Acting Attorney General Matthew T. Platkin
Office of the Attorney General
Division of Consumer Affairs
124 Halsey St.
Newark, NJ 07102

Dear Acting Attorney General Bruck —

The Board of Trustees of Princeton University, as fiduciary of a non-profit educational institution, is bound by the laws of New Jersey to promote the well-being of Princeton's students and community and to further the University's commitment to educational excellence. Princeton's informal motto is "In the Nation's Service and the Service of Humanity," and the University has recognized that "[t]he value of service is central to the mission of Princeton as a liberal arts university. It infuses the passions and pursuits of our students, faculty, staff and alumni, and is essential to how Princetonians serve the public good."[1]

Under the New Jersey Uniform Prudent Management of Institutional Funds Act, the Board of Trustees has a fiduciary duty to invest with consideration for the University's charitable purposes — a duty that distinguishes non-profit institutions from other investors. It may be problematic, then, that the Board of Trustees has invested a portion of the University's 37.7 billion dollar endowment in the fossil fuel industry — damaging the world's natural systems, disproportionately harming youth, low-income people, and communities of color, and imperiling the University's financial and physical condition. In the midst of the climate crisis, powerful institutions must take responsibility for their contributions to global warming. As concerned students, faculty, alumni, political leaders, civic groups, and community members, we ask that you investigate this conduct and use your enforcement powers to bring the Board's investment practices into compliance with its fiduciary obligations.

New Jersey law provides rules that charitable managers and investors must follow in managing institutional funds. As stewards of the Princeton endowment, the Board of Trustees is required to act in good faith and with loyalty, taking care that its investments further the purposes of the University. The Board of Trustees may not seek profit at any cost: the privileges that Princeton enjoys as a non-profit institution come with the responsibility to ensure that its resources are put to socially beneficial ends. By investing an estimated 750 million dollars in fossil fuel stocks, the Board of Trustees is in violation of these duties to Princeton and the public.

The values that should guide the Board of Trustees' investments are clear. According to the Princeton charter, the University was established "for the benefit of the inhabitants of the said province [New Jersey] and others" and for the purpose of "the education of youth in the learned languages and in the liberal arts and sciences." The Board recognizes that "[o]ur global environment faces challenges of unprecedented scope and complexity" and that "Princeton can play a leadership role not only by developing innovative solutions through teaching and research, but also by establishing best practices in our campus operations and community behaviors that

[1] In Service of Humanity, Princeton University (last visited Feb. 15, 2022).

serve as models for the world....”[2] And yet, despite the demonstrable financial and social benefits of institutional fossil fuel divestment, the Board of Trustees continues to provide financial support for an industry whose business model inexorably leads to environmental destruction and social injustice.

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

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the Board of Trustees has repeatedly refused to apply Princeton’s values to its investment activity. From managers of an institution of higher education, this conduct is especially galling. Fossil fuel companies have long engaged in a well-documented campaign to undermine climate science and distort public debate about how to deal with the climate crisis. The industry’s spread of scientific misinformation and funding of questionable research undermines the work of Princeton faculty and students who are designing solutions for a sustainable future. Likewise, the flow of fossil fuel money to politicians and think tanks has diverted or delayed serious government action to address the climate crisis, placing a special burden on young people whose futures will be most impacted by these investments. Even as the Princeton community grapples with the reality that “[o]ur planet faces multiple environmental crises — particularly climate change, the loss of biodiversity, and food and water shortages — that threaten to do incalculable damage,”[3] the Board of Trustees channels funds to an industry committed to winning short-term profits at the expense of the public good.

A similar inversion of values underlies the Board of Trustees’ funding of climate degradation despite its duty to protect Princeton’s physical property. As documented in the 2019 Princeton Climate Action Plan, sea level rise, higher temperatures, extreme rainfall, mental health challenges, and other sources of disruption are likely to pose serious threats to University land, buildings, and operations in the coming decades. Administrators may be forced to retrofit facilities and manage infrastructure disruptions. Instead of facilitating such injuries, the Board of Trustees should be doing everything in its power to prevent them.

The Board of Trustees is bound by an additional legal duty: the requirement to manage Princeton’s assets with prudence. Prudent investment practice cannot be squared with the ownership of fossil fuel assets. Investment in the oil, gas, and coal sectors has become

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[2] Overview, Princeton University Office of Sustainability (last visited Feb. 3, 2022) (quoting Princeton President Christopher L. Eisgruber).
[3] Campaign Impact, Princeton University Alumni (last visited Feb. 3, 2022).

excessively risky thanks to increased government regulation and the fossil fuel industry's own failure to diversify its operations and avoid capital-intensive extraction. Fossil fuel stocks have performed significantly worse than market averages in recent years. The domestic coal sector has nearly collapsed, and natural gas likewise stands to lose much of its value as cheaper, more sustainable energy sources become more readily available. For any prudent investor, these signs clearly indicate that continued investment in fossil fuels is a losing proposition.

Exacerbating the industry's poor financial performance is a well-documented pattern of alleged fraud. Fossil fuel companies such as ExxonMobil have allegedly misled investors by concealing the anticipated impact of climate change and energy regulation on the value of assets such as untapped oil reserves. Despite its legal duty to exercise care and prudence in avoiding dangerous securities, however, the Board of Trustees continues to invest in the fossil fuel sector.

The Board cannot plead ignorance of its duty to divest. For years, Princeton students and faculty have pushed for investment practices that align with the University's mission. This pressure was instrumental in the Board's decision in 1987 to withdraw investments from companies doing business in apartheid South Africa and its 2006 decision to divest from companies contributing to violence in Darfur: acknowledgments that its investment activity must comport with the University's missions and values. In recent years, the Student Government has voted for fossil fuel divestment, a position consistently endorsed by majorities in student referenda, and the open letter to President Eisgruber calling for divestment has been signed by more than 3,000 Princetonians. Repeated rallies, reports, and requests for negotiation have alerted the Board of Trustees to its fiduciary responsibility.

In partial acknowledgement of these demands, the University has instituted a "climate dissociation" process to guide its decisions as to whether divestment from certain fossil fuel companies may be warranted. While the dissociation policy is an important first step, it has as yet yielded little and does not provide a framework that would cure the violations described below. Again, the Board's continued investments in the fossil fuel industry cannot be squared with its duty to manage the University's assets prudently, in good faith, with due care, and in accordance with Princeton's charitable purposes.

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

We have included below a fuller description of the Board's violations, along with documents and reports supporting the claims made in this complaint. Under Title 15 of the New Jersey Legislative Statutes your office may investigate violations of New Jersey's charitable contribution laws. We would appreciate the opportunity to have members of our group meet with your staff to discuss legal avenues to address this matter.

Sincerely,

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

Divest Princeton

Alumni and Community

Cory Alperstein '78 *Educational consultant and climate activist*
Randy Altschuler '93 *Co-founder & CEO, Xometry, Inc.*
Cheryl Sladkin Altschuler '93 *pediatrician*
Aitalohi Amaize '07 *MPH, BSN, RN Co-author of the Open Letter for Princeton Divestment, PhD Candidate Health Policy & Management, University of Maryland*
Rev. Dr. Jim Antal '72 *Special Advisor on Climate Justice to UCC General Minister and President*
Lynne Archibald '87 p'16 *Divest Princeton organizer*
Dr. John Baez '82 *Professor of Mathematics, UC Riverside, Fellow of the American Mathematical Society*
Jeremy Ben-Ami '84 *President, J Street*
Dr. Joyce Chaplin, *Environmental Historian and James Duncan Phillips Professor of Early American History, Harvard University*
Dr. Stephen F. Eisenman *84 *Professor Emeritus Northwestern University; Founder Anthropocene Alliance*
Lisa Fernandez '83 *Associate Director, Yale Program on Climate Change Communication (YPCCC)*
Dr. Dana R. Fisher, '93 *Professor of Sociology, University of Maryland, Contributing Author for Working Group 3 of IPCC AR6*
Howard Gordon '84 *Emmy award-winning television writer and producer*
Dr. Jessica F. Green *10 *Associate Professor, Political Science & School of the Environment, University of Toronto*
Robert L. Herbst '69, Yale Law School 1972 *Civil rights lawyer & former Assistant United States Attorney*
Katrina vanden Heuvel '81 *Publisher and Editorial Director, The Nation*
John Huyler '67 *Environmental mediator (retired)*
Cathy Kunkel '06 *Energy Program Manager, CAMBIO PR*
Anna Liebowitz '09 *Co-author of Open Letter for Divestment*
Bevis Longstreth, '56 JD, *former Commissioner, US Securities and Exchange Commission; former Instructor, Columbia Law School*
Dr. Mordecai-Mark Mac Low '83 *Curator-in-Charge, Dept of Astrophysics, American Museum of Natural History; Adjunct Professor, Dept of Astronomy, Columbia University*
David Maisel '84 *Artist, 2018 Guggenheim Fellow*
The Rev. Dr. Robert K. Massie '78 s'78 p'21 *Founder of the Investor Network on Climate Risk*
John Oakes '83 *Publisher, The Evergreen Review*
Kavita N Ramdas *88 *Social Justice Advocate and Philanthropic Advisor; former Princeton Trustee*
Wendy Gordon Rockefeller '79 *President, PIPs Education Fund; former Trustee of the Rockefeller Brothers Fund*
Micah Sifry '83 *Co-founder of Civic Hall and Personal Democracy Media*
Accra Shepp, '84 Pp18 *Artist/writer, former Lecturer in the Lewis Center for the Creative and Performing Arts*

Tom Taylor *21 *Divest Princeton organizer*
Katthe Wolf '84 *President and CEO, Be Strong Families*
Daphne Wysham '83 *CEO of Methane Action, Founder and former co-director of the Sustainable Energy and Economy Network*

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Rep. Tiff Bluemle '83 *Vermont State Representative; former Board Member Vermont Energy Investment Corporation; former Princeton Trustee*
Sen. Jeff Merkley *82 *U.S. Senator from Oregon*
State Sen. Zach Wahls *18 *Iowa Senate District 37*
Timothy Wirth, *former U.S. Senator, State of Colorado; President Emeritus, The United Nations Foundation*

Princeton University Faculty
Eve Aschheim, *Artist and Lecturer in Visual Arts, former Director of the Program in Visual Arts*
Dr. Miguel Centeno, *Musgrave Professor of Sociology and Executive Vice-Dean of the School of Public and International Affairs (SPIA)*
Dr. Andy Dobson, *Professor of Ecology and Evolutionary Biology*
Dr. Christiane Felbaum, *Lecturer with Rank of Professor, Program in Linguistics and Computer Science*
Dr. Denis Feeney, *Professor, Classics*
Su Friedrich, *Professor, Visual Arts*
Emmet Gowin, *Emeritus Professor of Photography*
Aleksandar Hemon, *Professor of Creative Writing, Guggenheim Fellow 2003, MacArthur Fellow 2004*
Daniel Heyman, *Lecturer in Visual Arts, 2010 Guggenheim Fellow, 2009 Pew Foundations Fellow*
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Dr. Rob Nixon, *Thomas A. and Currie C. Barron Family Professor in Humanities and the Environment*
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Dr. Susan Sugarman, *Professor of Psychology*

Climate Science and Policy Community
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Dr. Benjamin Zaitchik, *Professor in the Department of Earth and Planetary Sciences, Johns Hopkins University*

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

Organizations
350NJ-Rockland
Center for Biological Diversity
DivestEd
Divest NJ
Divest NY
Dores Divest - Vanderbilt University
Fossil Fuel Divest Harvard
Fossil Free Stanford
Interfaith Power and Light
MIT Divest
Mothers out Front
Natives at Princeton
NY Climate Advocacy Project

Princeton Indigenous Advocacy Coalition
Princeton Students Against Gun Violence
Queer Natives (Princeton)
Sitka Conservation Society
Yale Endowment Justice Coalition

Prepared with assistance from attorneys at Climate Defense Project.

cc.

Christopher L. Eisgruber '83, President of Princeton University, Ex officio Trustee, Princeton University Board of Trustees; Ex officio Director, PRINCO Board of Directors

Philip Murphy, Governor of New Jersey, Ex officio Trustee, Princeton University Board of Trustees

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SUPPORTING DOCUMENTATION

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I. The Board of Trustees' violation of New Jersey law

Princeton University was founded in 1746 as the College of New Jersey in Elizabeth, New Jersey, by the Presbyterian Synod.[4] In 1896, the name was officially changed to Princeton University. Princeton is a charitable corporation organized under the New Jersey Nonprofit Corporation Act.[5] Princeton is governed by a Board of Trustees. The President of the University and the Governor of the State of New Jersey serve ex officio. The powers and allocations of responsibilities of the Trustees derive from, and are set forth in, Princeton's original Charter of 1746 and its amendments, from legislation, from the Trustees' own bylaws, and from resolutions it passes from time to time, including those delegating authority to various officers of the University, the faculty and other members of the University community.[6]

The school's second charter was granted by Jonathan Belcher, Governor of New Jersey, on September 14, 1748 "for the benefit of the inhabitants of the said province [New Jersey] and others" and for the purpose of "the education of youth in the learned languages and in the liberal arts and sciences." Under the Charter, the Trustees may, "for the use of the said College," receive "any rents, profits, annuities, gifts, legacies, donations and bequests of any kind whatsoever."[7]

The Trustees have "fiduciary responsibility to ensure that the University carries out in perpetuity its educational and research mission"[8] and "charge and control of the finances and funds of the University." The Trustees "[set] the operating and capital budgets and [supervise] the investment of the University's endowment."[9] Under the Trustees' bylaws, "the Directors of the Princeton University Investment Company [PRINCO], under the oversight of the Committee on Finance, shall have charge of the investments of the Corporation, including stocks, debt instruments and other securities."[10] The delegation of investment strategy to PRINCO does not negate the Trustees' "general control" of such investments.[11]

- Continued investment in fossil fuels by the Trustees ***violates the fiduciary duties spelled out in the New Jersey Uniform Prudent Management of Institutional Funds Act (NJUPMIFA)*** and in New Jersey common law.
    - NJUPMIFA states that, "[s]ubject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of

[4] Meet Princeton, Princeton University (last visited Feb. 13, 2022).
[5] N.J. Rev. Stat. § 15A.
[6] Office of the President, Princeton University (last visited Feb. 13, 2022).
[7] Second Charter of the College of New Jersey, 1748, Princeton University Library (2021); also available via HathiTrust [note that the University's first charter has been lost].
[8] Office of Communications, Nine elected to Princeton Board of Trustees, Princeton University (June 16, 2021).
[9] Board of Trustees, Princeton University Office of the President (2021).
[10] Bylaws, The Trustees of Princeton University at Ch. 25, § 3 (Sept. 25, 2021).
[11] *Id.* at Appendix B, § 3.

the institutional fund."[12] The model UPMIFA drafting committee describes consideration of "charitable purposes" as a "fundamental duty,"[13] and this requirement distinguishes charitable investors like the Trustees of Princeton University from other entities such as pension funds.

