they could choose to open an investigation and potentially force your university to divest. Whether the attorney general's office chooses to open an investigation depends on a number of factors, including the strength of your argument, the pressure your campaign puts on the office, the office's priorities and capacity (i.e., how busy it is with other cases and how many resources it has at its disposal), and the attorney general's political agenda.

If your state's attorney general chooses to pursue your complaint, it could have far-reaching implications. Namely, it could set an expectation for all charitable and nonprofit institutions to divest from fossil fuels or open themselves up to litigation by their state's attorney general. Thus, your complaint could reshape institutional investing nationwide in favor of a fossil fuel-free future and make huge strides in the fight for climate justice.

Your complaint could reshape institutional investing nationwide in favor of a fossil fuel-free future and make huge strides in the fight for climate justice...

The second main impact of filing a complaint is that it can help build power for the divestment movement nationwide, regardless of whether the attorney general takes it up. Every new complaint can help generate public momentum around and awareness of the divestment movement, and push lagging institutions — including universities, other nonprofit organizations, and for-profit corporations — toward divestment.

Filing a legal complaint is also a significant development for a campaign. It offers a unique opportunity to lay out your campaign's arguments for divestment and garner media and public attention. Accordingly, you should think critically about what you want your complaint to achieve. (For a better sense of why student organizers have chosen to file complaints, you may want to review their previous tactics and interactions with their university trustees, as detailed in their complaints. See Section XII, pages 35-41, of the Harvard complaint and pages 20-22 of the Boston College complaint for examples.)

Here are some questions to consider before filing a complaint:

- How does filing this complaint fit into your campaign's theory of change?
- What key audiences/stakeholders do you want to reach with this complaint?
- How might this complaint influence your negotiating power with your school's administration?
- How would this complaint filing affect other tactics you're pursuing? For instance, would it complement or hurt them in any way? And how would it serve your campaign goals as compared to other tactics? Specifically, what are the relative advantages and disadvantages of a complaint?
- How could you use this complaint to support the broader fossil fuel divestment movement?
- What is the legal and political state of affairs in your jurisdiction? Is the attorney general's office or relevant enforcement agency likely to be receptive to an effort like this, based on their past actions? How much momentum is there from state officials and the public around divestment and climate accountability?





WORKING WITH & ADVICE FOR ATTORNEYS

Consider what legal resources are available to your campaign. Technically speaking, anyone can file a complaint. However, since a well-written complaint has better odds of success, we highly recommend that you seek out legal expertise as you move forward in this process. Many free resources are available to students looking to go down this path, so please don't view this recommendation as a barrier, but rather as an opportunity to create the strongest possible complaint. CDP provides free legal support and has worked on every complaint of this type filed to date. CDP attorneys are happy to speak with campaigns and discuss ways to work together, including but not limited to filing complaints. You can contact them at info@climatedefenseproject.org.

There are also a number of important considerations for attorneys who want to assist in the divestment complaint process. If you are an attorney helping students or other members of a university divestment campaign file a complaint, we suggest you follow these steps (if you are a student or community member working with an attorney to file a complaint, you may want to share these recommendations with them):

- **Consult CDP.** Their attorneys are happy to provide resources and support.
- **Consider your role.** Although you are providing legal advice and are therefore bound by legal ethics, CDP has found it best not to establish a formal attorney-client relationship or to sign a representation agreement. Think of yourself as part of the legal team or working group of the divestment campaign. You are one activist among many, and one who happens to have a particular set of skills. Remember that this is not litigation; you are involved in advocacy rather than representing a specific client's interest. Particularly when it comes time for dialogue with university administrators or state officials, it's easiest if you do not erect barriers between attorneys and non-attorneys.
- **Do not communicate with campaigners using school email addresses.** This comes up in the context of both email communication and applications like Zoom. University administrations may monitor communications using their networks.

- **Determine who will be working on the complaint and maintain consistent contact with them.** Establish a clear line of communication. Student campaigns may assign a point person or people to communicate with you.
- **Share an outline or template document with campaigners.** This should reflect the format of the final complaint and include basic legal information. Campaigners will provide factual information to fill out the complaint.
- **Identify research questions for campaigners and make sure they know which sections of the complaint they have to fill in.** While you will do the legal research and writing, the campaigners may be best suited to draft the portions of the complaint that rely on facts such as their campaign's activities to date, their university, and the climate change impacts in the relevant region.
- **Conduct state-specific legal research.** See Section III of this guide for ideas regarding relevant legal claims.
- **Determine who will sign the complaint.** In many cases, the campaigning group will sign the complaint as an organization. Another option is for campaigners to sign the complaint individually (regardless of whether the organization is a signatory). Campaigners may fear retribution from university administrators; for this reason, we suggest offering to sign the complaint in your own name. CDP can advise further on this question.
- **Know that it will likely be your responsibility to file the complaint with the relevant office, so be prepared to do so if this is the case.** Campaigners may wish to file at a specific time in order to coordinate their media efforts with the filing.
- **Support the media efforts of students.** It may be useful to appear alongside campaigners as a press contact to answer legal questions. See Section VI of this guide for advice about media

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THE LEGAL BASIS FOR COMPLAINTS

Colleges and universities are, generally speaking, chartered as charitable institutions. This means that they receive certain privileges, such as tax breaks and other benefits, from the state, and in exchange, they owe certain obligations to the public and to their beneficiaries. To protect the institution and ensure that it can fulfill these obligations, trustees of these institutions possess what are called fiduciary duties, or legally binding responsibilities to act solely in the institution's best interest.

In 49 states (all U.S. states except Pennsylvania), these duties are enshrined in a law called the Uniform Prudent Management of Institutional Funds Act, or UPMIFA. The act, which governs how nonprofit institutions can invest and spend their money, defines the specific nature of trustees' fiduciary responsibilities in the context of charitable endowments. And while the specific arguments may vary by institution and jurisdictions, the financial, moral, and social risk posed by exposure to the fossil fuel industry make it hard to square fossil fuel investments with the text or spirit of the law.

For each of these states, there is a specific agency or office tasked with enforcing UPMIFA. (Often but not always, this is the state attorney general.) To be more precise, this office can investigate failures to comply and which has the standing and authority to initiate an enforcement action. Filing a complaint provides an opportunity to direct the attention of this office to potential violations of UPMIFA by your college or university. Again, a complaint is not a lawsuit but rather a request for the attorney general to investigate the matter and use their enforcement power to compel change.

As specific laws and legal conditions may vary by jurisdiction, it may be helpful to consult with an attorney familiar with your state about how to build the strongest legal case against your university for its fossil fuel investments. However, given the near-nationwide adoption of UPMIFA, many of the arguments raised in complaints filed thus far likely have widespread applicability. Below are some specific sorts of fiduciary duties which fossil fuel investments may violate.

Note that while this report has sought to avoid the use of technical legal language wherever possible, some of the terms below originate from relevant legal sources. They will likely show up in a complaint, so it is useful to be familiar with them and understand what they mean.

Violation of the Charitable Purpose Doctrine: Under UPMIFA, managers of charitable funds must consider the "charitable purposes of the institution and the purposes of the institutional fund," and "an asset's special relationship or special value, if any, to the

charitable purposes of the institution.” In other words, these institutions are duty-bound to consider the social, and not just the financial impact of their investment. If an asset is sufficiently incompatible with an institution’s core mission, it may be illegal to hold on this basis alone. This requirement, which is sometimes called the “charitable purpose doctrine,” is unique to charitable endowments and is an even higher standard than that which other institutional investors (e.g., pension funds) must meet.

The core mission of a university, broadly speaking, is the education and empowerment of future generations. The fossil fuel industry’s core business model of extraction and exploitation stands in clear opposition to this mission. Climate change threatens young people’s futures and puts universities’ physical campuses at risk. Furthermore, the industry’s decades of attacks on scholars, efforts to undermine science, and strategies to mislead the public further undermine the mission of higher education. Accordingly, a university that invests in the fossil fuel industry may be violating its duties to consider its charitable purpose.