  - NJUPMIFA further requires that, "[i]n addition to complying with the duty of loyalty imposed by law other than this act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances."[14]
  - NJUPMIFA lists several factors that must be considered in managing and investing an institutional fund, including: "general economic conditions . . . the role that each investment or course of action plays within the overall investment portfolio of the fund . . . the expected total return from income and the appreciation of investments . . . [and] an asset's special relationship or special value, if any, to the charitable purposes of the institution."[15]
  - The Chancery Division of the Superior Court of New Jersey has written that "[t]he powers of the persons who act as directors of a charitable nonprofit corporation, whether called directors or trustees, are prescribed in the statute of incorporation, in the instrument creating the corporation, and those implied powers which are necessary and proper to carry out the purposes for which the charity was created and which are not in conflict with expressions in the instrument creating the charity. []. In respect to investments, the individuals comprising the board must participate in all decisions but may act by a majority decision and may appoint a committee to supervise the investments subject to the general approval of the board."[16]
  - Although the directors of charitable institutions may delegate investment authority to an external agent,[17] such delegation does not suspend the duty of each director to "discharge their duties in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions."[18]

- The Trustees have ***failed to consider the charitable purposes of the institution and the purposes of the institutional fund*** by financially supporting the degradation of the climate, widespread damage to ecological and human health, and massive injuries to environmental and social equity. The duty to consider the charitable purposes for which Princeton was established distinguishes the Trustees from other investors, imposing a special legal responsibility to screen assets for their possible interference with the university's goals. Yet the outcomes of the Trustees' fossil fuel investments are directly contrary to Princeton's mission to "cultivate, embody and celebrate an

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[12] N.J. Rev. Stat. § 15:18-27(a).
[13] National Conference of Commissioners on Uniform State Laws, Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments at 15 (2006).
[14] N.J. Rev. Stat. § 15:18-27(b).
[15] N.J. Rev. Stat. § 15:18-27(e).
[16] Midlantic Nat. Bank v. Frank G. Thompson Found., 170 N.J. Super. 128, 133, 405 A.2d 866, 869 (Ch. Div. 1979).
[17] N.J. Rev. Stat. § 15:18-29.
[18] N.J. Rev Stat § 15A: 6-14.

ethos of sustainability at Princeton University in service to humanity and the world."[19] The well-known scientific misinformation campaigns of the fossil fuel industry likewise contravene Princeton's mission to provide "the education of youth in the learned languages and in the liberal arts and sciences."[20] As such, continued investment in fossil fuel holdings ***violates the Trustees' duty to consider an asset's special relationship or special value, if any, to the charitable purposes of the institution.***

- The Trustees have ***violated their duty of loyalty*** to the Princeton community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to Princeton property, thus failing to act in the best interests of the institution. Trustees have also violated their duty of loyalty by indulging conflicts of interest with the fossil fuel industry, maintaining personal, professional, and financial ties to oil, gas, and coal companies even as these companies harm Princeton.
- The Trustees have ***violated their duty to act in good faith*** by refusing to abide by their previous commitments to socially responsible investing; by ignoring the warnings of students, faculty, alumni, and regulators that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus groups to push the University's investment practices toward a more consistent and sustainable approach.
- The Trustees have ***violated their duty of care*** by investing the University's endowment in financially risky and volatile fossil fuel stocks, which have underperformed for years and are currently at risk of a general collapse in value. This violation is exacerbated by the Trustees' failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.
- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the original UPMIFA, has called for the application of the prudence standard to the threats of climate change. As Longstreth writes, the risks posed by fossil fuel investments are so serious that institutional investors will be hard-pressed to justify continued holdings in the industry: "The prudence standard of the Act can easily support a decision not to continue to hold or invest in fossil fuel companies. The risks and rewards now offered by such securities are asymmetric, in the sense that the foreseeable rewards are not likely to be equal to the foreseeable risks. The risk that, at some unknown and unknowable, yet highly likely, point in the future, markets will begin to adjust the equity price of fossil fuel company securities downward to reflect the swiftly changing future prospects of those companies, is as serious as it is immense. Moreover, the possibility of that adjustment being a swift one is also a serious risk. A decision to linger in an investment with such an overhanging risk, and expect to time

[19] Princeton University Sustainability Action Plan: Toward 2026 and Beyond at 4, Princeton University Office of Sustainability (2020).
[20] Second Charter of the College of New Jersey, 1748, Princeton University Library (last visited Feb. 15, 2022).

one's exit before the danger is recognized in the market, is a strategy hard to fit within the concept of prudence."[21]

- In a report analyzing fiduciary duties owed by public pension funds, the Center for International Environmental Law concludes that "climate change should be considered an independent risk variable when making investment decisions, and it will trigger the obligations of pension fund fiduciaries . . . If pension fund fiduciaries do not take the financial risks posed by climate change seriously, they may be subject to liability. A failure to properly consider climate change as a risk factor could result in lawsuits under various theories of liability for breaches of fiduciary duties."[22]
    - The report identifies four categories of risk to the value of fossil fuel assets: 1) impact risk (the risk of loss due to the physical effects of global warming, such as sea level rise and wildfires); 2) carbon asset risk (the risk that fossil fuel reserves will never be exploited and remain unprofitable; 3) transition risk (the risk that regulation and the growth of renewable energy will render fossil fuel products too expensive for or unappealing to consumers); and 4) litigation risk (the risk of financial penalties from lawsuits and other legal actions, such as the Attorney General of Massachusetts' action against ExxonMobil).
    - As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that "[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings."[23]
    - Princeton has never confirmed the value of its holdings in fossil fuel companies; however, publicly available data from other prominent research universities and peer schools suggest Princeton has hundreds of millions of dollars invested in the industry. Harvard, whose endowment in FY 2021 of 53.2 billion dollars was higher than Princeton's 37.7 billion dollars,[24] disclosed in February 2021 that its investments in fossil fuels made up less than two percent of its total portfolio, down from eleven percent in 2008.[25] Rutgers University, whose endowment of 1.6 billion dollars as of March 2021 was much lower than Princeton's, disclosed in its divestment announcement that it had "approximately five percent" of its portfolio invested in fossil fuels.[26] Using the low end of this range, two percent, Princeton's fossil fuel holdings are conservatively estimated at 750 million dollars. The value may be much higher.

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[21] Bevis Longstreth, Outline of Possible Interpretative Release by States' Attorneys General Under The Uniform Prudent Management of Institutional Funds Act (Jan. 26, 2016).
[22] Trillion Dollar Transformation, Center for International Environmental Law (Dec. 2016), 1-2.
[23] *Id.* at 5-7, 12-17, 19.
[24] Princeton's endowment returns continue to support University mission and impact, Princeton University (last visited Feb. 13, 2022).
[25] The Harvard Management Company recently reported that less than two percent of Harvard's $41.9 billion endowment is invested in fossil fuels. Climate Report at 2, Harvard Management Company (Feb. 2021).
[26] Rutgers to Divest From Fossil Fuels, Rutgers University (last visited Feb. 13, 2022).

II. Princeton's social and environmental commitments

In addition to their general duties to the public as managers of a charity, the Trustees are legally bound to uphold the particular *charitable purposes* and values of Princeton, which include commitments to social justice and environmental well-being. The Trustees have clearly acknowledged in the past that this legal duty extends to the manner in which they invest the University's assets.

- The Board of Trustees' 1748 Charter establishes the University "for the benefit of the inhabitants of the said province [New Jersey] and others" and for "the education of youth in the learned languages and in the liberal arts and sciences."[27]
- Princeton's informal motto is "In the Nation's Service and the Service of Humanity," and the University has recognized that "[t]he value of service is central to the mission of Princeton as a liberal arts university. It infuses the passions and pursuits of our students, faculty, staff and alumni, and is essential to how Princetonians serve the public good."[28]
- Princeton encourages its students and researchers to direct their work for the benefit of society and the world at large: "We push students, faculty and alumni to think about how their research, education and lives will benefit the nation, the world and humanity, and give them the support and resources to make it happen."[29]
- Through its Office of Sustainability, Princeton has committed to certain environmental values and outcomes:
    - In 2008 the University launched its Sustainability Action Plan ("Plan"), which has as its mission to "cultivate, embody and celebrate an ethos of sustainability at Princeton University in service to humanity and the world" and to use "repeatable best practices and innovation in sustainability to accelerate action at all scales, from personal to global."[30]
    - In the 2020 updated Plan, University President Christopher L. Eisgruber stated that "[o]ur global environment faces challenges of unprecedented scope and complexity. Princeton can play a leadership role not only by developing innovative solutions through teaching and research, but also by establishing best practices in our campus operations and community behaviors that serve as models for the world."[31]
    - In committing the University to emissions reductions measures on campus, the Plan acknowledges the global consensus established in the Paris Agreement that global warming must be kept below 1.5 degrees Celsius above pre-industrial levels.[32]

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[27] Second Charter of the College of New Jersey, 1748, Princeton University Library (last visited Feb. 15, 2022).
[28] In Service of Humanity, Princeton University (last visited Feb. 15, 2022).
[29] *Id.*
[30] Princeton University Sustainability Action Plan: Toward 2026 and Beyond, Princeton University Office of Sustainability, 4 (2020).
[31] *Id.*
[32] *Id.* at 7.

- The purpose of the Princeton University Investment Company (PRINCO), which invests Princeton's endowment under the direction of the Trustees, is "to provide steady support for the University's current and future operating needs, while preserving real value for future generations,"[33] and to "[seek] to earn outstanding long-term investment returns in support of Princeton University's mission to be a world-class research and higher education institution."[34] PRINCO's motto is "Invest well. Do good."[35]
- The Trustees have recognized that divestment is at times necessary to satisfy its legal obligation to invest in ways consistent with its charitable purposes.
    - In 1987, in response to public pressure to align its investment activity with its charitable mission, the Trustees announced that they would divest from stocks of any company "that does a primary part of its business in South Africa." The statement affirmed that "Princeton declines an institutional association with a company when that company's behavior conflicts substantially with central values of the University," finding that support for apartheid created such a conflict.[36]
    - In a 1997 policy establishing guidelines for the Trustees' Resources Committee to consider investment-driven "social responsibility" issues, the Trustees stated that "the Trustees have recognized that there may be very unusual situations in which the University simply does not wish to be associated with a particular company through ownership of its securities or acceptance of its gifts or grants."[37]
    - The 1997 policy recognized that, while the "University's basic mission is teaching and research," the manner in which the Trustees invest implicates Princeton's charitable purposes: "The Trustees have recognized, however, that in highly unusual situations, certain types of investments may be inappropriate and specific positions may need to be taken on proxy issues that go beyond purely economic interests and involve political, social, or moral judgments."[38]
        - The policy prescribed a procedure for considering divestment from a certain class of assets. When there is "considerable, thoughtful, and sustained campus interest in an issue involving the actions of a company or companies in the University's investment portfolio," the Resources Committee is delegated to study the issue. The Committee determines whether there is a "central University value clearly at stake" in the divestment decision, and examines whether "a consensus on how the University should respond" is possible. The Committee then analyzes whether the actions of the companies under consideration pose "a direct and serious contradiction of the central

[33] Investment Strategy, Princeton University Investment Company (2018).
[34] Supporting the University, Princeton University Investment Company (2018).
[35] *See* Princeton University Investment Company, Princeton University (last visited Feb. 2, 2022).
[36] Statement of the Trustees on Selective Divestiture at 3, 1, Trustees of Princeton University (Jan. 1987).
[37] Guidelines for Resources Committee Consideration of Investment-Driven "Social Responsibility" Issues. The Trustees of Princeton University at 6 (Jan. 25, 1997).
[38] *Id.* at 1, 2.

value" at stake. If the Committee determines that it does, the issue is then put before the full Board of Trustees, which may ask the relevant companies to respond, and, based on the companies' response, could decide for full divestment.[39]

- In 2006, in response to violence in Darfur, the Trustees voted to divest from companies whose operations supported violence in the region.[40] The decision was based on the 1997 policy for considering divestment.
    - In its report advocating for Darfur divestment, the Resources Committee noted that, although the University's endowment was less devoted to individual corporate stocks than it had been a decade earlier, "divestment of directly held assets remains a powerful tool."[41]

Princeton's "climate dissociation" process

- In May 2020, in response to a petition from Divest Princeton, the Board of Trustees announced a new policy for its investments in fossil fuels: "In keeping with its core truth-seeking mission and commitment to sustainability, Princeton University has established an administrative process for dissociating from companies engaged in climate disinformation campaigns or that are involved in the thermal coal and tar sands segments of the fossil fuel industry. The University also has committed to reducing the aggregate harmful climate impact of the entirety of the University's direct and indirect endowment holdings."[42]
    - This new policy did not set a deadline for achieving net-zero emissions across the University's investment portfolio. Instead, it outlined new administrative actions, including "creat[ing] an administrative process to determine what expert input is needed to establish, implement and sustain actionable criteria for dissociation from fossil fuel companies participating in campaigns that spread disinformation about climate change, and from companies in the thermal coal and tar sands segments of the fossil fuel industry" and "establish[ing] a committee of subject matter experts to determine how to define, measure and benchmark the greenhouse gas impact of the University's endowment."[43]
- The climate dissociation policy was based on recommendations from the Resource Committee of the Council of the Princeton University Community. In its report, the Resource Committee recognized that the University's investment practices must align with its charitable mission and demonstrated that this obligation extends to Princeton's ties to the fossil fuel industry:
    - The report acknowledges that the University receives funding from fossil fuel companies and that "some of these fossil fuel companies have played critical roles in spreading disinformation about climate change and undermining

[39] *Id.* at 4-5.
[40] Cass Cliatt, Princeton to disassociate from Darfur investments, Princeton University (June 5, 2006).
[41] Report of the Resources Committee Regarding Investment in Companies Conducting Operations in Sudan at 1, Trustees of Princeton University (May 2006).
[42] Denise Valenti, Princeton University widens net-zero goals and lays out dissociation process to advance action on climate change, Princeton News (May 27, 2021).
[43] *Id.*

efforts to pass legislation that could steer industries towards renewable, low carbon energy sources . . . companies or organizations that spread disinformation about scientific consensus and research are clearly in conflict with Princeton's values."[44]

  - The report gestures at the possibility that fossil fuel companies might genuinely commit to meeting global targets for emissions reduction, and that, should "companies commit to such reductions in their carbon footprint, and publicly disclose their progress and meet interim goals as Princeton has done, then maintaining partnerships with these companies does not seem to violate University values."[45]
  - The report states, contrary to the successful divestment processes of hundreds of peer institutions,[46] that "it is not possible to completely dissociate from fossil fuels in the short term."[47]
- Despite its laudable acknowledgment that fossil fuel investments violate Princeton's mission and values, the climate dissociation policy fails to cure the fiduciary violations described above, for the following reasons:
  - The policy commits Princeton to no timeline for divesting from companies whose activities undermine the University's mission, perpetuating ongoing fiduciary violations indefinitely;
  - While naming thermal coal and tar sands as particularly noxious sources of greenhouse gas emissions, the policy fails to acknowledge that all forms of fossil fuel extraction and combustion cause serious damage to the global climate system;
  - The policy does not account for the fact that decades of engagement attempts have failed to convince the fossil fuel industry to abandon its harmful practices;[48]
  - The policy purports to protect from divestment those fossil fuel companies that have refrained from scientific disinformation campaigns; however, industry groups representing all major fossil fuel companies have engaged in this practice for many years,[49] belying the possibility of identifying actors in the sector who are not at cross-purposes with Princeton's commitment to academic research and inquiry.
- In sum, the climate dissociation policy acknowledges the Board of Trustees' duty to align its investment practices with its charitable purposes but fails to provide a framework commensurate with the scale of the problem.

III. The scientific reality and risks of climate change

[44] CPUC Resources Committee Dissociation Recommendations Report at 5, 6-7, Princeton University (May 10, 2021).
[45] *Id.* at 8.
[46] *See infra* at Section X.
[47] CPUC Resources Committee Dissociation Recommendations Report, *supra* at note 44, at 1.
[48] *See infra* at Sections V, VIII, and IX.
[49] *See infra* at Sections VIII and IX.

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

- Statistically significant, historically unprecedented, and potentially irreversible changes are taking place in the Earth's oceans, atmosphere, and biosphere. These changes are collectively known as climate change. Such changes are "unequivocally" the result of human activities — primarily carbon dioxide emissions resulting from extraction and combustion of fossil fuels including but not limited to coal, oil, and fracked gas — according to the Sixth Assessment Report Summary for Policymakers by the Intergovernmental Panel on Climate Change (IPCC), the leading global authority responsible for synthesizing and producing much of the scientific research on climate change across the globe.[50]
- A small number of fossil fuel producers have been disproportionately responsible for greenhouse gas emissions since the Industrial Revolution: twenty companies account for nearly thirty percent of all emissions between 1751 and 2010.[51] A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all global greenhouse gas emissions since 1988 "can be traced to just 100 fossil fuel producers."[52]
- There is a near-linear relationship between the cumulative amount of carbon dioxide emitted and the amount of global warming it causes.[53] Every one-half degree Celsius of further global warming results in discernible increases in intensity and frequency of temperature extremes, heavy precipitation and agricultural, hydrological and ecological droughts in some regions.[54]
- As a result of human-caused warming, climate change is already affecting every inhabited region across the globe, leading to observed changes in weather and climate extremes.[55]
- The Fourth National Climate Assessment, released in 2018 by thirteen federal agencies comprising the U.S. Global Change Research Program (USGCRP), noted that "[t]he impacts of climate change are already being felt in communities across the country. More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating

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[50] *See* "Summary for Policymakers" at 7, in Climate Change 2021: The Physical Science Basis, Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Aug. 2021).
[51] Richard Heede, Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010, 122 Climatic Change 229, 234 (2014). These companies include Chevron, ExxonMobil, BP, Shell, ConocoPhillips, and Peabody. *Id.* at 237.
[52] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (July 10, 2017).
[53] IPCC, Summary for Policymakers, *supra* at note 50, at 37.
[54] *Id.* at 19.
[55] *Id.* at 10.

infrastructure, stressed ecosystems, and economic inequality."[56] The USGRCP report concluded that, as a result of climate change, "annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product . . . of many U.S. states."[57]

- Continued global warming is projected to further intensify the global water cycle, including the severity of wet and dry events.[58] Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets, and global sea level.[59]
- Global warming will exceed two degrees Celsius by the end of this century unless drastic reductions in carbon dioxide and other greenhouse gas emissions occur in the coming decades.[60] To limit warming, cumulative carbon dioxide emissions must reach net zero, along with strong reductions in other greenhouse gasses.[61]
- The global mean water level in the ocean rose by 0.14 inches (3.6 millimeters) per year from 2006-2015, which was 2.5 times the average rate of 0.06 inches (1.4 millimeters) per year throughout most of the twentieth century. By the end of the century, global mean sea level is likely to rise at least one foot (0.3 meters) above 2000 levels, even if greenhouse gas emissions follow a relatively low pathway in coming decades.[62]
- According to the Environmental Protection Agency, climate change effects in New Jersey will include: increasing temperature and changing precipitation; rising sea levels and retreating shores; loss and disruption of coastal ecosystems such as tidal marshes, bay beaches, and tidal flats; saltwater intrusion, which may decrease soil productivity for agriculture; harm to coastal homes and infrastructure tied to coastal storms and rising sea level; impacted commercial fishing and agricultural outputs; and threats to human health.[63]
- New Jersey is "one of the most vulnerable states in the nation to damage from sea-level rise, storm surge, more frequent and intense precipitation, erosion, and other climate impacts," according to an October 2021 report issued by New Jersey Governor Phil Murphy's Interagency Council on Climate Resilience, due in part to its "decades of dense development patterns, historical manipulation of rivers and floodplains, and natural topography."[64]
- Climate change will continue to cause severe problems in Central New Jersey, where Princeton is located, with more severe impacts expected under high-emissions scenarios. While many projections of harm extend only to 2100, as a centuries-old institution Princeton must consider the dramatic and unavoidable climate harms that will extend beyond this date.
    - As a result of climate change, the Central New Jersey area is expected to experience increasing intensity of precipitation by four to eleven percent,

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[56] Fourth National Climate Assessment, Volume II at 25, U.S. Global Change Research Program (Mar. 2021).
[57] *Id.* at 26.
[58] *Id.* at 25.
[59] *Id.* at 28.
[60] *Id.*
[61] *Id.* at 36.
[62] Rebecca Lindsey, Climate Change: Global Sea Level, Climate.gov (Aug. 14, 2020).
[63] What Climate Change Means for New Jersey, United States Environmental Protection Agency (Aug. 2016).
[64] New Jersey Climate Change Resilience Strategy at 21, State of New Jersey, nj.gov (Oct. 13, 2021).

periods of drought, severe heat waves, health effects tied to air pollution, strains on water supply and quality, declining agricultural production, and ecological harm tied to climate change over the next century.[65]

  - New Jersey is warming faster than the rest of the Northeast United States and the rest of the world, with average temperatures expected to increase by 4.1 to 5.7 degrees Fahrenheit by 2050. By the end of the decade, this change in temperature could lead to a fifty-five percent increase in heat-related mortalities from 1990s levels.[66]
  - Over the past four decades, sea level rise in New Jersey has averaged 0.2 inches per year. Projected sea level change in New Jersey is estimated to increase from 2000 levels by up to 1.1 feet by 2030, 2.1 feet by 2050, and 6.3 feet by 2100, with the rate of rise strongly conditioned on emissions of carbon dioxide.[67]
  - Governor Phil Murphy has emphasized the urgency of addressing sea level rise in New Jersey, stating in 2019 that "New Jersey is extremely vulnerable to the impacts of climate change and we must work together to be more resilient against a rising sea and future storms." [68] In 2020, Murphy's Department of Environmental Protection Commissioner stated that "The Murphy Administration recognizes that climate change is the single greatest long-term threat to the people, communities and economy of New Jersey."[69]
- The 2019 Princeton Climate Action Plan,[70] adopted by Princeton Council, identifies eight impacts of climate change which will increasingly affect the township of Princeton, where the University is located. These impacts may include more frequent high-heat days, an increase in average temperature, an increase in heat-related illnesses, a decline in outdoor air quality, heavier rains, potentially longer dry spells, and increase in vector-borne diseases, and impacts to mental health and well-being. The report also quantifies impacts already felt in the township as of 2018:
  - According to the Plan,"[l]ocal temperature data show that Mercer County has experienced a 3.6°F degree increase in average annual temperatures during the past century. During the same time period, average annual precipitation has increased two inches."[71]
  - Climate change will alter heating and cooling needs in buildings: "By 2050, Princeton will experience hotter temperatures, increasing energy use and costs for cooling."[72]

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[65] New Jersey Department of Environmental Protection, 2020 New Jersey Report on Climate Change, nj.gov (June 30, 2020).
[66] *Id.*
[67] New Jersey Department of Environmental Protection, DEP Presents New Study Predicting Dramatic Increase in Sea-Level Rise Along Jersey Shore By 2050, nj.gov (Dec. 12, 2019).
[68] *Id.*
[69] Murphy Administration Releases Final Climate Change Resiliency Strategy to Protect New Jersey's Communities, Environment, and Infrastructure from Climate Change, Insider NJ (Oct. 13, 2021).
[70] Princeton Climate Action Plan, Sustainable Princeton (last visited Jan. 30, 2022).
[71] *Id.*
[72] *Id*. at 21.

    - Low-income residents of Princeton spend up to twenty-one percent of household income on energy bills.[73] The Plan also explains that the "increase in the severity and frequency of storms is resulting in more damage to Princeton's trees, downed power lines, risks to life and property and costs to clean up after an event."
- Princeton University's Sustainability Action Plan, created by the Office of Sustainability, describes some of the local impacts of climate change which could impact Princeton's campus.
    - According to the Action Plan: "Intensified urbanization coupled with more frequent, heavier rain events across the globe are contributing to increased stormwater runoff, exacerbating pollution and flooding. Heavy downpours are only expected to become more frequent and intense as global temperatures increase. In the United States, stormwater is already among the fastest growing sources of water pollution, and the most significant water quality challenge in New Jersey. It poses serious risks to human health and the environment, particularly in overburdened communities that are already disproportionately impacted by other pollution sources."[74]
    - These estimates of risk to Central New Jersey are likely conservative. Princeton could face comparatively more sea level rise than the global average through the twenty-first century due to the physical and gravitational effects associated with ice sheet melt.[75]

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

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

- Climate change heavily impacts so-called frontline communities, including communities of color and Indigenous communities, with their disproportionate exposure to air pollution, sea level rise, drought, and other consequences of climate change.[76] In general, those who have contributed the least to the climate crisis by virtue of their economic position stand to suffer the most from dislocation and natural disasters caused by increased warming.
    - Climate change exacerbates racial inequality by focusing health and economic injuries on people of color, who tend to have fewer economic

[73] *Id.* at 21.
[74] Increase Area Under Enhanced Stormwater Management, Princeton University Office of Sustainability (last visited Jan. 30, 2022).
[75] *See* Carling C. Hay, Eric Morrow, Robert E. Kopp, & Jerry X. Mitrovica, Probabilistic reanalysis of twentieth-century sea-level rise, Nature (2015) (providing maps on pages 9 and 10).
[76] The Geography of Climate Justice, Mary Robinson Foundation (last visited Feb. 10, 2021).

resources to adjust to rising temperature and tend to receive less government assistance to deal with emergencies.[77]

  - According to a study from the Program for Environmental and Regional Equity at the University of Southern California, racial minorities will disproportionately suffer from an inability to pay for basic necessities and from decreased job prospects in sectors such as agriculture and tourism as the climate crisis accelerates.[78]
  - According to the United Nations, "[c]limate change exacerbates the difficulties already faced by Indigenous communities, including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment."[79] Indigenous communities are also vulnerable to climate change impacts because of the enduring legacy of colonialism, forced relocations, the loss of cultural practices, and other harms, which create health burdens.[80]
  - Throughout the world, migration due to climate change has increased in recent years and is anticipated to increase further as many areas of the globe become inhospitable to agriculture and human habitation, leading to political and social instability.[81]
- In September 2021, The Lancet published a Comment co-signed and co-published by the editors of more than 200 leading medical journals worldwide.[82] The authors noted that "[h]ealth institutions have already divested more than $42 billion of assets from fossil fuels" and urged others to join them, since "[t]he greatest threat to global

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[77] Steven Hiseh, People of Color Are Already Getting Hit the Hardest by Climate Change, The Nation *(*Apr. 22, 2014); Office of Health Equity's Climate Change and Health Equity Program, Racism Increases Vulnerability to Health Impacts of Climate Change, California Department of Public Health (Aug. 17, 2020).

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

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

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

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

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

public health is the continued failure of world leaders to keep the global temperature rise below 1.5°C and to restore nature."[83]

- According to a 2013 study co-authored by Denise Leonore Mauzerall, Professor of Environmental Engineering and International Affairs at Princeton, climate change modulates surface concentrations of fine particulate matter (PM2.5) and ozone (O3), leading to increased air pollution.[84] Exposure to this air pollution could increase annual premature deaths by more than 100,000 adults worldwide.[85]
- Children bear especially heavy burdens from the impacts of climate change and fossil fuel extraction.
    - According to UNICEF, one billion children live at extreme risk of climate and environmental hazards, shocks, and stresses.[86] The United States ranks among the countries in which children face at least five major climate and environmental shocks (extremely high category).[87]
    - Children are more vulnerable than adults to extreme weather. They are less able to regulate their body temperature during heat waves,[88] breathe at twice the adult rate,[89] and are at crucial stages of brain and organ development.[90] Exposure to toxins has more potential to harm their cognitive ability and lung capacity,[91] and they suffer these deficits their entire lives. Climate change-caused disasters, air pollution extremes, and environmental degradation also disrupt education, and excessive heat interferes with learning capacity.[92]
    - UNICEF concludes that "the climate crisis affects or will affect all children, everywhere, in often significant, life-changing ways, throughout their lives" and "undermines the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child."[93]
- According to a New Jersey Climate Change Resource Center report from Rutgers University, climate change presents significant challenges to human and environmental health in New Jersey.
    - Direct health ramifications from the combustion of fossil fuels in New Jersey include hazardous air quality from ground-level ozone production that can "irritate the lining of the lungs, trigger asthma, and aggravate respiratory diseases like chronic obstructive pulmonary disease (COPD), and bronchitis."[94] Inhalation of particulate matter from air conditioners used

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[83] *Id.*
[84] Yuanyuan Fang, *et al.*, Impacts of 21st century climate change on global air pollution-related premature mortality, 121(2) Climatic Change 239 (2013).
[85] *Id.*
[86] UNICEF, The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index (Aug. 2021).
[87] *Id.* at 80.
[88] *Id.* at 110.
[89] *Id.*
[90] *Id.* at 20.
[91] *Id.*
[92] *Id.* at 110; Joshua Goodman, Michael Hurwitz, Jisung Park, & Jonathan Smith, Heat and Learning, National Bureau of Economic Research (May 2018).
[93] *Id.*
[94] New Jersey Climate Change Resource Center, Rutgers University, Climate Change, Health, and Equity in New Jersey, (May 2020).

during heat waves causes "elevated rates of respiratory and cardiovascular disease as well as premature mortality." Low-income and vulnerable communities located in densely-populated urban areas are disproportionately subject to these exposures due to high concentrations of heavy industry and motor vehicles.[95]

    - The indirect health, environmental and economic consequences of climate change for New Jersey are significant. As global warming intensifies, heat-related illnesses will exacerbate "chronic health conditions, including cardiovascular and respiratory diseases" that will require more demand and investment in medical services.[96] There will be an increase in unpredictable extreme climate events, specifically tropical storms like Hurricane Sandy, that cause public health catastrophes like drownings, carbon monoxide poisonings and gastro-intestinal illness from improper storm sewage infrastructure. New Jersey is particularly vulnerable with more than "200 of these 'combined sewer' outfalls in its largest and oldest cities, including Newark and Jersey City."[97] The study also found that climate impacts correlate with mental-health challenges including PTSD, anxiety and depression.[98]

- On the night of September 1st, 2021, the remnants of Hurricane Ida swept through New Jersey, killing twenty-nine people, most of whom died by drowning.[99]
    - The storm was the deadliest in New Jersey's history, and Governor Murphy publicly attributed it to climate change, saying, "Climate change is the single greatest long-term threat facing humanity, and as Tropical Storm Ida made painfully clear in September, New Jersey's climate change risks are already manifesting across the state."[100]
    - The Princeton University campus was also affected. Those on campus first received emergency texts telling them to shelter in basements, in response to a tornado warning; however, many basements on campus flooded because of the intense rain, and students received additional warnings advising them of flash flooding. Short of drastic action to address the climate emergency, overlapping crises caused by disasters such as these will make it increasingly difficult for Princeton to provide safe options for its staff and students.
- Burning fossil fuels has altered ocean chemistry, making it more acidic.[101] Acidification has caused serious economic harm to the global fishing industry and also threatens coral reefs and other marine ecosystems.[102] New Jersey stands to be

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[95] *Id* at 2.
[96] New Jersey Climate Change Resource Center, Rutgers University, Climate Change, Health, and Equity in New Jersey, (May 2020).
[97] *Id.* at 2.
[98] *Id.* at 2, 3.
[99] Marlene Lenthang, Ida's toll continues: 2 more bodies recovered in New Jersey, over 100 oil-soaked birds found - ABC News, ABC News (Sept. 11, 2021).
[100] Dustin Racioppi, "Murphy Administration Releases Final Climate Change Resiliency Strategy to Protect New Jersey's Communities, Environment, and Infrastructure from Climate Change," InsiderNJ (Oct. 13, 2021).
[101] Scott Doney, Oceans of Acid: How Fossil Fuels Could Destroy Marine Ecosystems, Public Broadcasting Service (Feb. 12, 2014).
[102] *Id.*

particularly impacted by these harms, with its economic reliance on the seafood industry.[103]