Violation of the Duty of Loyalty: UPMIFA also states that fiduciaries have a legal duty to act in the best interests of the institution. Trustees, in other words, cannot engage in conflicts of interest that may threaten the independence or integrity of their decision-making, and a governing board cannot knowingly act in a way that harms the institution or its beneficiaries. As a result, trustees with material ties to fossil fuel companies (such as investors in or employees of the industry) may be violating their personal duties of loyalty. Moreover, a board that continues allowing investment in the industry even as these industries harm the interests of academia may find itself in violation of its general duty of loyalty.

Violation of the Duty to Act in Good Faith: According to this precept under UPMIFA, a board must approach its considerations in an honest manner. A board that has ignored or resisted efforts to engage in conversation with those seeking divestment, or which has spurned expert advice or vital stakeholder input on divestment or climate risk, may have failed to act in good faith.

Violation of the Duty of Care: This duty states that “each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.” In other words, part of a trustee’s job is making sure that the institution’s money is being managed prudently and responsibly.

Unlike in a corporate setting, where directors of a business corporation are expected to take business risks in pursuit of profit, charitable trustees must act in a way that minimizes risk and uncertainty. In other words, not only must a board member invest in a way that protects the fund’s bottom line — they must do so in an informed and cautious manner.

The fossil fuel industry is already in dire financial straits, and continued pressure from the energy transition is likely only to exacerbate the economic risks faced by the sector. By remaining invested in the industry, a board may be violating its duty of care through exposure to needless risk and immense potential financial loss. Since a number of top institutional investors have recognized this risk and divested, it is becoming difficult for institutions that refuse to divest to claim that they are acting as those in a similar position would.

Questions of process are also central to this duty. A board that fails to observe proper procedure when choosing to invest in fossil fuels (such as failing to abide by agreed-upon decision-making practices) may find itself especially vulnerable to such claims.

Note that this argument is focused on the economic risk of investing in fossil fuels. In this way, it differs from the above arguments, which focus on obligations more readily understood as moral or ethical.

Violations of Governing Documents: A college or university's charter or governing documents may lay out specifics in terms of governance processes, institutional purpose, or social duty. Violations of the text or spirit of these documents may help strengthen the case for other violations listed in this section.

Common Law Violations: In addition to the explicit duties of UPMIFA, trustees must also consider a state's common law regime (that is, the history of past court cases on related issues). Previous cases regarding charitable investing may lay out additional duties that fossil fuel investments could potentially violate, or might clarify interpretation of the duties above. In their complaint against Harvard, for example, students noted that prior case law further defines the duty of good faith in relation to charitable investments.

Violations of Other State Laws: In addition to UPMIFA, other state laws may regulate the investment behavior of colleges and universities, potentially providing relevant legal hooks. In their complaint against University of Wisconsin-Madison, for example, students noted that a state law bans certain state funds from being invested in companies that discriminate "on the basis of race, religion, color, creed, or sex," suggesting a possible violation by public universities' endowments due to the disparate impacts of climate change on communities of color.

V



WRITING & FILING A COMPLAINT

(1) Research all relevant background for making your case

While broad arguments about what fiduciary duty requires under UPMIFA are likely to be similar across complaints, the strength of any given complaint rests largely on the amount of case-specific details it includes. This is because every complaint has a unique context and will likely be treated accordingly by the legal authority with which it is filed, even if that authority receives multiple complaints of this kind.

In short, the more angles you can find that are specific to your university and its local context which speak to the illegal nature of its fossil fuel investments under UPMIFA, the better. Your university's affiliations (political, social, financial, religious, etc.), espoused values, public-facing commitments, mission, and processes for institutional decision-making may all factor into the weight of your argument. Thus, the first and most important part of assembling a complaint is a comprehensive research process.

Prior to researching, your campaign may want to have discussions about how the research process will be divided and carried out. The process is a wonderful opportunity to engage those looking to get more involved in a divestment campaign. However, it is also a significant amount of work, and the time and energy it requires should not be underestimated.

We also recommend that as you research, you record your findings in a central place and be sure to save and organize your sources. It's helpful to make a habit of double-checking sources and cross-referencing important facts in order to ensure that you build the most credible case, as you will want to be able to provide reliable citations and otherwise substantiate any material from your research that ends up in your written complaint. You may want to share your research and citations with a legal expert, such as an attorney at CDP if they are helping you to prepare the complaint.

Below are some questions to ask yourself as you begin to research material for a complaint:

What has your university said or written about its social duty or institutional mission, and how might fossil fuel investments clash with their specific words?

Look at governing documents such as your institution's charter or articles of incorporation, as well as public-facing materials promoted by your university such as mission statements. You might also look at any recent statements acknowledging the university's relationships with and/or responsibilities to surrounding communities and broader society. Some universities also have specific programs or initiatives focused on climate change and environmental, sustainability, and social justice issues, which can provide further evidence of institutional commitments at odds with fossil fuel investments.

Also look at whether and how your university has previously sought to capture its social mission in its investment policies. Does it have specific Environmental, Social, and Governance (commonly referred to as ESG) or sustainable investing commitments, and has it previously divested from morally or financially questionable industries (e.g., apartheid South Africa or tobacco)? If so, are they applying their own standards and precedent faithfully?

Finally, does your university have any broader affiliations that may serve as examples of social purpose? These affiliations may include membership in sustainable investing coalitions, religious affiliations, and more.

How much does your university invest in fossil fuels (or if this information is inaccessible, how much do you estimate it does), and is there any quantifiable financial harm occurring as a result?

If your university has not disclosed the scope of its fossil fuel investments (typically, as a dollar amount or percentage of its endowment), you should note its refusal as an example of a lack of candor and transparency. You may also be able to use more limited portions of the endowment (for instance, those revealed by quarterly filings of their university's endowment managers with the Securities and Exchange Commission) to estimate your university's fossil fuel holdings or make such an estimate based on the disclosures of peer institutions with comparable endowments. Little Sis, a project of the nonprofit public interest research organization Public Accountability Initiative, offers guidance on more specific approaches to and tools for researching your university's fossil fuel (and other) investments. Your university library may also give you access to databases such as PitchBook or Crunchbase with useful information on university investments.

Do your university's decision makers on divestment have any conflicts of interest, such as fossil fuel industry ties, that might cloud their decision-making process?

First, identify who the relevant players are. How does governance work at your university, and who is influential (formally or informally) when it comes to a decision on whether to divest? This may include members of a board of trustees, investment committee members, influential administrators or faculty, and external endowment management firms or advisors.

Once you know who's making the relevant decisions, look into their backgrounds. One way in which problematic industry ties can arise is when a trustee has a material financial interest in the fossil fuel industry (meaning they get richer when the industry does well or profit off of industry activity in some way). Such ties can be more direct (for instance, one Harvard trustee works as a lawyer for oil and gas giant ExxonMobil) or indirect (several Harvard trustees run financial organizations that have invested in fossil fuels). Even indirect ties are causes for concern if they create the potential for a conflict of interest. If lists of trustees or governance documents are not public, you may be able to find them through IRS form 990 filings or filings with your state's Secretary of State office.

How do the fossil fuel industry's actions harm your university specifically (for example, industry attacks on faculty members and their research)?

There are plenty of examples of fossil fuel interests attacking scholars. Have any of them taken place at your university? It may be worth speaking with faculty supporters on this matter, as these examples could provide powerful fodder for your complaint. You might also ask whether there are examples of the fossil fuel industry seeking to undermine the independence of scholarship on your campus indirectly through funding research or programs. For instance, UnKoch My Campus, a grassroots campaign working to expose the influence of Koch Network money in higher education, offers a tool to look up whether a university has received donations from the Koch brothers and affiliated organizations, who are known for funding numerous climate denial groups.

How do the consequences of climate change (e.g., more frequent and intense disasters, extreme weather events, rising temperatures, and flood risk due to sea level rise and storm surges) specifically harm your university's physical property?