- Plastic waste — a direct by-product of fossil fuel extraction, with ninety-eight percent of plastics made from fossil fuels — further damages marine ecosystems.[104] The United Nations Environment Programme estimates that damage to marine ecosystems from plastic waste causes thirteen billion dollars' worth of damage every year.[105] Fossil fuel companies rely on plastic production to shore up profits.[106]
- Finally, climate change causes an increase in the frequency of pandemics such as COVID-19: according to the Intergovernmental Platform on Biodiversity and Ecosystem Services, climate change will "cause substantial future pandemic risks and other localized disease emergence."[107] A paper published in The New England Journal of Medicine concludes that the climate crisis exacerbates the effects of COVID-19, as high heat, wildfire smoke, and high pollen counts amplify underlying conditions such as pulmonary disease, and as emergency responses to events such as hurricanes and fires reduce the ability to mitigate COVID-19 spread. These effects are felt particularly by the most vulnerable communities.[108]

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

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

- Fossil fuel companies knew about the connection between their products and climate change decades before the general public, "as early as the 1950s and no later than 1968."[109]
    - Coal industry publications suggested as early as 1966 that the combustion of fossil fuels could cause "vast changes in the climates of the earth."[110] By 1968, the American Petroleum Institute, an industry trade group, was familiar

[103] *See* New Jersey Department of Agriculture, New Jersey Seafood Harvest: Facts and Figures (last visited Dec. 27, 2021).
[104] Marty Mulvihill, Gretta Goldenman, & Arlene Blum, The Proliferation of Plastics and Toxic Chemicals Must End, The New York Times (Aug. 27, 2021).
[105] UNEP, Plastic Waste Causes Financial Damage of US$13 Billion to Marine Ecosystems Each Year as Concern Grows over Microplastics (June 23, 2014).
[106] Mulvihill, *et al.*, *supra* at note 104.
[107] Intergovernmental Platform on Biodiversity and Ecosystem Services, IPBES Workshop on Biodiversity and Pandemics: Workshop Report (Oct. 29, 2020).
[108] Renee N. Salas, James M. Shultz, & Caren G. Solomon, The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response, New Eng. J. Med. (2020).
[109] Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, and Geoffrey Supran in Support of Appellees and Affirmance, County of San Mateo v. Chevron Corporation, et al., County of Imperial Beach v. Chevron Corporation, et al., County of Marin v. Chevron Corporation, et al., County of Santa Cruz, et al., v. Chevron Corporation, et al., Nos. 18-15499, 18-15502, 18-15503, 18-16376 at 2 (9th Cir. 2019).
[110] Elan Young, Exxon knew -- and so did coal, Grist (Nov. 29, 2019).

with a study concluding that the burning of fossil fuels was likely to create significant environmental consequences.[111]
    - As early as 1977, Exxon scientists had privately concluded that "there is general scientific agreement that the most likely manner in which [hu]mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels."[112]
    - Shell internally reached similar conclusions by at least the 1980s,[113] as did Mobil (then separate from Exxon).[114] By the 1980s, major fossil fuel companies had "internally acknowledged that climate change was real, it was caused by fossil fuel consumption, and it would have significant impacts on the environment and human health."[115]
- A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all global greenhouse gas emissions since 1988 "can be traced to just 100 fossil fuel producers."[116]
- No major fossil fuel company has established itself as a willing participant in the transition to renewable energy.
    - In 2018, all fossil fuel majors approved projects that are noncompliant with the Paris Agreement goals.[117] That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.[118]
    - A study by the London School of Economics found that no fossil fuel major has carbon-reduction plans that are Paris-compliant as of October 2020.[119] A September 2020 report by climate research group Oil Change International concluded that "[n]one of the evaluated oil majors' climate strategies, plans, and pledges come close to alignment with the Paris Agreement."[120]
- Fossil fuel companies continue to bet on long-term fossil fuel reliance.

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[111] Oliver Milman, Oil industry knew of 'serious' climate concerns more than 45 years ago, The Guardian (Apr. 13, 2016).
[112] Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, Sci. Am. (Oct. 26, 2015).
[113] John H. Cushman Jr., Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show, Inside Climate News (Apr. 5, 2018).
[114] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[115] Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 109, at 15.
[116] New report shows just 100 companies are source of over 70% of emissions, Carbon Disclosure Project (Jul. 2017).
[117] Breaking the Habit - Why none of the large oil companies are "Paris-aligned", and what they need to do to get there, Carbon Tracker Initiative (Sept. 2019).
[118] Ron Bousso, Big Oil spent 1 percent on green energy in 2018, Reuters (Nov. 11, 2018).
[119] Anjli Raval, Big fossil fuel groups all failing climate goals, study shows, Financial Times (Oct. 6, 2020).
[120] Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans, Oil Change International (Sept. 2020).

- Approximately half of the oil under BP's financial control is excluded from the company's decarbonization commitments.[121] As recently as November 2020, BP was buying up Canadian offshore oil parcels.[122]
- According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.[123] The 2018 investment plan by ExxonMobil, one of the world's largest oil companies, predicted that the firm's expanded oil and gas production would release an additional twenty-one million tons of carbon dioxide annually by 2025. When added to the emissions released by "end uses" of the company's products, the total additional emissions of ExxonMobil's growth strategy would amount to around 100 million tons of carbon dioxide per year. This figure — which represents only the anticipated *expansion* of ExxonMobil's business — is roughly equivalent to the entire annual emissions of the country of Greece.[124]
- Several leading executives from Shell's renewable energy sectors recently quit in response to the company's lackluster efforts to decarbonize.[125] In December 2020, the company was actively engaged in litigation in the Netherlands in which it argued that emissions reduction commitments should not be legally binding.[126] In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.[127]
- Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower forty-eight states in 2021.[128]
- The American Petroleum Institute recently asserted that the oil industry remains essential to the American economy and promised to resist President Biden's climate agenda.[129]

- The commitment of the fossil fuel industry to increased emissions makes fossil fuel investment incompatible with international targets to reduce greenhouse gas emissions. In a recent report, the International Energy Agency concluded that, in

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[121] Kelly Trout, The Loopholes Lurking in BP's New Climate Aims, Oil Change International (Mar. 11, 2020) ("BP's accounting of its production excludes any oil and gas that it produces but does not sell . . . . BP also excludes the production related to its 20% stake in Russia-based oil company Rosneft. We estimate that these accounting loopholes exclude from BP's net zero aim 46% of the total carbon that the company invested in extracting in 2018 . . . .").

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

[123] Kevin Crowley & Akshat Rathi, Exxon Carbon Emissions and Climate: Leaked Plans Reveal Rising CO2 Output, Bloomberg Green (Oct. 5, 2020); Emily Pontecorvo, Exxon's 'emission reduction plan' doesn't call for reducing Exxon's emissions, Grist (Dec. 15, 2020).

[124] Crowley & Rathi, *supra* at note 123. ExxonMobil's growth strategy has since changed in light of the Covid-19 pandemic.

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

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

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

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

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

order to reach net zero emissions by 2050, "[t]here is no need for investment in new fossil fuel supply in our net zero pathway."[130]

- Shareholder engagement has not been an effective tactic for changing the industry's core business model, with recent attempts by shareholders to persuade fossil fuel companies to address climate risks going largely unheeded.
    - The Interfaith Center on Corporate Responsibility found that "150 requests from various responsible shareholders asking fossil fuel companies to evaluate financial risk from climate change regulation [between 1992 and 2015] were ignored or met with a dismissive reply," with leaders of companies including ExxonMobil and Shell explicitly stating their intentions to continue producing fossil fuels without interruption.[131]
    - Shareholder engagement group As You Sow noted in a 2018 report that, although oil and gas companies are disproportionate targets of shareholders' attempts to engage and intervene, the companies have been singularly unresponsive to requests to reduce greenhouse gas emissions.[132]
    - In August 2021, ExxonMobil announced that it had made a new oil discovery off the coast of Guyana. In the words of the Institute for Energy Economics and Financial Analysis, the announcement "reflects a business-as-usual approach for ExxonMobil. Earlier this year, the International Energy Agency warned there should be no new oil field developments if the planet is to mitigate catastrophic climate change… the new discovery (and maybe more importantly, the announcement of the new discovery) is a signal that drilling remains ExxonMobil's primary business, now and for the future."[133]
- The fossil fuel sector continues to undermine climate-friendly policymaking.
    - In the three years following the Paris Agreement, the five largest public fossil fuel companies "invested over $1 [billion] of shareholder funds on misleading climate-related branding and lobbying."[134]
    - Each year, "the world's five largest publicly owned oil and gas companies spend approximately 200 million dollars on lobbying designed to control, delay or block binding climate-motivated policy."[135]
    - In 2018, the industry spent nearly 100 million dollars to stymie three proposed climate initiatives in Western states: a carbon emissions fee in

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

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

[132] As You Sow, 2020: A Clear Vision for Paris-Compliant Shareholder Engagement (Sept. 2018). The report urges fiduciaries to divest from the oil and gas sector so as to "protect their beneficiaries" if the companies do not adopt Paris-compliant plans by the close of the 2020 proxy season. *Id*. at 25. That deadline has now passed without any meaningful change of course by the industry. Raval, Big fossil fuel groups all failing, *supra* at note 119.

[133] Tom Sanzillo, IEEFA: Months after tumultuous ExxonMobil annual meeting, no substantial change expected, Institute for Energy Economics and Financial Analysis (Aug. 6, 2021).

[134] Big Oil's Real Agenda on Climate Change, InfluenceMap (Mar. 2019).

[135] Niall McCarthy, Oil and Gas Giants Spend Millions Lobbying to Block Climate Change Policies, Forbes (Mar. 25, 2019). BP spends approximately $53 million, Shell $49 million, and ExxonMobil $29 million per year. *Id.*

Washington, restrictions on hydraulic fracturing in Colorado, and improved renewable energy standards in Arizona.[136]

- As a 2013 article by environmental sociologists explained: "[a]lthough many factors have contributed to the failure to enact strong international and national climate change policies… a powerful and sustained effort to deny the reality and significance of human-induced climate change has been a key factor."[137]
- Finally, the fossil fuel industry has engaged in a sustained effort to silence climate protesters and increase the severity of criminal punishment for their activities.
    - Since 2017, the industry has pushed for the passage of numerous "critical infrastructure" bills in U.S. state legislatures, thirteen of which have become law.[138] Many of the bills are similar or identical to model legislation authored by the corporate lobbying group American Legislative Exchange Council, and at least three were accompanied by political contributions from oil and gas companies to the bills' sponsors.[139]
        - The majority of enacted "critical infrastructure" laws contain provisions for organizational as well as individual criminal liability.[140]
        - A wide range of commentators have criticized "critical infrastructure" laws as unnecessary, vague, and overly punitive, and two of the laws face litigation challenging their constitutionality.[141]
    - The industry has also used lawsuits and subpoenas to accuse environmental advocates of defamation, racketeering, and other crimes, to label advocates as terrorists, and to chill advocacy targeting the industry's activities.[142]
    - There is mounting evidence of collusion between paramilitary firms hired by fossil fuel companies and local police departments in suppressing climate protest, and the use of heavy-handed tactics to suppress protest against fossil fuel infrastructure projects such as Energy Transfer Partners' Dakota Access pipeline.
        - In response to protests at the Standing Rock reservation in 2016 and 2017, Energy Transfer Partners hired TigerSwan, a military contractor

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

[137] Shaun W. Elsasser & Riley E. Dunlap, Leading Voices in the Conservative Choir: Conservative Columnists' Dismissal of Global Warming and Denigration of Climate Science, 57(6) Am. Behav. Scientist 754, 755 (2013).

[138] Institute for Policy Studies, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws (Oct. 2020). *See* US Protest Law Tracker, International Center for Not-for-Profit Law (last visited Feb. 10, 2022).

[139] New Report Details Impact of Secretive American Legislative Exchange Council on Communities of Color, Center for Constitutional Rights (Dec. 23, 2019); Gabrielle Cochette & Basav Sen, Muzzling Dissent: How Corporate Influence Over Politics Has Fueled Anti-Protest Laws at 8-9 (Oct. 2020).

[140] Namely, those enacted in Kentucky, Mississippi, North Dakota, Ohio, Oklahoma, North Dakota, South Dakota, Tennessee, Texas, and West Virginia. US Protest Law Tracker, *supra* at note 138.

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

[142] *See, e.g.*, Amal Ahmed, Energy Transfer Partners Files Lawsuit Against Greenpeace, Texas Monthly (Dec. 15, 2017); Exxon's Campaign of Intimidation against Climate Defenders Ushers in a New McCarthy Era, EarthRights International (Dec. 21, 2016); Green Group Holdings v. Schaeffer: Defense of Environmental Protesters Against Defamation Lawsuit, American Civil Liberties Union (Feb. 7, 2017). A national coalition of civil rights organizations called Protect the Protest tracks and opposes these tactics.

with experience in Iraq and Afghanistan. In collaboration with local police, TigerSwan used legally questionable tactics against protesters, including digital surveillance.[143] Water cannons, tear gas, and rubber bullets were also used, resulting in hundreds of injuries.[144]

- Energy Transfer Partners also retained TigerSwan to respond to vandalism targeting the Dakota Access pipeline in Iowa in 2017, using scare tactics, residential surveillance, and the hiring of locals to pursue suspects in a wide-ranging operation that swept in dozens of people.[145]
- A multi-part reporting series by the investigative journalism publication The Intercept concluded that "[l]eaked documents and public records reveal a troubling fusion of private security, public law enforcement, and corporate money in the fight over the Dakota Access pipeline."[146]
- In 2019, the Canadian pipeline company Enbridge used digital and aerial surveillance, along with embedded informants, against nonviolent protesters targeting the company's Line 3 pipeline in Minnesota, attempting to follow the same playbook used by law enforcement at Standing Rock.[147]

- The militarized response to climate protest by fossil fuel companies is at least a decade old. At a 2011 conference attended by members of the fossil fuel industry, an executive of Anadarko Petroleum recommended military-style tactics against citizen groups protesting hydraulic fracturing (also known as fracking): "I want you to download the US Army/Marine Corps counterinsurgency manual because we are dealing with an insurgency here."[148]

VI. The financial risk of fossil fuel investments

As an asset manager, the Board has violated its *duty of care* by failing to adequately consider the risk of continued investment in fossil fuels despite ample evidence of the industry's financial precarity. The untenable value thesis of fossil fuel investments should be especially concerning for investors at charitable institutions. As a public charity that works "in the service of humanity,"[149] Princeton is ostensibly committed to mitigating the worst effects of climate change. Such mitigation requires government regulation to reduce greenhouse gas emissions and the growth of the green technology sector — developments that pose an

[143] Antonia Juhasz, Paramilitary security tracked and targeted DAPL opponents as 'jihadists,' docs show, Grist (Jun. 1, 2017).
[144] Alleen Brown, Medics Describe How Police Sprayed Standing Rock Demonstrators with Tear Gas and Water Cannons, The Intercept (Nov. 21, 2016).
[145] Alleen Brown, Will Parrish & Alice Speri, Tigerswan Responded to Pipeline Vandalism by Launching Multi-State Dragnet, The Intercept (Aug. 26, 2017).
[146] *Id.*
[147] Will Parrish & Alleen Brown, How Police Are Preparing for a Standoff Over Enbridge Line 3, The Intercept (Jan. 30, 2019).
[148] Bill McKibben, Shake Harvard Free of Oil Stock, The Boston Globe (April 7, 2015).
[149] Meet Princeton: In Service of Humanity, Princeton University (last visited Nov. 18, 2021).

existential threat to the fossil fuel industry. Since the Board's fiduciary duties oblige it to promote the financial non-viability of the fossil fuel sector, continued investment in the sector is unreasonable on its face.

- Oil, gas, and coal companies face an extremely uncertain financial future due to mismanagement, the failure to prepare for a renewable energy economy, social pressures and unrest created by the unequally distributed health and economic burdens of fossil fuel products, and the pressures of COVID-19.
    - Oil and gas stocks have greatly underperformed other investments over the last ten years. While the S&P 500 has gained approximately 189 percent in value since 2011, the S&P Oil and Gas Exploration and Production Index has lost approximately 56 percent of its value and the S&P Oil and Gas Equipment Select Industry Index has lost approximately eighty-six percent of its value.[150] Even prior to the COVID-19 crisis, leading financial analyst Jim Cramer stated that fossil fuel stocks were "just done" as profitable investments, thanks to falling demand and the impact of divestment campaigns.[151]
    - From the fourth quarter of 2019 to August 2020, seven of the world's largest oil companies lost eighty-seven billion in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.[152]
    - In January 2021, the S&P rating agency warned leading fossil fuel companies that they were at risk of imminent credit downgrades due to economic pressures resulting from the energy transition.[153]
- In August 2020, ExxonMobil was dropped from the Dow Jones stock index, a reflection of the company's rapidly declining business: Since 2008, its market capitalization has shrunk from 500 billion dollars to around 260 billion dollars.[154]
- In February 2021, ExxonMobil reported quarterly losses of 20.1 billion dollars.[155]
- Since 2010, the world's five oil "supermajors" — ExxonMobil, BP, Chevron, Shell, and Total SA — have spent far more on dividends and stock buybacks (556 billion dollars) than they have earned from business operations (340 billion dollars), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.[156]
- The coal industry, especially in the United States, is collapsing: the share of U.S. electricity produced by coal has declined from forty-five percent in 2008 to twenty-

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[150] Data from S&P Dow Jones Indices, S&P Global (Dec. 23, 2021).
[151] Kevin Stankiewicz, There's no more money to be made in oil and gas stocks, Jim Cramer says, CNBC (Feb. 3, 2020).
[152] Jillian Ambrose, Seven top oil firms downgrade $87bn in nine months, The Guardian (Aug. 14, 2020).
[153] Ben Butler, Rating agency S&P warns 13 oil and gas companies they risk downgrades as renewables pick up steam, The Guardian (Jan. 27, 2021).
[154] Avi Salzman, Why Exxon Is Being Dropped From the Dow, Barron's (Aug. 25, 2020).
[155] ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans, ExxonMobil (Feb. 2, 2021).
[156] Clark Williams-Derry, Tom Sanzillo, and Kathy Hipple, In Q1, Four of Five Oil Majors Paid More Cash to Investors Than They Made From Operations, Institute for Energy Economics and Financial Analysis (May 2020).

four percent in 2020, while eight coal companies, including the largest private coal firm, declared bankruptcy in 2019.[157]

- As outlined in "The Financial Case for Fossil Fuel Divestment" by the Sightline Institute and the Institute for Energy Economics and Financial Analysis, investment in the fossil fuel sector is now unacceptably risky thanks to price volatility, the rise of renewable energy sources, and government climate regulations. The traditional value thesis that justified investment in the sector — based on the assumptions that demand for oil, gas, and coal will continue to grow and that companies' extensive untapped reserves represent a sure source of future profits — is no longer tenable.[158]
    - There are various reasons for the fossil fuel industry's transformation from a secure source of investment returns to a dangerously speculative risk sector: "The world economy is shifting toward less energy-intensive models of growth, fracking has driven down commodity and energy costs and prices, and renewable energy and electric vehicles are gaining market share. Litigation on climate change and other environmental issues is expanding and campaigns in opposition to fossil fuels have matured. They are now a material risk to the fossil fuel sector and a force for the reallocation of capital to renewable energy and electric vehicles as a source of economic growth. The risks, taken cumulatively, suggest that the investment thesis advanced by the coal, oil and gas sector that worked for decades has lost its validity."[159]
    - The report notes that "[t]he financial case for fossil fuel divestment is strong. Over the past three and five years [prior to 2018], respectively, global stock indexes without fossil fuel holdings have outperformed otherwise identical indexes that include fossil fuel companies. Fossil fuel companies once led the economy and world stock markets. They now lag . . . Fossil fuel stocks, once prime blue-chip contributors to institutional funds, are now increasingly speculative. Revenues are volatile, growth opportunities are limited, and the outlook is decidedly negative."[160]
    - Comparing fossil fuel-free funds to traditional funds, the report concludes that divesting endowments of oil, gas, and coal holdings poses no risk to future returns: "Over the past five years, the MSCI-All Country Global Index without fossil fuels has outperformed the Index that includes fossil fuels."[161]
- The Carbon Tracker Initiative calculates the remaining amount of carbon dioxide that may be released into the atmosphere if international warming limits are to be met. As of November 2019, the world could continue to release carbon dioxide at current rates for only thirteen more years in order to have a fifty percent chance of meeting the 1.5 degree Celsius target. Under this limited "carbon budget," fossil fuel majors would have to reduce emissions from oil and gas production forty percent below 2019 levels by 2040. Such reductions — which represent only a moderate chance at

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[157] Fred Pearce, As Investors and Insurers Back Away, the Economics of Coal Turn Toxic, Yale Environment 360 (Mar. 10, 2020).
[158] Tom Sanzillo, Kathy Hipple, and Clark Williams-Derry, The Financial Case for Fossil Fuel Divestment, Sightline Institute and the Institute for Energy Economics and Financial Analysis (July 2018).
[159] *Id.* at 4.
[160] *Id.* at 1.
[161] *Id.* at 38.

avoiding catastrophe — would render the majority of oil and gas reserves unexploitable and unprofitable.[162]

- According to a 2019 study by the Mercer consulting firm, investment portfolios will be greatly affected by future global warming. If warming is held to two degrees Celsius — the target set by the 2015 Paris Agreement and one which will still result in widespread harm — the global economy will suffer significant damage from climate change while also transitioning to a renewable energy base. In this scenario, according to the study, portfolio assets in the coal industry will suffer cumulative impacts of 58.9 percentage points by 2030 and 100 percentage points by 2050, while assets in oil and gas will suffer cumulative impacts of 42.1 and 95.1 percentage points, respectively.[163] Other studies have concluded that major energy companies who continue to rely on fossil fuels would lose between thirty and sixty percent of their value.[164]
- In its 2020 financial stability report, the Federal Reserve reported that "climate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks."[165]
- A wave of litigation against companies responsible for climate change damages poses an additional risk to investment in the fossil fuel sector. A report from the law firm Clyde & Co LLP concludes that "[o]il majors are currently facing threatened or pending litigation on a number of fronts and across a number of jurisdictions. Their liability insurers and reinsurers will undoubtedly be watching these cases with keen interest . . . Companies in a number of sectors may find themselves exposed not just to damages claims for climate change, but also the cost of defending litigation, the reputational harm of being associated with such litigation and the consequential impacts on operations and value."[166]
- In a sign of the growing consensus that fund managers have a duty to assess climate risks in their portfolios, the multibillion-dollar Australian Retail Employees Superannuation Trust (REST) recently settled a beneficiary lawsuit that faulted the fund for failing to disclose how it would manage the risks posed by climate change and the plummeting value of fossil fuel stocks. REST acknowledged that "climate change is a material, direct and current financial risk" and committed to manage its investments in a way that would support net-zero greenhouse gas emissions by 2050 and the Paris Agreement goal of 1.5 degrees Celsius warming.[167]

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[162] Carbon Tracker Initiative, Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink (Nov. 1, 2019).
[163] Mercer LLC, Investing in a Time of Climate Change: The Sequel 2019 at 34 (2019).
[164] European Green Party, The Carbon Bubble: The financial risk of fossil fuels and need for divestment at 7 (2020).
[165] Board of Governors of the Federal Reserve System, Financial Stability Report at 58 (Nov. 2020).
[166] Clyde & Co LLP, Climate change: Liability risks at 37 (Mar. 2019).
[167] Michael Slezak, Rest super fund commits to net-zero emission investments after Brisbane man sues, ABC News (Nov. 2, 2020).

- In a 2020 report, the Commodity Futures Trading Commission warned that "Climate change poses a major risk to the stability of the U.S. financial system and to its ability to sustain the American economy."[168]
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz and former Secretary of Labor Robert Reich, identified the continued existence of the fossil fuel economy as "fundamentally incompatible" with long-term social and economic well-being and cited divestment as an essential tactic for bringing about systemic change: "When our largest banks, most influential investors and most prestigious universities place bets on the success of the fossil fuel industry, they provide it with the economic and social capital necessary to maintain the dangerous status quo. Instead, these institutions should divest from fossil fuel companies and end financing of their continued operations while reinvesting those resources in a just and stable future."

VII. The financial prudence of fossil fuel divestment

Despite the frequent claim that removing an asset class like fossil fuels from an endowment would violate the fiduciary duty to maintain a diverse portfolio, fossil fuel divestment poses no risk to a portfolio's diversity and flexibility, nor does it impact returns. The Board has violated its *duty of care* and its *duty of loyalty* by failing to embrace a divestment strategy that would both improve the endowment's performance and cure the fiduciary violations created by fossil fuel investment.

- Two major financial management firms, BlackRock and Meketa, have separately concluded that investment funds have experienced no negative financial impacts from divesting from fossil fuels. Instead, they found evidence that divestment improves returns.[169]
- The problem of stranded assets is a noted risk of fossil fuel investments. A 2019 report from the equity research firm Redburn warned that capital costs for conventional energy projects are rising due to "the growing concern of investors surrounding energy transition."[170]
- A 2018 London School of Economics analysis led by Jeremy Grantham, one of the world's leading asset managers, concluded that removing any one of ten major asset classes such as technology or utilities from a portfolio produced no discernible impact on overall long-term returns. The analysis states that the purported financial peril of fossil fuel divestment was "mythical," and that "[i]nvestors with long-term horizons should avoid oil . . . on investment grounds."[171]

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[168] Commissioner Rostin Behnam, David Gillers, Bob Litterman, Leonardo Martinez-Diaz, Jesse M. Keenan, Stephen Moch, Managing Climate Risk In the U.S. Financial System, Climate-Related Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission (Sept. 2020).
[169] Tom Sanzillo, IEEFA: Major investment advisors BlackRock and Meketa provide a fiduciary path through the energy transition, Institute for Energy Economics and Financial Analysis (Mar. 22, 2021).
[170] Fossil fuel angst darkens oil sector funding outlook, S&P Global (last visited Nov. 18, 2021).
[171] Jeremy Grantham, The mythical peril of divesting from fossil fuels, London School of Economics (June 13, 2018).

- Divestment from fossil fuels does not threaten the profitability of invested funds and thus does not violate a fiduciary's duty to ensure the prudent management of an endowment. In recent years, investment portfolios lacking fossil fuel holdings have matched or outperformed funds still containing the risky investments.
    - The most comprehensive study to date of the endowment performance at universities that have divested from fossil fuels concludes that divestment does not have a negative effect on investment returns.[172] Other research indicates that fossil fuel divestment does not significantly limit portfolio diversification opportunities, allowing investors to satisfy their fiduciary duty to maintain balanced holdings even as they avoid the risks posed by stranded assets and the energy transition.[173]
    - A 2019 study of university endowments that adopt "socially responsible investment" [SRI] policies concludes that such policies benefit the universities. Surveying SRI endowment returns from 2010 to 2019, the study reports that "donations are 33.3% per year higher among universities that incorporate SRI policies into their endowments" and that "SRI policies predict greater university donations, higher student enrollment, and more extensive risk management practices by the endowment fund."[174]
    - In 2020, the financial research agency Morningstar reported that European sustainable investment funds — defined as "funds that use environmental, social, and governance criteria as a key part of their security selection and portfolio-construction process, and/or indicate that they pursue a sustainability-related theme, and/or seek a measurable positive impact alongside financial return" — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.
    - A 2018 analysis concluded that the New York State Common Retirement Fund would have earned an additional 22.2 billion dollars (137 billion dollars versus 114.8 billion dollars) from 2008 to 2018 had it divested from fossil fuels.[175]

VIII. Industry fraud and the fiduciary duty to avoid fraudulent investments

Despite well-known facts regarding the fossil fuel industry's alleged efforts to defraud investors, PRINCO continues to hold industry securities, violating its *duty of care*.

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

- Fossil fuel companies have allegedly long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This alleged fraud has been a matter of public record since at least 2015[176] and a matter of common knowledge for investors in Massachusetts since at least 2019.
    - In 2019, the Massachusetts Attorney General sued ExxonMobil, one of the world's leading oil companies, for three alleged violations of the Massachusetts Consumer Protection Act.
        - The state's Second Amended Complaint alleges that "[f]or many years, Exxon Mobil Corporation . . . the world's largest publicly traded oil and gas company, systematically and intentionally has misled Massachusetts investors and consumers about climate change. In order to increase its short-term profits, stock price, and access to capital, ExxonMobil has been dishonest with investors about the material climate-driven risks to its business and with consumers about how its fossil fuel products cause climate change—all in violation of Massachusetts law."[177]
        - According to the Complaint, ExxonMobil scientists in the 1970s accurately predicted the rate of global warming that would be caused by fossil fuel use. The company was well aware of how its business activity would damage the planet; for example, a company scientist told management in 1981 that climate change will "produce effects which will indeed be catastrophic" and that it would be necessary to sharply reduce fossil fuel use.[178]
        - Despite this knowledge, ExxonMobil — like many of its peers in the industry — persisted in a "highly misleading" campaign to spread doubt about climate science and to prevent measures that would decrease the use of fossil fuels. As late as 2015, ExxonMobil's CEO was publicly disputing the scientific consensus that rising atmospheric carbon dioxide levels produce catastrophic warming.[179]
        - The Attorney General concluded that ExxonMobil's value will fall precipitously in coming years, thanks in large part to an expected transition to renewable energy that will make the companies' oil and gas reserves valueless: "When those reserves cease to have future value, other things being equal, ExxonMobil securities are likely to decline in value as well, perhaps dramatically, much as the market value of coal companies has collapsed in recent years as the deployment of cleaner, more efficient fuel sources has reduced expected future coal demand."[180]
        - According to the Complaint, "[t]he systemic risk climate change poses to the world's financial markets is comparable to, and could well

[176] Neela Banerjee, Lisa Song, & David Hasemyer, Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago, Inside Climate News (Sept. 16, 2015).
[177] Second Amended Complaint, Massachusetts v. ExxonMobil, No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5, 2020) at 1.
[178] *Id.* at 5.
[179] *Id.* at 9, 50-51.
[180] *Id.* at 8.

exceed, the impact of the 2008 global financial crisis . . . The risks of climate change and regulatory responses to it pose an existential threat to [the company's] business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors."[181]

    - The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the Harvard Corporation in danger of serious financial damage: "ExxonMobil's omissions and misrepresentations put its Massachusetts investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances."[182]
  - In September 2020, the State of Connecticut sued ExxonMobil for violations of the state's Unfair Trade Practices Act, alleging that the company has for decades "misled and deceived Connecticut consumers about the negative effects of its business practices on the climate."[183]
    - The lawsuit alleges that, beginning in the 1980s, ExxonMobil defied its own scientists' warnings dating back to the 1950s and "began a systematic campaign of deception to undermine public acceptance of the scientific facts and methods relied upon by climate scientists who knew that anthropogenic (human-caused) climate change was real and dangerous to humanity."[184]
    - The complaint goes on to note that "ExxonMobil's strategy to create uncertainty about climate science successfully kept consumers purchasing ExxonMobil products by deceiving consumers about the serious harm caused by ExxonMobil's industry and business practices."[185]
  - Also in September 2020, Hoboken became the first New Jersey City to sue fossil fuel companies for climate change damages. Hoboken, which is under fifty miles from Princeton, "seeks to recover the cumulative cost of hundreds of millions of dollars to compensate the city for past, current and future costs associated with climate change adaptation, remediation, and economic losses." Hoboken alleges violations of the New Jersey Consumer Fraud Act and claims for negligence and common law remedies "to prevent and abate hazards to public health, safety, welfare and the environment."[186]
  - In January 2021, a former senior accounting analyst for ExxonMobil alleged in a whistleblower complaint to the Securities and Exchange Commission that the company has repeatedly overstated the value of its U.S. oil and gas assets — which will likely prove unprofitable due to the collapse of the fracking