Your university, locality, or state may have previously produced reports on the local consequences of the climate crisis that may be useful citations. Additionally, it may be relevant to consult resources such as sea level rise prediction maps.

How have peer institutions addressed the issue of divestment, and is your university falling behind by comparison (by not divesting and/or failing to meaningfully consider divesting)?

Among the sort of universities in a comparable position to yours, note the ones that have divested. "Peer" is a flexible term, but it may include universities that are located in the same geographic region, have similar endowment sizes or educational focuses, have shared group affiliations within the world of higher education (such as members of the Ivy League or Big Ten) or outside of it (such as institutions linked to a specific religious institution, like the Catholic church) and more.

How has the issue of fossil fuel divestment played out at your institution previously? First, identify and list all the ways in which students, faculty, and/or alumni have sought to

push your school to divest. Also list all ways in which your administration has responded (or declined to respond) to these calls. Additionally, you should note what you can about your university's process for making such decisions, and whether past rejections of divestment were decisions that occurred with care and good faith (i.e., the university seriously considered all relevant and available evidence, and accounted for community members' concerns and interests).

There are many tools available to research these questions. Divest Ed, a national training and strategy hub for student fossil fuel divestment campaigns, offers numerous resources to support this research and the case for divestment more broadly on its website. DivestInvest, a global network of individuals and organizations united by a commitment to divest from fossil fuels and invest in climate solutions, also offers general divestment resources that may be helpful. Students at public universities can also utilize government transparency resources like Freedom of Information Act requests, which any member of the public can make in order to access federal agency records. (Note that private university endowments are not subject to such requests.) Student organizers who have already engaged in this process for purposes of filing a complaint may have additional advice or guidance. Additionally, it can be helpful for campaigns to examine any historical archives of their past actions, research, and records of communications with their university or other relevant figures such as faculty.

Though UPMIFA applies to all charitable organizations, the structure of your university's endowment and how its investments are managed will determine who you file the complaint against. For example, there may be additional considerations for how to approach your complaint if your campus is part of a centralized endowment in addition to or in place of an individual one (e.g., a university system-wide endowment like that of the University of California, versus a system of distributed endowments like the University of Wisconsin).

Now that you have a better sense of what the research process entails, it may be helpful to consider how students who have already filed complaints used the research process to identify distinct features of the divestment situations at their universities in order to support their complaints. Here are two examples:

(A) Boston College, *Religious Affiliation & Conflicts of Interest*

In their complaint, Boston College students argue that in addition to the broader adverse social, environmental, and financial consequences of Boston College's fossil fuel investments, the university's Catholic and Jesuit religious mission and affiliations make divestment a clear imperative. Hundreds of Catholic institutions (including numerous universities) have already divested. Nearly all have cited their religious mission and faith as the basis for doing so. Catholic and Jesuit leadership have described the Church and their institutions as being obliged to take climate action. Boston College's fossil fuel investments not only fail to align with but actively undermine that value. Thus, the university misleads when advertising itself to prospective students, donors, and the public as a genuine Catholic and Jesuit institution. *See page 4 of the Boston College complaint.*

(B) Harvard University, *Conflicts of Interest & Flawed Decision-Making Processes*

In addition to highlighting the intransigence of the members of Harvard's primary governing board (the Harvard Corporation) amid overwhelming calls from the Harvard community for it to divest, in their complaint, students note the significant conflicts of interest posed by the current and past relationships of several Corporation members with the fossil fuel industry. Given the Corporation's longstanding refusal to seriously consider fossil fuel divestment, these relationships and the lack of transparency around them suggest that Corporation members may be privileging their own personal interests and financial stakes over their fiduciary duties. Students also describe how the Harvard Corporation relies on anti-divestment perspectives from a small number of Harvard faculty with financial connections to the fossil fuel industry to defend its anti-divestment position. Furthermore, the Harvard Corporation has taken deliberate steps to limit institutional power among divestment supporters at the university (e.g., limiting the number of petition candidates permitted to sit on the second of its two governing boards, following the election of three pro-divestment petition candidates to the board.) All of these factors provide important context around the lack of a rigorous, transparent, and honest process for considering the impacts of fossil fuel investments on the university's charitable mission and the endowment's financial security, which supports students' case that the university is violating its duties under UPMIFA. *See Sections X and XII of the Harvard complaint.*

(2) Draft your complaint

The process of complaint-drafting can seem daunting, but the complaints filed thus far provide strong foundations for drafting your own. As previously discussed, it can also be helpful to have advice from an attorney throughout this process, and they may be able to provide guidance on structure and format.

Developing a clear outline for your argument can help simplify the process. To do so, first synthesize your research and identify the most compelling points in favor of the case that your school's fossil fuel investments are illegal. For instance, students at the University of Wisconsin-Madison note in their complaint that the university explicitly commits on its website to being "a living model for sustainability, exemplifying values and actions that demonstrate our commitment to stewardship of resources, respect for place, and the health and well-being of the broader community, now and for the future." The idea that university trustees — in this case, the Wisconsin Foundation & Alumni Association — are undermining this goal by investing in the unsustainable fossil fuel industry provides a strong point in favor of their case. After completing this first step, you should categorize the points you've established into broader sections that could support your complaint. To continue the previous example, University of Wisconsin-Madison students' complaint includes a section titled "The Wisconsin Foundation & Alumni Association's social and environmental commitments" that overviews all the commitments trustees have made that are compromised by their fossil fuel investments.

You should look to previously filed complaints as examples for argumentative templates upon which you can build and/or tailor as you see fit to effectively make your case. You should feel free to use as much or as little of the existing framework and language in already filed complaints as you would like. (See how the University of Wisconsin-Madison students' complaint adopted the template of Harvard students' complaint and applied it to their own university's situation as an example of how to do so.)

If you look at any single complaint, you should be able to tell the structure of its argument and thereby, what the most relevant factors are, just by reading the table of contents. For instance, review the contents of Harvard students' complaint below:

- I. THE HARVARD CORPORATION'S VIOLATION OF MASSACHUSETTS LAW**
- II. HARVARD'S SOCIAL AND ENVIRONMENTAL COMMITMENTS**
- III. THE SCIENTIFIC REALITY AND RISKS OF CLIMATE CHANGE**
- IV. THE FAILURE OF FOSSIL FUEL COMPANIES TO ADDRESS CLIMATE RISKS**
- V. THE SOCIAL EFFECTS OF CLIMATE CHANGE**
- VI. THE FINANCIAL RISK OF FOSSIL FUEL INVESTMENTS**
- VII. INDUSTRY FRAUD AND THE FIDUCIARY DUTY TO AVOID FRAUDULENT INVESTMENTS**
- VIII. THE FINANCIAL PRUDENCE OF FOSSIL FUEL DIVESTMENT**
- IX. DIVESTMENT BY PEER INSTITUTIONS**
- X. HARVARD'S TIES TO THE FOSSIL FUEL INDUSTRY AND CONFLICTS OF INTEREST**
- XI. THE FOSSIL FUEL INDUSTRY'S SCIENTIFIC MISINFORMATION CAMPAIGNS AND ATTACKS ON ACADEMIA**
- XII. THE HARVARD CORPORATION'S REFUSAL TO CONSIDER DIVESTMENT FROM FOSSIL FUELS**

As you can see, the Harvard complaint starts out with an overview of the legal basis for arguing that Harvard's investments in fossil fuels violate UPMIFA and then proceeds section by section to lay out that initial argument, moving from the broader context of fossil fuel companies' role in driving the climate crisis to the financial risk of fossil fuel holdings and how Harvard's relationship with the fossil fuel industry both through its investments and otherwise harms the Harvard community. The section on divestment by peer institutions in particular shows just how widely recognized the moral and financial imperatives for divestment by universities are, and you should feel free to utilize that information in your own complaint. It is important to point out whether and how your university has failed to engage with or willfully ignored the reality of fossil fuel industry deception, the deprecation of fossil fuel assets and growth of divestment commitments, and more. In particular, it is relevant for the attorney general to know the extent to which university administrators have been willing to engage with students, faculty, alumni, staff, and campus community members more broadly around divestment and what those interactions have looked like. You may also wish to compare the process (or lack thereof) that your institution has undergone with regards to considering fossil fuel divestment to that of peer institutions. All of these factors speak to whether your university has taken seriously and sought to satisfy its duties under UPMIFA, as they relate to fossil fuel investments.