[181] *Id.* at 65, 80-81.
[182] *Id.* at 138.
[183] Complaint, Connecticut v. ExxonMobil, No. HHDCV206132568S (Conn.. Super. Ct. Spe. 14, 2020) at 1.
[184] *Id.*
[185] *Id.* at 2.
[186] Hoboken becomes first NJ city to sue Big Oil companies, American Petroleum Institute for climate change damages, Hoboken City Hall (Sept. 2, 2020).

boom — fraudulently inflating the company's worth to investors by as much as fifty-six billion dollars.[187]

  - In April 2021, neighboring New York City sued Exxon Mobil, Royal Dutch Shell, and the American Petroleum Institute (an industry trade association) for systematically and intentionally deceiving consumers.[188] A former senior accounting analyst for ExxonMobil has alleged in a whistleblower complaint to the Securities and Exchange Commission that the company has repeatedly overstated the value of its U.S. oil and gas assets — which will likely prove unprofitable due to the collapse of the fracking boom — fraudulently inflating the company's worth to investors by as much as fifty-six billion dollars.[189]
  - In June 2021, an Exxon lobbyist admitted that ExxonMobil was engaged in a concerted effort to block climate change measures and deceive the public.[190] This revelation led the House Oversight Committee to ask the chief executives of Exxon Mobil, Chevron, BP, and Shell, along with the American Petroleum Institute and the Chamber of Commerce, to appear at a hearing and provide emails and documents about whether the industry led an effort to mislead the public and prevent action to fight climate change.[191]
- Despite the revelation of this alleged fraudulent behavior, and in the face of existential threats to their business models, oil companies continue to refuse to provide investors with any assurances that they are preparing for the effects of climate change. ExxonMobil and Chevron, for example, have blocked shareholder proposals that ask the companies to describe how they will adjust their operations to satisfy the warming targets established under the Paris Agreement.[192]

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

Fossil fuel companies have engaged in decades-long efforts to obscure scientific reality and undermine academic research. These anti-academic activities have been undertaken in bad faith and cannot be attributed to intellectual disagreement. By funding this activity, the Trustees contravene Princeton's core *charitable purposes* as an educational institution and violate their *duty of loyalty.*

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[187] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[188] New York City Sues ExxonMobil, Shell, BP, and The American Petroleum Institute for Systematically and Intentionally Deceiving New Yorkers, The Official Website of the City of New York (Apr. 22, 2021).
[189] Nick Cuningham, Exclusive: Whistleblower Accuses Exxon of 'Fraudulent' Behavior for Overvaluing Fracking Assets For Years, Desmog Blog (Feb. 2, 2021).
[190] Hiroko Tabuchi, In Video, Exxon Lobbyist Describes Efforts to Undercut Climate Action, The New York Times (Jun. 30, 2021).
[191] Timothy Gardner, U.S. House panel to probe oil companies over climate disinformation, Reuters (Sept. 16, 2021).
[192] Dana Drugman, Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk, The Climate Docket (Jan. 29, 2020).

- Beginning in the 1980s, in response to mounting evidence of climate risks, fossil fuel companies halted their climate research and "began a campaign to discredit climate science and delay actions perceived as contrary to their business interests."[193] This campaign was multi-pronged, consisting of the development of internal policies to suppress the companies' own knowledge, public communications to sow doubt about the dangers of fossil fuels, and the funding of organizations and research to undermine climate science.[194]
    - In 2019 testimony to the Senate Special Committee on the Climate Crisis, Dr. Justin Farrell described a decades-old movement "to deceive the American people about the reality of climate change." This movement has been largely successful "sowing seeds of widespread popular doubt, transforming climate change into a sharply politicized issue, infusing climate denial into the highest levels of government, and obstructing policy solutions that are so direly needed to decarbonize our economy and mitigate the impacts of warming."
    - Research shows that fossil fuel companies launched a "multi-pronged manipulation effort" to manufacture uncertainty around climate science by funding climate denial groups as well as creating "fake grassroots efforts" to promote climate misinformation. "Money facilitated coordination between 200 organizations," said Farrell, to create the "appearance of scientific credibility."[195]
    - In his analysis of the funding sources of 164 climate denialist organizations, Farrell found that ExxonMobil and the Koch foundations were "the most reliable and theoretically important across-time indicators of corporate involvement."[196]
    - Between 1998 and 2005, ExxonMobil alone spent nearly sixteen million dollars funding groups that promote climate denial, according to a report by the Union of Concerned Scientists.[197]
    - Since 1997, Koch Industries, through its various foundations and institutes including the Koch Family Foundation, has donated more than 145 million dollars from 1997 to 2018, financing ninety organizations that attack climate science and policy solutions.[198]
    - Over about the last three decades, "five major U.S. oil companies have spent a total of at least $3.6 [billion] on advertisements."[199] These ads, along with

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[193] Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, and Geoffrey Supran in Support of Appellees and Affirmance at 17, County of San Mateo v. Chevron Corporation, et al., County of Imperial Beach v. Chevron Corporation, et al., County of Marin v. Chevron Corporation, et al., County of Santa Cruz, et al., v. Chevron Corporation, et al., Nos. 18-15499, 18-15502, 18-15503, 18-16376 (9th Cir. 2019).
[194] *See generally id.*
[195] Senate Dems Special Committee on the Climate Crisis Hearing, Senate Dems (Oct. 29, 2019).
[196] Justin Farrell, Corporate Funding and Ideological Polarization, 113(1) Proceedings of the National Academy of Sciences 92-97 (2016).
[197] Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science at 5, Union of Concerned Scientists (Jan. 2007).
[198] Koch Industries: Secretly Funding the Climate Denial Machine, Greenpeace (last visited Jan. 31, 2022).
[199] Emily Holden, How the oil industry has spent billions to control the climate change conversation, The Guardian (Jan. 8, 2020).

other public communications, have promoted narratives the companies know to be false: In the case of ExxonMobil, for example, between 1977 and 2014, only twelve percent of ads acknowledged that anthropogenic climate change is real, compared to eighty percent of internal documents.[200]

- These activities were summarized in an amicus brief by academics and researchers as part of the ongoing tort litigation by California counties against fossil fuel companies,[201] and by the Massachusetts Attorney General's complaint against ExxonMobil in its deceptive advertising litigation.[202]
- Academic research has confirmed that the fossil fuel industry's "major tactic was and continues to be manufacturing uncertainty . . . [and] constantly asserting that the evidence is not sufficient to warrant regulatory action. Historically these efforts focused on specific problems such as secondhand smoke, acid rain, and ozone depletion, but in the case of [climate change] they have ballooned into a full-scale assault on the multifaceted field of climate science, the IPCC, scientific organizations endorsing [climate change], and even individual scientists."[203]
- Direct attacks on academics and scholars have become a regular tactic of the fossil fuel industry.
    - Following publication of his famous "hockey stick graph," climate scientist Michael E. Mann faced years of efforts to discredit him and his work, and "many [of these] attacks . . . trace directly to involvement by the fossil fuel industry."[204]
    - ExxonMobil has repeatedly sought to portray the Intergovernmental Panel on Climate Change — a coordinating body of respected scientists and academics, including Princeton scholar Professor Michael Oppenheimer, who publish periodic reports on climate science to aid policymakers — as biased and untrustworthy.[205]
    - In 2013, the Harvard Law School Environmental Law Program Policy Initiative released a report suggesting that existing disclosure regulations were insufficient to regulate the fracking industry's behavior.[206] An industry-funded website accused the study of being "fundamentally and transparently flawed."[207]

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[200] Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications (1977–2014), 12(8) Envtl. Res. Letters (Aug. 2017).
[201] *See* Brief of Amici Curiae Robert Brulle, *et al.*, *supra* at note 193.
[202] *See* Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 177, at Part IV.B.
[203] Riley E. Dunlap & Peter J. Jacques, Climate Change Denial Books and Conservative Think Tanks: Exploring the Connection, 57(6) Am. Behav. Scientist 699, 700 (2013) (internal citations omitted).
[204] Union of Concerned Scientists, How the Fossil Fuel Industry Harassed Climate Scientist Michael Mann (Oct. 12, 2017).
[205] David Hasemyer & John H. Cushman Jr., Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty, Inside Climate News (Oct. 22, 2015).
[206] Legal Fractures in Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool (Apr. 23, 2013).
[207] John Krohn, Four Things to Know about the Harvard FracFocus Study, Energy in Depth (April 25, 2013).

- In 2015, an industry-funded group sought to win access to the private correspondence of University of Arizona climate scientists in order to cast doubt on their work.[208]
- In 2017, Harvard researcher Geoffrey Supran and professor Naomi Oreskes published a peer-reviewed study analyzing ExxonMobil's climate communications.[209] Exxon's response included commissioning and paying for a (non-peer-reviewed) academic analysis that accused Supran and Oreskes of bias,[210] running a Twitter ad calling its conclusions "manufactured,"[211] urging the European Parliament to ignore the study's conclusions,[212] and suggesting on a website known to take editorial direction from Exxon[213] that the study was written for the purpose of "suppressing free speech."[214]
- In 2020, Harvard doctoral student Xiao Wu, professors Rachel Nethery and Francesca Dominici, and others released a study suggesting a correlation between exposure to air pollution and incidence of COVID-19.[215] The American Petroleum Institute lobbied the EPA to reject the study's conclusions, arguing that it could not "be used to draw policy inferences."[216]

- Paradoxically, even while engaging in these attacks the fossil fuel industry has quietly courted academic institutions and individual researchers in an attempt to burnish its image and legitimize its policy positions. These efforts have taken the form of funding for research and programs at prominent universities,[217] including Princeton.
  - Princeton's Carbon Mitigation Initiative (CMI) is an independent academic research program sponsored by British Petroleum (BP) and administered by the High Meadows Environmental Institute (originally PEI, or Princeton Environmental Institute). Its mission is "to lead the way to a compelling and sustainable solution to the carbon and climate problem." Established in 2000, CMI is Princeton's largest and most long-term industry-university relationship.[218]

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[208] Michael Halpern, Arizona Superior Court Protects Academic Freedom in Climate Email Disclosure Case, Union of Concerned Scientists (Mar. 30, 2015).
[209] Geoffrey Supran & Naomi Oreskes, Assessing ExxonMobil's climate change communications, *supra* at note 200.
[210] Nicholas Kusnetz, Exxon Turns to Academia to Try to Discredit Harvard Research, Inside Climate News (Oct. 20, 2020).
[211] Just today, @exxonmobil ran Twitter ads, Fossil Fuel Divest Harvard (Jun. 16, 2020).
[212] ExxonMobil refused to attend a hearing, Food & Water Action Europe (Mar. 21, 2019).
[213] Hiroko Tabuchi, How One Firm Drove Influence Campaigns Nationwide for Big Oil, The New York Times (Nov. 11, 2020).
[214] Spencer Walrath, Activists Admit Climate Campaign Is About Attacking Free Speech, Energy In Depth (Aug. 22, 2017).
[215] X. Wiu, R. C. Nethery, M. B. Sabath, D. Braun & F. Dominici, Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, 6(45) Sci. Advances (Nov. 2020).
[216] Kelsey Tamborrino, Inside carbon capture tax credit claims, Politico (Apr. 30, 2020).
[217] These funding relationships are not unique to Princeton. *See* Benjamin Franta & Geoffrey Supran, The fossil fuel industry's invisible colonization of academia, The Guardian (Mar. 13, 2017).
[218] *See* Annual Report 2020 at 5, High Meadows Environmental Institute & Carbon Mitigation Initiative, Princeton University (2020).

        - BP gave over thirty-one million dollars to CMI between 2000 and 2020. Ford Motor Company, one of the world's largest car manufacturers, was also a founding member and sponsor of CMI from 2000-2009.[219]
        - According to the 2019 CMI Annual Report, "Commencing in 2000 with a 10-year contract, the program has since undergone three five-year renewals with BP (2010-15, 2015-20, and the latest in 2020-25)."[220]
        - Carbon capture and sequestration research has long been among CMI's signature projects.[221] While the IPCC and the IEA have said that carbon capture is critical for a two-degree Celsius pathway, they have also made it clear that carbon capture is not a substitute for dramatic reductions in conventional fossil fuel usage. Despite twenty years of work at CMI, all of the world's existing carbon capture projects capture less than 0.1 percent of global emissions.[222]
    - The Andlinger Center for Energy and the Environment is another recipient of fossil fuel funding.
        - Between 2015 and 2020, ExxonMobil gave 6.4 million dollars to the Andlinger Center.[223] Its research contract was renewed on July 2, 2020.[224] That same day, Exxon tweeted about the relationship and released a video celebrating its partnership with Princeton.[225]
        - The partnership is the latest in Exxon's history of greenwashing while simultaneously denying scientific consensus, delaying political action to address climate change, and deflecting blame.[226] For example, it is now well documented that Exxon's research into biofuels is little more than a public relations campaign.[227] This research features in a lawsuit currently pending against the company by the state of Massachusetts.[228]
        - Andlinger's director Lynn Loo has sought to defend the Center's research partnership with ExxonMobil on the grounds that

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[219] Sponsor, High Meadows Environmental Institute & Carbon Mitigation Initiative, Princeton University (last visited Feb. 2, 2022).
[220] Introduction, High Meadows Environmental Institute & Carbon Mitigation Initiative, Princeton University (last visited Feb. 2, 2022).
[221] *See* Princeton receives $20-million grant to address greenhouse problem, Princeton University (Oct. 25, 2000).
[222] Engine No. 1, Reenergize ExxonMobil: Investor Presentation at 16 (May 2021).
[223] Annual Report of the University Research Board (URB) and the Office of Research and Project Administration (OPRA) Fiscal Year 2017-2018 at 32, 56, Princeton University (2018).
[224] Molly A. Seltzer, Andlinger Center and ExxonMobil renew agreement to advance clean energy technologies and transition, Andlinger Center for Energy & the Environment, Princeton University (July 2, 2020).
[225] ExxonMobil, Together with @Princeton University's @AndlingerCenter for Energy and the Environment, we're supporting research for breakthrough energy technologies including CO2 capture, power generation and innovative materials, Twitter (July 2, 2020).
[226] *See, e.g.*, Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 177, at Parts IV, VI.
[227] Zoya Teirstein, What's with Exxon's big algae push?, Grist (Aug. 7, 2018) (interviewing research analyst at U.K.-based nonprofit InfluenceMap).
[228] *See* Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 177, at Part VI.B.3.b.

engagement with oil and gas companies is required for rapid decarbonization.[229] This sentiment is difficult to sustain, however, when juxtaposed with the prevailing view of Exxon among those in the climate policy and finance communities — a view summarized in February 2021 by Clark Williams-Derry of the Institute for Energy Economics and Financial Analysis, who noted that the company has "doubled down on the old oil and gas business model" and "hardly even giv[en] lip service to the energy transitions that are realigning the market."[230]

    - The Net-Zero America report, published by Princeton professors under Andlinger's auspices in December 2020, was hailed by Princeton and many media outlets as the definitive guide for how America could transition to a "net-zero" economy by 2050. However, four out of the five pathways proposed rely on fossil fuels. Only the fifth proposes a pathway that uses one hundred percent renewable resources.[231] While the University's original media release included a note at the very end stating that the research had been funded by BP and ExxonMobil,[232] the home page for the project makes no mention of this,[233] nor did an article in the Princeton Alumni Weekly calling the report a "bold new study."[234] The statement about the recent release of the final version also makes no mention that it was funded by two of the largest oil and gas companies in the world.[235]

- At least one fossil fuel company has sought to influence the outcome of ongoing litigation by funding research at prominent universities, undermining the integrity of those institutions.
    - In 1989, the Exxon Valdez oil spill led to a 5.3-billion-dollar verdict against the oil giant by an Alaskan jury in *In re Exxon Valdez*. By the 1980s Exxon had embraced an aggressive form of philanthropy known as "venture philanthropy,"[236] and rather than simply appeal the award, the company undertook to fund academic research that might undermine the verdict. As

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[229] Lynn Loo, Urgency of climate change demands all hands on deck to transform the energy system, The Daily Princetonian (July 2, 2020).
[230] Sam Meredith, Wall Street turns positive on Exxon after a brutal year. But some experts warn it could get much worse, CNBC (Feb. 5, 2021) (quoting Williams-Derry).
[231] See Net-Zero America: Potential Pathways, Infrastructure, and Impacts, Net-Zero America Project, Princeton University (last visited Feb. 2, 2022).
[232] *See* Molly Seltzer, Big but affordable effort needed for america to reach net-zero emissions by 2050, princeton study shows, Andlinger Center for Energy & the Environment, Princeton University (Dec. 15, 2020).
[233] *See* Net-Zero America: Potential Pathways, Infrastructure, and Impacts, *supra* at note 231.
[234] *See* Joanna Wendel, Research Environmental Studies: The Paths to Net-Zero, Princeton Alumni Weekly (Feb. 2021).
[235] *See* Molly Seltzer, Net-Zero America: How state policymakers can use data from Princeton's pioneering study to meet climate goals, Princeton University Alumni, Princeton University (Nov. 8, 2021).
[236] Lee Smith, The Unsentimental Corporate Giver, Fortune (Sept. 21, 1981). ("With relatively few employees and correspondingly little need to support local institutions that employees depend upon, Exxon [could] concentrate its charity on projects remote from immediate concerns, such as interdisciplinary studies at universities.") Exxon's charity program director at the time was Stephen Stamas, who was also on the Harvard Board of Overseers. *Id.*

one Exxon official opined, "With the judges, there's at least a reasonably good chance that they'll be able to see things as they ought to be . . . ."[237]

- The upshot of the funded research was that juries' punitive damage awards in cases that involve "normative judgments" are "arbitrary," "unpredictable," "erratic," and "incoherent," and ought to be replaced with a schedule-based system of fines.[238] One professor called for the total abolishment of punitive damages.[239]
- A comparison of industry-funded law review articles on punitive damages with those supported by universities "found that the former were uniformly critical of punitive damages and jury awards, while the latter overwhelmingly defended them."[240] The same study found that courts cited industry-funded studies more often.[241]

- Funding relationships like these call into question the intellectual independence of academic programming and the balance of perspectives within the academy.
  - According to Robert Brulle, a visiting professor at Brown University, "[T]he financial steering of intellectual inquiry is a big issue. . . . The academy is really dependent on external funding sources, and it drives a certain research agenda. I'm not saying that the people they fund are dishonest or illegitimate. But this has a systematic effect, in that it heightens certain voices and leaves others invisible, or reduces their staying power, within the academy. And so you end up with a biased system."[242]

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[237] Stephanie Mencimer, Blocking the Courthouse Door: How the Republican Party and its Corporate Allies Are Taking Away Your Right to Sue 231 (2006) (quoting Freudenberg notes from conversation with Exxon official). "The authors of the studies have insisted they were given complete autonomy in pursuing their work. One academic who took Exxon money, however, was fired after he produced an article that conflicted with the company's political agenda." *Id*. at 230.

[238] Mencimer at 230; Thomas O. McGarity, A Movement, A Lawsuit, and the Integrity of Sponsored Law and Economics Research, 21(1) Stan. L. & Pol'y Rev. 51, 52, 55-56 (2010); Cass Sunstein, Daniel Kahneman, & David Schkade, Assessing Punitive Damages (With Notes on Cognition and Valuation in Law), 107 Yale L.J. 2071 (1998); Cass Sunstein, Daniel Kahneman, et al, Predictably Incoherent Judgments, 54 Stanford L. Rev. 1153 (2002); Cass R. Sunstein, Reid Hastie, John W. Payne, David A. Schkade, & W. Kip Viscusi, Punitive Damages: How Juries Decide (University of Chicago Press 2002). In Exxon Shipping Co. v. Baker, the U.S. Supreme Court substantially reduced the damage award against Exxon, holding that punitive damages may not exceed actual damages in maritime cases. 554 U.S. 471, 513 (2008). The Court declined to rely on the funded studies but was aware of their existence. *Id.* at 501 n. 17.

[239] McGarity, *supra* at note 238, at 55-56 (citing W. Kip Viscusi, The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts, 87 Geo. L.J. 285 (1998)).

[240] McGarity, *supra* at note 238, at 56 (citing Shireen A. Barday, Note, Punitive Damages, Remunerated Research, and the Legal Profession, 61 Stan. L. Rev. 711, 713 n. 9, app. A (2008)). Beyond power to control research, sponsorship can compromise research integrity by coloring peer evaluation and through the implicit threat of funding termination. *Id.* at 53. McGarity writes, "Since it is normally impossible to know whether a sponsor has in fact determined the outcome of research . . . it may be appropriate to conclude that sponsorship undermines the integrity of sponsored research when the researchers behave as if the sponsor controlled the research." *Id.*

[241] *Id.* at 56.

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

- Princeton's Dean for Research, which administers "sponsored research," publishes scant information about who pays for what.[243] After an op-ed that called for greater transparency in research funding,[244] the University published updated versions of the Annual Report that disclose private and corporate funders by name and provide figures for the value of their total annual funding but do not identify the researchers or the projects they fund.[245] At the time of writing, only reports for 2019, 2020, and 2021 are publicly available.[246]
- In May 2021, Princeton announced a "climate dissociation" process related to its fossil fuel investments.[247] While the policy falls short of acknowledging the full scope of the problem and seems partially intended to justify the decision against full fossil fuel divestment, it nonetheless hints that the University is aware of the pernicious effects of fossil fuel funding within its own research and programs.

- Princeton takes great pride in its informal motto, "In the Nation's Service, and the Service of Humanity," and professes to take its mission of public service very seriously: "The value of service is central to the mission of Princeton as a liberal arts university. It infuses the passions and pursuits of our students, faculty, staff and alumni, and is essential to how Princetonians serve the public good."[248] Continued investment in an industry that undermines scientific knowledge, compromises the integrity of Princeton's own research, and threatens young people's future runs directly contrary to this mission.

X. Divestment by peer institutions

Hundreds of large institutional investors have opted in recent years to divest from fossil fuel producers, including many universities situated similarly to Princeton. Their reasoning applies to Princeton's circumstances as well as their own, and thus the Board has failed to *invest with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.*

- Institutional divestment from the fossil fuel industry has become increasingly common. Many institutions have pointed to the moral and financial imperative of abandoning holdings in oil, gas, and coal, and there is broad consensus that fossil fuel divestment is both necessary and effective as a means of mitigating climate disaster.[249]

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[243] *See* Sponsored Research, Office of the Dean for Research, Princeton University (last visited Feb. 2, 2022) (providing annual reports for the three most recent fiscal years and noting Princeton's "ability to attract a significant and growing amount of external funding").
[244] Tom Taylor, How much is Princeton's contract with Exxon worth? Why does it matter?, The Daily Princetonian (Apr. 11, 2021).
[245] *See* Sponsored Research, *supra* at note 243.
[246] *See id.*
[247] *See* Fossil Fuel Dissociation Process, *supra* at note 401.
[248] In Service of Humanity, Princeton University (last visited Jan. 18, 2022).
[249] *See, e.g.*, How falling demand for oil is set to transform international relations, World Economic Forum (Aug. 20, 2019) (citing the "global campaign in support of divestment from fossil fuels" as one of the key

- Institutional investment in fossil fuel firms "provid[es] [them] with the capital to continue oil and gas production, to persuade members of Congress to provide industry-specific tax breaks and other favors, and to thwart carbon taxes and new public-transportation projects and other policies — actions that ultimately delay the transition from the greenhouse gas-emitting fuels."[250]
- In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is effective in reducing the fossil fuel industry's harmful effects on the climate: "Insofar as they damage companies' reputations for their social responsibility and environmental stewardship, and thus their societal 'license to operate,' divestment efforts pose an additional climate-related risk to oil and gas companies. In 2018, an oil major that competes with ExxonMobil acknowledged that divestment campaigns and related efforts pose a material risk to its business and the price of its securities."[251]
    - The Attorney General was referencing an investor disclosure by Shell, in which the company stated that the divestment movement "could have a material adverse effect on the price of our securities and our ability to access equity capital markets . . . other financial institutions also appear to be considering limiting their exposure to certain fossil fuel projects. Accordingly, our ability to use financing for future projects may be adversely impacted."[252]
    - Other fossil fuel companies have likewise acknowledged the effects of investors' decisions to pull their funds: Prior to its bankruptcy declaration, for example, Peabody Energy stated in SEC filings that "[t]here have also been efforts in recent years affecting the investment community, including investment advisors, sovereign wealth funds, public pension funds, universities and other groups, promoting the divestment of fossil fuel equities and also pressuring lenders to limit funding to companies engaged in the extraction of fossil fuel reserves. The impact of such efforts may adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets."[253]
- In addition to "hasten[ing] the [fossil fuel] industry's decline," divestment commitments from large institutions create pressure on governments to take action and make political space for the shift away from fossil fuels."[254]

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factors in the ongoing energy transition worldwide); Gunther Thallinger, The zero that every investment portfolio needs, World Economic Forum (Jan. 14, 2021) ("To address climate change effectively, investors must steer their entire portfolios towards climate neutrality. . . . [I]t could become necessary to reduce assets with a non-satisfactory sustainability approach. In the extreme case of non-existence of such approaches, divestment is the ultima ratio.").

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

[251] Second Amended Complaint, Massachusetts v. ExxonMobil, *supra* at note 177, at 108-09.

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

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

[254] Emma Howard, A beginner's guide to fossil fuel divestment, The Guardian (Jun. 23, 2015) (quoting Jamie Henn, of 350.org, who explains that institutional divestment commitments "hasten the [fossil fuel] industry's

- Princeton's peer institutions in the Ivy League and elsewhere have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. Such institutions have often chosen divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals. Many of Princeton's peer institutions have also committed to meaningful climate action on a much more rapid timescale.
    - On October18, 2021, Vassar College announced its divestment from fossil fuels.[255]
    - On October 8, 2021, Dartmouth College announced that the Dartmouth Investment Office would let its remaining public investments in the fossil fuel industry expire.[256]
        - The decision was made based on both moral and financial considerations. Dartmouth's statement cited the worsening effects of climate change, saying that the "damaging effects will continue to exacerbate existing threats to global health, nutrition, and biodiversity while also creating new hazards."[257] Dartmouth President Phil Hanlon said the College has noticed "that investments in energy transitions are now comparable or better than the investment opportunities in fossil fuel companies."[258]
    - On October 6, 2021, California State University System, the largest in the US, announced that the system would no longer invest in fossil fuels.[259]
        - The California State University Chancellor said that the move was "consistent with our values" and that "it is an appropriate time to start to transition away from these types of investments, both to further demonstrate our commitment to a sustainable CSU but also to ensure strong future returns on the funds invested by the university."[260]
    - On September 9, 2021, Harvard University divested from fossil fuels.[261]
        - Harvard's President Lawrence Bacow stated: "Given the need to decarbonize the economy and our responsibility as fiduciaries to make long-term investment decisions that support our teaching and research mission, we do not believe such investments are prudent."[262]

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decline and help push governments to take action," while also serving to stigmatise fossil fuel companies in order to "make the space for progress" and reduce those companies' corrupting influence on politics).

[255] Larry Hertz, Vassar Trustees Approve Investment Policy Aimed at Combating Climate Change, Vassar (Oct. 18, 2021).

[256] Office of Communications, Darmouth Taking Formal Steps to Address Climate Crisis, Dartmouth College (Oct. 8, 2021).

[257] *Id.*

[258] Taylor Haber, College formally announces plan to divest from fossil fuels, The Dartmouth (Oct. 8, 2021).

[259] California State University Will Not Make Future Fossil Fuel Investments in University Investment Portfolios and Funds, The California State University (Oct. 6, 2021).

[260] *Id.*

[261] Anemona Hartocollis, Harvard Says It Will Not Invest In Fossil Fuels, The New York Times (Sept. 10, 2021).

[262] Harvard Office of the President, Harvard University (last visited Jan. 27, 2022).

        - President Bacow also noted that "[c]limate change is the most consequential threat facing humanity… without concerted action, this dire situation is only going to get worse."[263]
    - In March 2021, Rutgers, Princeton's neighbor and the state university of New Jersey, announced full divestment.[264]
        - "This decision aligns with Rutgers' mission to advance public health and social justice," said President Jonathan Holloway. "While the university has taken steps recently to limit investments in this area, approving a policy of divestment from fossil fuels is a significant expression of the values of our institution and our broader community."[265]
        - The senior vice president for strategy noted that "The committee carefully considered the concerns of Rutgers community members along with the ethical and fiduciary responsibilities of the investment committee and the boards as we unanimously reached our recommendations."[266]
    - In January 2021, Columbia University announced that it did not hold any direct investments in publicly traded oil and gas companies, and was formalizing this policy of non-investment for the foreseeable future. The university had already divested from thermal coal in 2017.[267] "There is an undeniable obligation binding upon Columbia and other universities to confront the climate crisis across every dimension of our institutions," said Columbia University President Lee C. Bollinger.
    - In March 2020, Brown University made public that it had begun selling its investments in fossil fuel extraction companies in October 2017, arguing that the climate crisis called for serious action beyond teaching and research.
        - "The urgency of the situation calls for additional action," Brown's president Christina Paxson wrote in a letter to the Brown community.[268]
        - Paxson explained the move as aligning with "the view that, as the world shifts to sustainable energy sources, investments in fossil fuels carry too much long-term financial risk."[269]
    - On May 22, 2020, the Cornell University Board of Trustees announced a moratorium on new private investments focused on fossil fuels and a phase-out of existing investments in that area, effectively divesting the endowment from the fossil fuel industry.[270] Like many investors, when Cornell's Trustees announced their moratorium on fossil fuel investments, they cited the

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[263] *Id.*
[264] Dory Devlin, Rutgers to Divest From Fossil Fuels, Rutgers Today (March 9, 2021)
[265] *Id.*
[266] *Id.*
[267] University Announcement on Fossil Fuel Investments, Columbia News (last visited Jan. 27, 2022).
[268] Christina Paxson, Letter from President Paxson: Brown's actions on climate change, Brown University (Mar. 4, 2020).
[269] *Id.*
[270] Kathryn Stamm, Cornell to Effectively Divest from Fossil Fuels, Trustees Vote, Cornell Daily Sun (May 22, 2020).

financial imperative behind their actions: "We're doing the right thing from an investment perspective, particularly for an endowment with a perpetual time horizon" said Ken Miranda, the university's chief investment officer, in a Cornell press release.[271]

- On October 1, 2020, the University of Cambridge announced plans to divest all direct and indirect holdings from the fossil fuel industry and to achieve net-zero greenhouse gas emissions by 2038 — commitments that are more ambitious than Harvard's in both their scope and timescale.[272]
    - As of December 2020, the university had already withdrawn investments in "conventional energy-focused public equity measures," and planned to divest from "all meaningful exposure in fossil fuels" by 2030. It now aims to achieve net-zero greenhouse gas emissions across its entire investment portfolio by 2038 — eight years before Princeton's 2046 deadline.[273]
    - Cambridge's announcement was justified on moral grounds. "The University is responding comprehensively to a pressing environmental and moral need for action with an historic announcement that demonstrates our determination to seek solutions to the climate crisis," said Stephen Toope, the university's vice-chancellor.[274]
    - In addition to leveraging the university's endowment, Cambridge also made clear its continued commitment to research and teaching, emphasizing that all research funding and donations will now be scrutinized against the university's goal of reducing greenhouse gas emissions "before any funding is accepted."[275]
- In April 2020, the University of Oxford announced plans to divest its endowment from fossil fuel companies.[276]
    - Oxford's divestment decision was made in accordance with its Oxford Martin Principles for Climate-Conscious Investment, a set of guidelines that led the university to determine that fossil fuel investments "hinder" worldwide efforts to (1) bring CO2 emissions to zero and (2) limit global warming to 1.5 degrees Celsius.[277]
    - While some universities have insisted on "shareholder engagement" *instead of* divestment, Oxford chose to pursue both strategies, divesting from fossil fuel companies while also pledging to work with companies around the world, "helping them assess whether investments are compatible with transition to a more stable climate and the goals of the Paris Agreement on climate change." Oxford also