Much of the case for opening an investigation into your university's conduct can also be made clear with an effective timeline of the history of your campaign. When considering what to include in such timeline, ask whether a given event or development reflects the growth of and/or support for your campaign (such as community and public petitions, campaign endorsements, and notable media coverage), the ways in which your campaign has advocated for divestment (including any past actions, legal and non-legal), interactions between your campaign or other divestment advocates and your university administration (including the context around and nature of such interactions), and/or any other factor that may be relevant to the case for an investigation into your university's conduct and fossil fuel investments (such as concrete examples of divestment advocates being ignored, silenced, or excluded from decision-making processes by your university). You may want to review Section XII of the Harvard complaint for a clearer example of what to include. Also note that the timeline provided in this section is broken up into two main segments, the first focusing on Harvard community members' advocacy for divestment and the second focusing on the Harvard Corporation's refusal to engage with this advocacy in good faith, to provide a clear narrative and contrast between community members' conduct and that of the Corporation. This format can be replicated and applied to your university in your own complaint's timeline.

There is no set number of sections that a complaint must have; you should write as much as you need to support your argument and include clear citations to any referenced and/or otherwise relevant documents. The goal is to give ample coverage to the legal arguments discussed earlier in this guide (and any other legal arguments you choose to feature), and to ensure that the university-specific information you have researched serves to amplify and strengthen these points. You should consider what experts from among your base of supporters could be good to consult as you write your complaint, and be sure to think about the relevant angles to your case that are unique to your university, your divestment campaign or organization (if applicable), and your circumstances.

You may also want to break up the complaint-writing process among relevant parties. For instance, in the cases of both Harvard and Boston College students, a small number of dedicated student organizers took charge of researching and writing different sections of their complaints. Both received assistance from attorneys at CDP in putting that writing into an appropriate format, preparing the final version of the complaints, and filing them with the state attorney general's office.

Once you have completed a draft of your complaint, you should solicit feedback from any relevant stakeholders and experts to ensure it is maximally effective and accurate (being careful, of course, to only share with trusted individuals and to ensure that a draft recipient understands the norms of confidentiality). In the Harvard case, for example, students shared confidential drafts with supporters who had expertise in law, climate science, institutional history, and more. You should also make sure to the fullest extent possible that your complaint cites clear and accessible sources to back up the claims you're

making and any research you're referencing. (For instance, you may want to check with campaign allies that you have the proper timeline when recounting displays of support for divestment on campus or interactions between student organizers and university administrators, etc. in your complaint.)

After you feel confident that you have solicited and addressed any relevant feedback about your complaint from allies, relevant stakeholders, and legal experts, you should assemble a final version that is proofread and polished. This version should be in a professional and accessible format that you can submit to the attorney general's office or other legal authority and publish online (for instance, a PDF file that is downloadable and can be published to the web). At this point, you're ready to move forward!

(3) Conducting signatory outreach

The next step and a very important part of your complaint assembly process is collecting signatures. Technically speaking, any one person or organization can submit a complaint — there is no specific legal requirement to have any additional signatories on the document, and a complaint can still be a powerful tool without them. However, having additional signatories can help strengthen a complaint and the case it makes to the attorney general's office, as well as the public narrative surrounding it.

Among the categories of signatories your campaign may wish to consider having are the following:

- Signatories who can establish credibility and demonstrate community/public support for your complaint (e.g., faculty, notable alumni, elected officials, environmental and civic nonprofit organizations, community or student groups, former members of university governance)
- Signatories who can lend expertise to your complaint (e.g., climate scientists, climate policy scholars, legal or financial experts)
- Signatories who can establish personal harm experienced as a result of your university's investment decisions (e.g., community members threatened by climate change or students and faculty whose academic interests are harmed by the actions of the fossil fuel industry)

Recall that a complaint is not a formal legal action, but rather a call for investigation. By signing a complaint, a signatory is not making any legal commitment or implicating themselves in any further action, legal or otherwise. Rather, they are joining in the call for change.

When collecting signatories for your complaint, the aim should not necessarily be to amass as many as possible. Rather, the signatories can instead be chosen in order to serve specific purposes. These reasons may include building a media narrative for the

public, bolstering a complaint's credibility in the eyes of the attorney general, showcasing a unified front in the push for divestment, highlighting the voices of individuals directly harmed by your institution's investments, and more. Whatever the reason for having signatories on a complaint, the quality of such signatories is much more likely to impact how the attorney general's office and members of the public view the complaint than the quantity. In fact, unless you can garner a truly impressive number of signatories, it is more impactful to choose a handpicked list of signatories whose opinions are clearly relevant.

To maximize the impact of your complaint's public debut, you should begin conducting outreach to signatories sufficiently before complaint filing. When conducting such outreach, you may want to be careful about who and how many individuals or organizations you ask to sign onto the complaint in order to maintain its confidentiality. Note that nobody has the right to stop you from filing a complaint, but if word of the complaint reaches trustees prior to filing, it may add new complications to the process (trustees may try to interfere or retaliate).

Outreach to signatories can also continue after a complaint's filing. At that point, you will hopefully be able to share the names of notable signatories and news clippings about the filing with potential new supporters, loop back with those who were unsure about signing the first time, and more. Additionally, without the confidentiality requirements, it may be possible to catch a much wider net for outreach. Note that there may not be an official way to amend an already filed complaint, so an updated signatory list is often best emailed or mailed to the office of the relevant state legal authority with whom you filed.

You may also wish to use signatory outreach as a chance to coalition-build and practice solidarity work. For instance, you might consider how requesting that an individual or organization who signs onto the complaint can help build lasting connections and relationships with allies and supporters. There may be valuable opportunities to mutually support one another beyond the complaint process.

Some information you may wish to include in a signatory outreach email can be found in the appendix. See existing complaints for examples of signatory lists.

(4) Filing your complaint

Once you've strategized, researched, drafted, revised, and outreached with the help of legal experts and your campaign's stakeholders, you're ready to file your complaint!

Most states have an online portal to file a complaint about a charity or nonprofit. Simply fill out the form on the attorney general's website, upload your complaint document, and click submit (for example, see the "File a complaint about a charity or nonprofit" page on the official website of the Commonwealth of Massachusetts, Mass.gov). If you can't find such

a portal for your state, find the contact information for your state's attorney general's office online and contact the office to inquire about your complaint filing options.

Consider the individual or organizational name under which you want to file your complaint. Choose whether to file your complaint in the name of your group or campaign, or as an individual or group of individuals. For instance, if you're part of a student group that relies on funding or other resources from your university, you may want to consider filing the complaint as an individual to decrease the likelihood of potential retaliation by the university against your group (see Boston College students' complaint). By contrast, if you want it to be known that your group is responsible for the complaint (perhaps, to advance your complaint's public narrative, garner more media attention, and/or more directly challenge your university trustees), simply include the name of your group as the primary signatory to your complaint (see Harvard students' complaint). To strike a middle ground, you can also list your group further down in a list of signatories, which will make your group's role in the complaint less apparent at first glance while still making clear your group's role in the complaint effort. If you do not want to include your group's name or the name of an individual, an ally or attorney may be able to file the complaint on your behalf.

If you're filing with the assistance of legal professionals, they may send an email to the university trustees to which the complaint is addressed on the day of the complaint launch to notify them. Having this notification come from legal professionals, whether or not it is made explicitly on behalf of students or other campus divestment organizers, can be a deliberate choice to enhance the credibility of the complaint in university trustees' eyes and make clear that campus activists have legal support (which may dissuade universities from pursuing retaliatory measures against student organizers and faculty supporters).

To be clear, there is no obligation to provide universities with formal or advance notice of any complaints filed against them. However, you may choose to provide such notice for a number of reasons, including to increase pressure on university trustees to divest, to add to the public narrative around your complaint, and as a courtesy measure.

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STEPS TO ADVANCE A COMPLAINT

Once you have filed, CONGRATULATIONS! You have joined a historic youth-led legal movement to hold our institutions accountable for aiding and abetting the fossil fuel industry. Now, what?

This section focuses on tasks and strategies for after you file your complaint, but it's important to start thinking about them well before you file so they're ready to go as soon as your complaint launches.

Having filed a complaint, the bulk of research and writing (in many ways, the hardest part) is behind you. But your journey isn't over. Part of what makes these complaints so powerful is using them to generate a clear public narrative that holds your institution and the fossil fuel industry accountable for their role in perpetuating the climate crisis — and uplifting the student-led fight for that accountability. To do so effectively, you'll want to garner media coverage.

Grabbing press attention can be difficult, but here are some quick and easy steps you can follow...

- **Write a powerful press release about your complaint.** Your press release should state cleanly and clearly what's going on, and why it's important. You may want to frame your complaint within the context of the broader movement of complaint filings this report reflects (i.e., mention the other complaints yours builds off of and use language that speaks to the nationwide repercussions that your or any of these complaints could have if successful) and current events (e.g., ongoing efforts to hold the fossil fuel industry accountable and combat the climate crisis, moving to the courts amid climate inaction by institutions and lawmakers, an upwelling of youth climate and fossil fuel divestment activism, the diminishing value of fossil fuels etc).
- **Write a compelling pitch for a story about your complaint.** Your framing can be similar to that in the press release, but this write-up should be much more concise (remember, reporters don't have a lot of time and receive many pitches). You should identify what's unique and/or significant about your complaint and why covering it would make sense for the outlet or reporter to whom you're reaching out. If possible, you should offer to connect press with any complaint authors and/or signatories for interviews (offering an "exclusive" interview with or comment from a signatory, especially a high-profile one, or legal expert can help hook reporters).

- **Reach out to a broad but selective list of media outlets and contacts.** To use your time and that of members of the press meaningfully, you should reach out primarily to outlets and/or individual reporters who would have a reason to cover your complaint. For instance, outlets and reporters who have previously written about climate and divestment activism (including those who have already written about Harvard, Boston College, Cornell, and University of Wisconsin-Madison students' complaints or other legal actions to hold fossil fuel companies and fossil fuel investors accountable), legal activism, student activism, higher education, and/or the fossil fuel industry are more likely to be interested. You may also want to reach out to a mix of kinds of media outlets (e.g., print media, television and radio, podcasts, etc.) in order to broaden your audience. Pitching to campus and/or university-affiliated media outlets is a great way to capture the attention of your peers, administrators, and university community — these outlets can be an intuitive starting point for press outreach, since they have a special interest in developments affecting your university.
- **Plan an in-person event.** Many of the complaints filed as of writing this report came together during the Covid-19 pandemic, so this was not an option. However, moving forward, how might filing allow for physical mobilization of your base and engagement of your communities? Some options to consider are a rally, a press conference, a teach-in, and delivering a hard copy of your complaint to the attorney general's office.
- **Post about your complaint on social media.** It's great to have one comprehensive and clear original post breaking the news about your complaint on social media that can then be liked and re-shared. Such a post provides a clear and authoritative source for further information on the complaint. A social media strategy to promote your complaint may also include developing explanatory infographics, videos, and more. (See the original Twitter thread and Instagram post announcing the launch of Harvard students' complaint on Fossil Fuel Divest Harvard's social media for examples: <https://twitter.com/DivestHarvard/status/1371464539301056517> and <https://www.instagram.com/p/CMcT8XEnpEG/>.)
- **Write an op-ed (or op-eds) about your complaint.** Op-eds are a great way to directly communicate your perspective, including what you're arguing in your complaint and why you're arguing it. You may want to have different complaint authors, signatories, and/or supporters write op-eds about the complaint (ideally, from distinct angles or perspectives) for different outlets (including campus and non-campus publications) to reach different and broader audiences. Each section of your complaint will likely provide material for a distinct op-ed.
- **Sustain media momentum over time by continuing to make social media posts, write follow-up press releases, and pitch stories/write op-eds.** Any developments around your complaint and/or support for it can serve as a jumping-off point to garner more attention and rally people for your cause. Examples of good social media/news bites are meetings you have with the attorney general's office, additional support your complaint receives from prominent or otherwise relevant individuals/organizations, and any actions you organize around your complaint.

You can find tips for crafting a press release, news pitch, and op-ed about your complaint in Appendix C.

Per the sixth step listed above, it's important to note that once your complaint is filed and you've completed the initial launch you may have to find new and creative ways to sustain the public life of your complaint. The public won't get to see any internal processes that the attorney general's office undergoes; they'll only get to see the publicity you generate. To that end, here are some ideas for sustaining public momentum (and thereby, giving the attorney general's office more reason to pursue your complaint):

- **Seek out more high-profile signatories** for your complaint and publish an updated signatory list.
- **Pitch longer-term stories to the press** related to your complaint and the broader movement.
- **Try to obtain letters of support** for your complaint from relevant experts (e.g., elected officials, economists and financial experts, scientists, legal scholars, trustees of charitable organizations) and community members (e.g., faculty and alumni) to provide to the attorney general's office. Don't seek to flood the office with perspectives that will simply repeat what they've heard, but do consider if there are perspectives that might strengthen your case or lend a viewpoint not captured in your complaint. Such letters can build credibility for your complaint in the office's eyes.
- **Pursue complementary legal and non-legal tactics** to advance your complaint. Note that you should be mindful of how any tactics you pursue will align with and strengthen your complaint and the case you're making to the attorney general's office. You do not want to accidentally take action (legal or non-legal, such as direct action) that undermines your case. To avoid doing so (especially, in the context of complementary legal tactics), it can be helpful to consult with attorneys and other complaint stakeholders.
- **Hold follow-up teach-ins about your complaint** to recruit more campus community members to your cause, and organize and/or participate in public-facing webinars and panels about your complaint.
- **Encourage and support students at other universities in your state to file complaints.** Remember, the more complaints of this nature that your attorney general's office receives, the more likely it is that any single one complaint will be picked up and the more press it generates.
- **Share updates about your complaint.** For example, if you are asked to meet with the relevant office or if they take steps towards a formal investigation or enforcement action, let your supporters and the media know that this is occurring.

You will also want to engage with the office which received your complaint, as much as is possible and appropriate, to bolster your case once your complaint is filed. For instance, trying to meet with the attorney general's office to provide additional information about the circumstances of your complaint and to clarify any questions officials may have about

your complaint's argument can be greatly beneficial. You can simply reach out to the office and ask for a meeting, as well as try to arrange follow-up meetings after an initial one occurs. (You should prepare thoroughly for such meetings, including by being familiar with your complaint's content and trying to anticipate any questions the office may have. It may also help to include any attorneys who helped prepare your complaint and/or other relevant experts and campaign allies who can speak to its different components join such meetings.) Providing the attorney general's office with memos including relevant research and updates on campaign and campus developments around divestment is another way to strengthen your case and sustain focus on your complaint.

WIN

VII

CONCLUSION

The case for fossil fuel divestment is overwhelming. With support for divestment from nonprofit, corporate, faith-based, academic, democratic, and government institutions alike, we know we're winning in the court of public opinion. Now, we're turning to the court of law and building on a rich history of legal activism to advance climate action, accountability, and justice in the process to continue growing support for our movement and redefining political possibilities in favor of a just and sustainable future.

Every complaint filed makes a vital contribution to these efforts, helping to uplift the public narrative of young people and community members holding Big Oil and the institutions propping it up accountable. And in doing so, each complaint advances a legal strategy with the potential to reshape institutional investing by nonprofit and charitable corporations nationwide, ensuring that they support rather than impede a just transition off fossil fuels.

We hope that in reading this guide, you've found the background and tools you need to file a complaint of your own and/or to encourage others around you to do so. Feel free to return to and reference this guide anytime — it is meant to provide support throughout the complaint process — and to share it widely. It's important to remember that this tactic is open to everyone, no matter the resources you do or don't have immediately at your disposal. There is no cost to writing or filing a complaint and while you can do so independent of any legal assistance, we once again recommend that people pursuing complaints take advantage of the incredible and entirely free legal resources in place to support these efforts, such as CDP. It's also important to remember that this guide is not exhaustive and every complaint is unique. We welcome and encourage those who file complaints to share any new insights they gain in the process. Organizers and attorneys who have previously filed complaints are also available to answer any questions.

Our communities and our planet deserve protection from the reckless and deadly behavior of the fossil fuel industry. So long as our institutions continue to invest in that industry, we cannot be assured of such protection. By exercising our rights to expose and fight against these unjustifiable investments, we push our legal and political systems as well as our institutions to practice climate accountability and stand on the right side of history by advancing a fossil free future.

ENDNOTES

1. You can find an updated estimate of the total value of assets committed to full or partial divestment from fossil fuels, along with a breakdown of institutional divestment commitments, at <https://gofossilfree.org/divestment/commitments/>.
2. Find more information about *Harvard Climate Justice Coalition v. President & Fellows of Harvard College* in a case write-up from the Sabin Center for Climate Change Law, accessible at <http://climatecasechart.com/climate-change-litigation/case/harvard-climate-justice-coalition-v-president-fellows-of-harvard-college/>.
3. Lack of standing has been a recurrent issue for students and alumni who have sought to use litigation to challenge their university's investments in extractive industries, including fossil fuels and prisons. Griffin, Kelsey J., and Kevin A. Simauchi. "Massachusetts Court Dismisses Harvard Prison Divestment Campaign Lawsuit Over University Investments." January 9, 2021. <https://www.thecrimson.com/article/2021/1/9/prison-divest-suit-dismissed/>.
4. Across the world, climate activists are using diverse legal tactics to take on the fossil fuel industry, as well as institutions that continue to back it. These tactics provided momentum for the Cornell students and continue to inspire many of the students now filing divestment complaints. Dennys, Harriet. "Oil and gas firms could face fresh legal action by activist groups as investors demand stock market-listed firms align with Paris climate goals." *This is Money*. June 26, 2021. <https://www.thisismoney.co.uk/money/markets/article-9728059/Oil-gas-firms-face-fresh-legal-action-activist-groups.html>; "McVeigh v. Rest." Equity Generation Lawyers. November 27, 2020. <https://equitygenerationlawyers.com/cases/mcveigh-v-rest/>; "Pensions and Climate Risk - Legal Letter to Ford Pension Fund." ClientEarth Document Library. <https://www.documents.clientearth.org/library/download-info/pensions-and-climate-risk-legal-letter-to-ford-pension-fund/>; "Letter to EIB Board of Directors Fossil Fuel Lending Policy." Client Earth. <https://www.clientearth.org/media/0swjmspr/clientearth-letter-to-eib-board-of-directors-fossil-fuel-lending-policy-ce-en.pdf>; "Juliana v. United States." Our Children's Trust. <https://www.ourchildrenstrust.org/juliana-v-us>.
5. More information about the complaint against Chevron filed by green groups with the Federal Trade Commission is available online. "Fossil Fuel Firms Face New Challenge over 'Greenwashing' Ads." *Thomas Reuters Foundation*. June 23, 2021. <https://news.trust.org/item/20210622225049-8wosh>.
6. The basic arguments regarding fiduciary duty and how fossil fuel investments may violate it as presented in this guide may be relevant even when UPMIFA does not apply. Students in Pennsylvania who want to pursue legal tactics against their universities over continued fossil fuel investments, and individuals exploring such a strategy in the context of other types of institutional funds, may reach out to the Climate Defense Project for consultation. They may also find inspiration for related legal and non-legal action in the rest of this guide.

ENDNOTES

7. The legal strategy discussed in this guide is in large part inspired by the work of former SEC Commissioner Bevis Longstreth. Longstreth's scholarship on nonprofit investment helped inform the drafting of the original UPMIFA, and in 2016, he wrote what was among the first legal opinions exploring the potential of using UPMIFA to push for fossil fuel divestment. See "Will This Retired Lawyer Open the Floodgates of Divestment From Fossil Fuels?" Inside Climate News, 4 Feb. 2021, insideclimatenews.org/news/08062016/retired-lawyer-boris-longstreth-floodgates-divestment-fossil-fuels-climate-change-investments/; Longstreth, Bevis. "Outline of Possible Interpretative Release by States' Attorneys General Under The Uniform Prudent Management of Institutional Funds Act." Inside Climate News, 8 June 2016, insideclimatenews.org/documents/outline-possible-interpretative-release-states-attorneys-general-under-uniform-prudent/.
8. Little Sis resources that may be useful for researching your university's endowment include the article "Five Ways to Research Your University's Fossil Fuel (and Other) Investments" (available at <https://news.littlesis.org/2020/10/21/five-ways-to-research-your-universitys-fossil-fuel-and-other-investments/>) and a webinar on the relationship between private equity and university fossil fuel investments (slides available at <https://littlesis.org/static/PrivateEquityFossilFuelsUniversitiesWebinar.pdf>).
9. To discern the influence of Koch money on your campus, search for your university using the "Find my Campus" tool available at <http://www.unkochmycampus.org/find-your-campus>. For more background on the relationship between Koch money and climate denial, see the Greenpeace article "Koch Industries: Secretly Funding the Climate Denial Machine," available at <https://www.greenpeace.org/usa/ending-the-climate-crisis/climate-deniers/koch-industries/>.
10. Harvard-based scholars Naomi Oreskes and Geoffrey Supran have repeatedly faced attacks from the fossil fuel industry for their work exposing the industry's role in climate denial and misinformation. Oreskes, Naomi, and Geoffrey Supran. "ExxonMobil misled the public about the climate crisis. Now they're trying to silence critics." *The Guardian*, Oct. 6, 2020. <https://www.theguardian.com/commentisfree/2020/oct/16/exxonmobil-misled-the-public-about-the-climate-crisis-now-theyre-trying-to-silence-critics>. Contact information for the offices of state attorneys general is available at <https://www.myfinancialgoals.org/education/state-attorney-general-contact-list.htm>.
11. To gauge the threat posed by sea level rise to your campus, you can visit <https://coast.noaa.gov/slr/>.
12. Learn more about how to make Freedom of Information Act requests at <https://foiaonline.gov/foiaonline/action/public/home>.

VIII

VIII

APPENDIX A

Contact for Complaint Support

CLIMATE DEFENSE PROJECT (legal)

info@climatedefenseproject.org
<https://climatedefenseproject.org/>
@Climate_Defense (Twitter,
Facebook)

FOSSIL FUEL DIVEST HARVARD (non-legal)

ffdivestharvard@gmail.com
divestharvard.com
@DivestHarvard (Twitter, Instagram,
Facebook, TikTok)

CLIMATE JUSTICE AT BOSTON COLLEGE (non-legal)

cjbc.coordinatingteam@gmail.com
climatejusticebc.com
@BClimateJustice (Twitter, Instagram, and
Facebook)

UNIVERSITY OF WISCONSIN DIVESTMENT COALITION (non-legal)

wiscac.madison@gmail.com
<https://linktr.ee/uwdivestmentcoalition>
@UWDivestmentCoalition (Facebook,
Twitter, Instagram)

Links to Past Complaints

Boston College Complaint (filed December 15, 2020)

<https://climatedefenseproject.org/wp-content/uploads/2021/03/Boston-College-Fossil-Fuel-Investment-Complaint.pdf>

Cornell University Complaint (filed November 22, 2019)

<https://cornellsun.com/wp-content/uploads/2019/11/Cornell-University-Complaint-Form-11222019.pdf>

Harvard University Complaint (filed March 15, 2021)

<https://climatedefenseproject.org/wp-content/uploads/2021/03/Harvard-Fossil-Fuel-Investment-Complaint.pdf>

University of Wisconsin-Madison Complaint (filed May 7, 2021)

<https://climatedefenseproject.org/wp-content/uploads/2021/05/WFAA-Investment-Complaint.pdf>

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APPENDIX B

Further Information for Signatory Outreach

Further Information for Signatory Outreach

Below is an email template designed for general signatory outreach based on the above recommendations which you may use and tailor as you see fit. Note that how you conduct outreach to potential signatories may look different depending on whether or not you have a pre-existing relationship with them and the nature of that relationship (i.e., whether they know who you are or require an introduction to you/your campaign, whether you have worked with them in the past, whether you have clearly aligned goals, etc.).

Subject: Confidential Request from [INDIVIDUAL/CAMPAIGN]
(Time-Sensitive)

This is a confidential email. Please do not share its contents with anyone.

Hello/Dear [POTENTIAL INDIVIDUAL/ORGANIZATIONAL SIGNATORY NAME],

[If/as applicable, insert an introduction to you or your campaign. e.g., "We are a coalition of students, faculty, and alumni fighting to divest Climate University's endowment from fossil fuels and reinvest it in a just and sustainable future."]

We're filing a complaint with [STATE ATTORNEY GENERAL/RELEVANT ENFORCEMENT AGENCY], urging them to compel [UNIVERSITY/INSTITUTION] to divest. We argue that [UNIVERSITY/INSTITUTION]'s ongoing fossil fuel investments represent a violation of its legal obligations as a charitable/nonprofit corporation. This tactic builds on a growing movement by students across the country, who are filing complaints with their states' attorneys general to hold their universities accountable on climate change, and we expect it to have a big impact.

Given your expertise/perspective/important work, we would be very grateful to have your support in this effort. **Would you be interested in adding your signature to our complaint pushing for [UNIVERSITY/INSTITUTION]'s divestment from fossil fuels?** (Note: this is not a lawsuit, and you would have no legal tie to the document beyond showing your support for the attorney general opening an investigation.) If you are interested, we would

be happy to send an embargoed copy of the complaint document for your review, but it cannot be shared with anyone.

[If/as applicable, insert a personalized message about why this effort is relevant to the potential individual/organizational signatory and how it might contribute to a continuing and mutually beneficial relationship between you two going forward.]

If you would like to sign on (and/or receive an embargoed copy of the complaint for consideration), please let us know by responding to this email no later than [DATE] (and preferably, as soon as possible). And in the meantime, please keep this correspondence confidential.

We think this could be a major step towards climate justice and accountability and would love to have your support!

Thank you,

[INDIVIDUAL/CAMPAIGN]

Consider all resources at your disposal to reach out to potential signatories, including alumni databases, social media DMs, databases like RocketReach or Hunter.io, asking known supporters to pass along emails to specific individuals, or more.

Also remember that in addition to physically joining their names to your complaint, signatories can be incredibly helpful in promoting and bolstering the credibility of your complaint in other ways. After filing your complaint, you may want to conduct outreach to signatories again (as well as to individuals and organizations who declined to be signatories but may be receptive to supporting the complaint to lesser degrees) and include the following information:

- A note of gratitude for signing the complaint (if/when applicable)
- A link to the final published complaint and any relevant news coverage
- An ask for them to share information about the complaint's filing on social media (including links to any social media posts about the complaint that you want re-shared)
- If relevant, an ask for them to consider supporting the complaint in other ways (e.g., writing an op-ed about why they support the complaint, submitting a letter of support to the attorney general's office or relevant enforcement agency, collecting more signatories for the complaint, joining you for a meeting with the attorney general's office or relevant enforcement agency, etc.)

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APPENDIX C

Crafting a Press Release

In order to help spread the word about your complaint, you will want a press release describing the filing and its significance ready to go on day one. For some guidance on how to write a press release, you may find resources like 350's Media Advisories and Press Releases training (<https://trainings.350.org/?resource=media-advisories-and-press-releases>) helpful.

When writing your release, some talking points you may wish to include are:

- A brief overview of your complaint
- A discussion of why it's important and impactful
- A recap of your school's entanglement with the fossil fuel industry, and some background on the divestment movement
- How your filing is part of a broader student movement (e.g., the schools that have filed previously, and potential for this effort to create national change)
- Ready-to-use quotes for media by organizers, attorneys, and/or notable backers/signatories of your efforts

You should also have spokespeople familiar with a complaint's talking points ready to discuss them further.

You can find the original press release from Fossil Fuel Divest Harvard announcing students' historic complaint (which includes a text, a launch video, and relevant images with captions) at tinyurl.com/harvardcomplaintpress and on the campaign Medium page (divestharvard.medium.com).

Crafting a Pitch for News Coverage

Your pitch should try to capture the key points from the press release in a few sentences (presume that a journalist will only skim your email for a few seconds before deciding whether to move forwards), and share the full press release if interested.

The following pitch was used for the Harvard complaint and can be modified as needed.

Dear [JOURNALIST],

This morning, members of the Harvard community filed an official complaint with Massachusetts Attorney General Maura Healey arguing that Harvard's fossil fuel investments aren't just immoral — they're illegal. The complaint, which is supported by top climate scientists, investors, Massachusetts elected officials, advocacy groups, and even a legal scholar who contributed to the law in question, **has the potential to reshape institutional investing nationwide in the face of the climate crisis.**

Here is a press release, and we're happy to set up some interviews if that would be helpful: <https://divestharvard.medium.com/harvards-fossil-fuel-investments-are-illegal-alleges-complaint-5bbc0b03274a>

For nearly a decade, our movement has protested, petitioned, met with university administration, and even stormed football fields to persuade Harvard to divest from fossil fuels. We now escalate our campaign to the legal realm, opening a new front in the movement to hold fossil fuel companies and their enablers accountable.

Massachusetts law is clear: Under the Uniform Prudent Management of Institutional Funds Act (UPMIFA), by investing in an industry that puts the future of its students and the entire planet at risk, Harvard is in violation of its legal obligations as a charitable investor. If the attorney general was to decide that holding fossil fuel stocks is incompatible with fiduciary duties, **the decision could set a new precedent for exposing institutions that fail to act on climate to legal liability**, as some version of the UPMIFA exists in every state.

Once again, the press release is above, and we're happy to talk further if this story would be of interest.

Sincerely,

[NAME]

[PHONE NUMBER]

Fossil Fuel Divest Harvard

Crafting an Op-Ed

Remember that any effective op-ed should have a clear thesis or topline, as well as make clear why you're the right person to argue it. You may also want to use the conclusion of an op-ed about your complaint as an opportunity to encourage supporters to take action, such as by becoming a signatory to your complaint or promoting it on social media.

Below are a few op-eds written by student organizations about their complaints, along with a few resources to help you through the process of writing an op-ed.

- *Example* - "Fossil Fuel Divest Harvard Files Complaint with Massachusetts Attorney General" by Ilana Cohen for *Teen Vogue*: <https://www.teenvogue.com/story/fossil-fuel-divest-harvard-complaint>
- *Example* - "Harvard's Fossil Fuel Investments Aren't Just Immoral — They're Illegal, Too" by Morgan Whitten and Alex Marquardt for *The Nation*: <https://www.thenation.com/article/environment/divest-harvard/>
- *Resource* - "Tips for Aspiring Op-Ed Writers" by Bret Stevens for *The New York Times*: <https://www.nytimes.com/2017/08/25/opinion/tips-for-aspiring-op-ed-writers.html>
- *Resource* - "Op-Ed Writing: Tips and Tricks" by *The Oped Project*: <https://www.theopedproject.org/oped-basics>
- *Resource* - "How to Write an Op-Ed or Column" by the Harvard Kennedy School Communications Program: https://projects.iq.harvard.edu/files/hks-communications-program/files/new_seglin_how_to_write_an_oped_1_25_17_7.pdf

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APPENDIX D

Ideas for Complementary Tactics

LEGAL

- Sending a letter to a university's trustees or other fund directors outlining how their fossil fuel investments and/or pro-fossil fuel policies violate their fiduciary duties (e.g., *legal letter on pensions and climate risk from Client Earth to Ford Pension Fund*, <https://www.documents.clientearth.org/library/download-info/pensions-and-climate-risk-legal-letter-to-ford-pension-fund/>)
- Calling for a formal review of an institution's investment behavior by non-legal institutions and networks with sustainable/responsible investment principles of which it is a member (e.g., *Boston College students accompanying their complaint with requests for investigation of the university's fossil fuel investments by authorities within the Society of Jesus and Catholic Church, including the Archdiocese of Boston and The Vatican; community group Save the Dawson lodging a formal complaint with the United Nations Principles for Responsible Investment against Liberty Mutual over its insuring a polluting coal mine in Australia* <http://libertysclimatecrisis.com/unpri-reviews-liberty-mutuals-membership-over-australian-coal-mine/>)
- Pursuing litigation directly against fossil fuel investors with which one has a relationship (e.g., *Mark McVeigh v. Retail Employees Superannuation Pty Ltd climate risk litigation brought against major Australian pension fund by one of the fund's members*, <https://equitygenerationlawyers.com/cases/mcveigh-v-rest/>)

NON-LEGAL

- Obtaining third party letters of support for your complaint from relevant experts and community members
- Generating media attention for your complaint by putting out your own press releases, pitching stories about your complaint to press, writing op-eds, and/or holding a press conference about it
- Create a video explaining the motivations behind your complaint (e.g., tinyurl.com/harvardcomplaintvideo)
- Organize public events around your complaint, such as panels with signatories, relevant experts, and community members
- Encourage other individuals and campaigns in your state to file complaints of their own (*feel free to share this guide*)
- Hold direct actions such as marches, rallies, protests, creatives demonstrations, blockades, and sit-ins on campus and/or at relevant offices for your university administration and trustees which put on clear display the community, expert, and public support for your complaint
- Continue generating signatories for your complaint and collaborate with your signatories around further tactics with mutual benefits
- Create opportunities for dialogue with your university trustees about your complaint and continued call for divestment (e.g., *Requesting meetings, holding public forums, making it clear in public-facing content that you are open to conversation anytime, arranging dialogue about divestment through third parties such as faculty or alumni or relevant experts*)

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APPENDIX E

Helpful Background Reading

Legal Case for Divestment

- Feit, Steven et al. “Trillion Dollar Transformation: Fiduciary Duty, Divestment, and Fossil Fuels in an Era of Climate Risk.” Center for International Environmental Law, 31 Aug. 2018. www.ciel.org/reports/trillion-dollar-transformation-fiduciary-duty-divestment-fossil-fuels-era-climate-risk/.
- Longstreth, Bevis. “Outline of Possible Interpretative Release by States’ Attorneys General Under The Uniform Prudent Management of Institutional Funds Act.” *Inside Climate News*, 8 June 2016. insideclimatenews.org/documents/outline-possible-interpretative-release-states-attorneys-general-under-uniform-prudent/.
- Sassoon, David. “Will This Retired Lawyer Open the Floodgates of Divestment From Fossil Fuels?” *Inside Climate News*, 4 Feb. 2021. insideclimatenews.org/news/08062016/retired-lawyer-boris-longstreth-floodgates-divestment-fossil-fuels-climate-change-investments/.

Moral and Practical Case for Divestment

- “Divestment Mythbusting.” Go Fossil Free, June 3, 2015. <https://gofossilfree.org/usa/wp-content/uploads/sites/6/2015/03/DivestmentMythbusting.pdf>.
- McKibben, Bill. “Global Warming’s Terrifying New Math.” *Rolling Stone*, July 19, 2012. <https://www.rollingstone.com/politics/politics-news/global-warmings-terrifying-new-math-188550/>.
- Schwartz, Caleb and Connor Chung. “From Apartheid to the Climate Crisis: The Limits of Shareholder Engagement.” *Impakter*, September 11, 2020. <https://impakter.com/harvard-from-apartheid-to-the-climate-crisis-the-limits-of-shareholder-engagement/>.
- Tutu, Desmond. “We need an apartheid-style boycott to save the planet.” *The Guardian*, April 10, 2014. <https://www.theguardian.com/commentisfree/2014/apr/10/divest-fossil-fuels-climate-change-keystone-xl>.
- “Who Is Divesting and Why?” The Global Catholic Climate Movement, November 25, 2020. <https://catholicclimatemovement.global/divest-and-reinvest/leaders/>.

Financial Case for Divestment

- Grantham, Jeremy. “The mythical peril of divesting from fossil fuels.” The London School of Economics and Political Science and Grantham Research Institute on Climate and the Environment, June 13, 2018. <https://www.lse.ac.uk/granthaminstitute/news/the-mythical-peril-of-divesting-from-fossil-fuels/>.
- Sachs, Jeffrey et al. “Letter from economists: to rebuild our world, we must end the carbon economy.” *The Guardian*, August 4, 2020. <https://www.theguardian.com/commentisfree/2020/aug/04/economists-letter-carbon-economy-climate-change-rebuild>.
- Sanzillo, Tom. “IEEFA: Major investment advisors BlackRock and Meketa provide a fiduciary path through the energy transition.” Institute for Energy Economics and Financial Analysis, March 22, 2021. <https://ieefa.org/major-investment-advisors-blackrock-and-meketa-provide-a-fiduciary-path-through-the-energy-transition/>.
- Sanzillo, Tom, Hipple, Kathryn, and Clark Williams-Derry. *The Financial Case for Fossil Fuel Divestment*. Sightline Institute and Institute for Energy Economics and Financial Analysis, July 2018. http://ieefa.org/wp-content/uploads/2018/07/Divestment-from-Fossil-Fuels_The-Financial-Case_July-2018.pdf.
- “Stranded Assets.” Carbon Tracker Initiative, Aug. 23, 2018. <https://carbontracker.org/terms/stranded-assets/>.

The Fossil Fuel Industry’s Climate Denial and Delay

- “Absolute Impact 2021: Why oil and gas ‘net zero’ ambitions are not enough.” Carbon Tracker Initiative, May 27, 2021. <https://carbontracker.org/reports/absolute-impact-2021/>.
- *Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans*. Oil Change International, Sept. 23, 2020, <http://priceofoil.org/2020/09/23/big-oil-reality-check/>.
- Buchanan, Emily. “Inside Exxon’s playbook: How America’s biggest oil company continues to oppose action on climate change.” *Unearthed*, June 30, 2021. <https://unearthed.greenpeace.org/2021/06/30/exxon-climate-change-undercover/>.
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- Kenner, Dario, and Richard Heede. “White knights, or horsemen of the apocalypse? Prospects for Big Oil to align emissions with a 1.5 °C pathway.” *Energy Research & Social Science*, April 15, 2021, ISSN 2214-6296. <https://doi.org/10.1016/j.erss.2021.102049>.

- McCarthy, Niall. "Oil And Gas Giants Spend Millions Lobbying To Block Climate Change Policies." *Forbes*, March 25, 2019.
<https://www.forbes.com/sites/niallmccarthy/2019/03/25/oil-and-gas-giants-spend-millions-lobbying-to-block-climate-change-policies-infographic/?sh=163adfa87c4f>.
- Oreskes, Naomi, and Geoffrey Supran. "ExxonMobil misled the public about the climate crisis. Now they're trying to silence critics." *The Guardian*, Oct. 6, 2020.
<https://www.theguardian.com/commentisfree/2020/oct/16/exxonmobil-misled-the-public-about-the-climate-crisis-now-theyre-trying-to-silence-critics>.
- Oreskes, Naomi, and Geoffrey Supran. "Rhetoric and frame analysis of ExxonMobil's climate change communications." *One Earth*, May 13, 2021.
<https://doi.org/10.1016/j.oneear.2021.04.014>.

General Divestment Resources

- "Resources for Campaigns." Divest Ed.
<https://divested.betterfutureproject.org/resources>.