[271] James Dean, Cornell announces moratorium on fossil fuel investments, Cornell Chronicle (May 22, 2020).
[272] Matthew Taylor, Cambridge University to divest from fossil fuels by 2030, The Guardian (Oct. 1, 2020).
[273] *Id.*
[274] Cambridge to divest from fossil fuels with 'net zero' plan, University of Cambridge (Oct. 1, 2020).
[275] *Id.*
[276] University of Oxford cuts ties to fossil fuels industry, BBC News (Apr. 28, 2020).
[277] Oxford Martin Principles for Climate-Conscious Investment, Oxford Martin Net Zero Carbon Investment Initiative (Feb. 2018) (adapted from R.J. Millar, C. Hepburn, J. Beddington, J., & M.R. Allen, Principles to guide investment towards a stable climate, 8 Nature Climate Change 2-4 (2018)).

plans to engage with fund managers "to request evidence of net-zero carbon business plans across their portfolios."[278]

        - Oxford's divestment pledge was seen as consistent with the university's academic and teaching mission, and administrators did not see divestment as precluding climate- and sustainability-related research or efforts to promote sustainable campus operations. In fall 2020, months after announcing its divestment pledge, Oxford released drafts of a sustainability plan to achieve net-zero carbon and biodiversity net gain by 2035[279] — eleven years before Princeton committed to neutralizing its greenhouse gas emissions.
    - In February 2020, Georgetown University announced the divestment of its endowment from all public and private fossil fuel assets.[280]
        - In its announcement, Georgetown stressed the financial risk of continued investment, with Michael Barry, Georgetown's chief investment officer, noting that "climate change, in addition to threatening our planet, is increasing the risk of investing in oil and gas companies, as we expect a more volatile range of financial outcomes."[281]
        - Georgetown President John J. DeGioia also identified moral concerns as important to the decision, noting that "caring for our environment is one of the most urgent moral and practical concerns of our time."[282]
    - In September 2019, the University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels.[283]
        - In an op-ed in the Los Angeles Times, fund managers cited their fiduciary duty to the long-term financial wellbeing of the institution, writing that "[t]he reason we sold some $150 million in fossil fuel assets from our endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC's diversified portfolios."[284]
        - The fund managers also pledged to take the opportunity to reinvest in climate change solutions, writing that "[w]e have been looking years, decades and centuries ahead as we place our bets that clean energy will fuel the world's future. That means we believe there is money to be made."[285]
- Aside from peer universities, many other large-scale charitable funds with analogous fiduciary duties have divested.

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[278] Oxford announces historic commitment to fossil fuel divestment, University of Oxford (Apr. 27, 2020).
[279] Aiming for zero carbon and biodiversity net gain by 2035, University of Oxford (Nov. 20, 2020).
[280] Fossil Fuels Divestment Continues Georgetown's Commitment to Sustainability, Georgetown University (Feb. 6, 2020).
[281] *Id.*
[282] *Id.*
[283] Jagdeep Singh Baccher & Richard Sherman, Opinion: UC investments are going fossil free. But not exactly for the reasons you may think, The Los Angeles Times (Sept. 17, 2019).
[284] *Id.*
[285] *Id.*

- Pension funds that have divested from fossil fuels include the California Public Employees' Retirement System (coal), the California State Teachers' Retirement System (coal), the country of Ireland, the New York City Employees Retirement System, the New York State Common Retirement Fund, the Teachers Retirement System of the City of New York, and the City of Providence, Rhode Island (partial).[286] In September 2021 the Caisse de dépôt et placement du Québec — Canada's second-biggest pension fund at 310 billion dollars— announced it was divesting from oil production investments by the end of 2022.[287]
- In the fall of 2021, two of America's largest and most prestigious foundations announced their divestment from fossil fuels. The MacArthur Foundation announced that it was divesting from fossil fuels, citing a number of reasons including fiduciary duty.[288] Shortly after, the Ford Foundation announced it was divesting its thirteen billion dollar endowment from fossil fuels.[289] The foundation president apologized for not having divested sooner.[290]
- Other major funds that have divested include the five-billion-dollar Rockefeller Foundation,[291] Norway's 1.1 trillion dollar sovereign wealth fund (oil and gas exploration and production)[292] and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).[293]

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

Almost one-third of the members of Princeton's Board of Trustees maintain significant, publicly known professional or financial ties to the fossil fuel industry. These apparent conflicts of interest violate the Board's *duty of loyalty* because fossil fuel companies' business models are in fundamental tension with Princeton's espoused values and commitment to decarbonization.

- Josh Bolten '76 (Term Trustee 2018-2022) has been president and CEO of the Business Roundtable since 2017.[294] The members of this organization are chief executive officers of major United States companies, including major oil and gas companies.[295] Bolten is also a director of Emerson Electric,[296] which supplies fossil fuel companies, and a member of the BP International Advisory Board.[297]

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[286] 1000+ Divestment Commitments, GoFossilFree.org (updated Dec. 9, 2020).
[287] CDPQ announces its new climate strategy, Caisse de dépôt et placement du Québec (Sept. 28, 2021).
[288] Our Approach toAchieving Impact with Investment Assets, MacArthur Foundation (Sept. 22, 2021).
[289] Darren Walker, Aligning our investments and our value, Ford Foundation (October 18, 2021).
[290] InvestDivest 2021 Event Video, DivestInvest (last visited Jan. 27, 2022).
[291] *Id.*
[292] Terje Solsvik, Norway sovereign wealth fund to divest oil explorers, keep refiners, Reuters (Oct. 1, 2019).
[293] Jillian Ambrose, Major investment firm dumps Exxon, Chevron and Rio Tinto stock, The Guardian (Aug. 24, 2020).
[294] Leadership and Administration: Joshua Bolten, Business Roundtable, (last visited Nov. 18, 2021).
[295] Members, Business Roundtable (last visited Nov. 18, 2021).
[296] Board of Directors: Independent Directors, Emerson Electric Co. (last visited Nov. 19, 2021).
[297] Carl-Henric Svanberg, The Board and its work at 5, BP (last visited Feb. 11, 2022).

- Blair Effron '84 (Term Trustee 2016-2020, Charter Trustee 2021-2029) is the son of James W. Effron '53,[298] former president of family-owned Effron Oil, a fossil fuel distribution company.[299] Blair Effron is a co-founder Centerview Partners,[300] an international investment banking and advisory firm that serves fossil fuel companies.[301] He is a major donor to Princeton[302] and co-chair of a major fundraising campaign called Venture Forward.[303]
- Amy Alving '88 (Alumni Trustee 2019-2023) is a director of the DXC Technology Company,[304] a supplier to the oil and gas industry.[305]
- Pete Briger '86 (Term Trustee 2020-2024) is the Founder and Co-Chief Executive Officer of Fortress Investment Group.[306] This group owns New Fortress Energy,[307] a provider of natural gas, and has a limited partner interest in Red Rocks Energy Partners, which owns and develops oil and gas assets in Oklahoma.[308] Fortress Investment Group also manages Fortress Transportation and Infrastructure,[309] which owns infrastructure and equipment for the energy industry, including off-shore energy assets,[310] a multi-modal crude oil and refined products terminal in Beaumont, Texas;[311] Long Ridge Energy Terminal, which includes a gas fired power plant and natural gas liquids storage;[312] and Repauno Port & Rail Terminal along the Delaware River in Greenwich Township, New Jersey, which is designed to handle fossil fuel products.[313] Briger is a major donor to Princeton.[314]
- Sumir Chadha '93 (Term Trustee 2019-2023) is Managing Director of WestBridge Capital.[315] Westbridge Capital owns companies that supply and/or depend on the

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[298] Memorial: James Wilbur Effron, Princeton Alumni Weekly (last visited Jan. 26, 2022).
[299] Paid Notice: Deaths Effron, James W. The New York Times (July 26, 2005).
[300] Welcome to Centerview Partners, Centerview Partners (last visited Jan. 26, 2022).
[301] Transactions, Centerview Partners (last visited Jan. 26, 2022).
[302] *See, e.g.,* Marie-Rose Sheinerman & Sam Kagan, Gift from Princeton trustee Effron '84 allows mass expansion of American Studies program, The Daily Princetonian (Dec. 2, 202).
[303] Effron Center for the Study of America established at Princeton through a major gift to the Venture Forward campaign, Princeton University (last visited Jan. 26, 2022).
[304] Leadership and Governance, DXC Technology (last visited Jan. 26, 2022).
[305] Industries: Energy, Utilities, Oil and Gas, DXC Technology (last visited Jan. 26, 2022).
[306] Leadership, Fortress (last visited Feb. 11, 2022).
[307] Select Investments: Energy & Infrastructure, Fortress (last visited Jan. 26, 2022).
[308] Fortress Announces Acquisition of Limited Partner Interest in Red Rocks Energy Partners, Fortress (last visited Jan. 26, 2022).
[309] Investment Portfolio: Infrastructure, Fortress Transportation and Infrastructure (last visited Jan. 26, 2022).
[310] Investment Portfolio: Offshore Energy Assets, Fortress Transportation and Infrastructure (last visited Jan. 26, 2022).
[311] Investment Portfolio: Jefferson Terminal, Fortress Transportation and Infrastructure (last visited Jan. 26, 2022).
[312] Investment Portfolio: Long Ridge Energy Terminal, Fortress Transportation and Infrastructure (last visited Jan. 26, 2022).
[313] Investment Portfolio: Repauno Port and Rail Terminal, Fortress Transportation and Infrastructure (last visited Jan. 26, 2022).
[314] A Gift From Alumni Supports Princeton Entrepreneurship, Princeton University Alumni (last visited Jan. 26, 2022).
[315] Advisory Team, Westbridge Capital (last visited Jan. 26, 2022).

fossil fuel industry, including Cognizant, The Supreme Industries Ltd., Stovekraft, and KMC Construction.[316] Chadha is a major donor to Princeton.[317]

- Paul G. Haaga Jr. '70 (Charter Trustee 2014-2022) is the Former Chair of the Capital Research and Management Company, a wholly owned subsidiary of The Capital Group Companies Inc. The Capital Group is heavily invested in fossil fuel companies, including ExxonMobil, Chevron, Shell, Occidental Petroleum, Valero, and Chesapeake Energy.[318] Haaga is currently a donor and National Council Co-chair of the American Enterprise Institute,[319] an organization that promotes climate denial and has regularly received funding from the fossil fuel industry.[320] He is a donor and former member of the Board of Overseers of the Hoover Institution, which also promotes climate denial.[321] Haaga is a major donor to Princeton.[322]
- Philip Hammarskjold '87 (Charter Trustee 2016-2024, Vice-Chair of the Board, and Former Chair of PRINCO) is the Executive Chair of Hellman & Friedman LLC, where he helps lead the Energy and Industrials Sector.[323] This division invests in companies that supply or depend upon the fossil fuel industry.[324]
- C. James Yeh '87 (Term Trustee 2010-2014, Charter Trustee 2015-2023, Chair of the Finance Committee, and PRINCO Board member) was, until 2021, President and Co-Chief Investment Officer of Citadel Investment Group for twenty-five years.[325] Citadel invests in the energy sector, focusing on commodities such as natural gas, crude, and refined products.[326] Yeh is also a Venture Forward campaign steering committee co-chair.[327]
- Timothy Kingston '87 (Charter Trustee 2021-2029 and the Former Chair of Annual Giving) is the Country Head of Goldman Sachs Chile.[328] In this capacity, he co-leads the investment banking business across the Andean Region, which includes Argentina, Chile, Colombia and Peru.[329] Goldman Sachs is the fifteenth largest funder of the oil and gas industry globally.[330]

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[316] Companies, Westbridge Capital (last visited Jan 26, 2022).
[317] Pat Coen, M.S. Chadha Center for Global India established at Princeton, Princeton University (Feb. 26, 2018).
[318] *See* Fund Holdings Search, Capital Group (last visited Jan. 26, 2022). Company names were identified using search function.
[319] National Council, American Enterprise Institute (last visited Jan. 26, 2022).
[320] Steven F. Hayward, In Denial, American Enterprise Institute (Mar. 15, 2020).
[321] Robert J. Brulle, *Institutionalizing Delay: Foundation Funding and the Creation of U.S. Climate Change Counter-Movement Organizations*, 122 Climatic Change 681 at 12 (2014).
[322] Donors Endow the Heather and Paul G. Haaga Jr., Class of 1970, Curatorship At Princeton University Art Museum; Laura M. Giles Appointed, Princeton University Art Museum (last visited Jan. 26, 2022).
[323] People: Phillip Hammarskjold, Hellman & Friedman (last visited Jan 26, 2022).
[324] Portfolio, Hellman & Friedman (last visited Jan. 26, 2022).
[325] James Yeh to Retire After Distinguished 25-Year Career with Citadel. Pablo Salame Named Co-Chief Investment Officer, Citadel (last visited Jan. 26, 2022).
[326] Strategies for a range of market opportunities, Citadel (last visited Jan. 26, 2022).
[327] Princeton launches Venture Forward, an engagement and fundraising campaign that supports the University's strategic plan, Princeton University Alumni (last visited Jan. 26, 2022).
[328] Nine elected to Princeton Board of Trustees, Princeton University (last visited Jan. 26, 2022).
[329] Timothy M. Kingston, TechnoServe (last visited Jan. 26, 2022).
[330] Rainforest Action Network, Bank Track, Indigenous Environmental Network, Oil Change International, Reclaim Finance, & Sierra Club, Banking on Climate Chaos: Fossil Fuel Finance Report 2021 at 4 (Mar. 2021).

- Elizabeth Myers '92 is a Term Trustee (2021-2025). She is a Managing Director and Global Chair of Investment Banking, Equity Capital Markets at J.P. Morgan, where she has worked for twenty-seven years.[331] Myers began in 1992 in the mining and metals group in corporate finance at J.P. Morgan.[332] JPMorgan Chase contributes more money towards fossil fuel industries than any other bank in the world.[333]

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

The Trustees have failed to act in *good faith* or with *due care* by ignoring repeated efforts by Princeton students and faculty to align the university's investment practices with its charitable mission. Members of the Princeton community have consistently argued that investment in fossil fuels is inconsistent with the university's values and with its mission as a public charity, research center, and institution of higher education.

- Since 2013, groups of students, alumni, staff and faculty have urged Princeton to divest from fossil fuels. Since 2019, these initiatives have been under the umbrella of a group called Divest Princeton.[334]
- On February 26, 2013, Students United for a Responsible Global Environment (SURGE) circulated a petition for Princeton to divest its fossil fuel holdings,[335] gathering 576 signatures by October 2013.[336]
- On October 2, 2013, SURGE co-sponsored a panel on "Energy, the Environment, and Endowment Investing" at The Princeton Association of New York City.[337] David Crane '81, CEO of NRG Energy, Professor Michael Oppenheimer, Professor Peter Singer, and Randall A. Hack '72, former PRINCO president, spoke; Carl Ferenbach '63 served as the moderator.[338]
- In the spring of 2014, a group specifically formed to promote fossil fuel divestment, Princeton Sustainable Investment Initiative (PSII), developed a proposal to incorporate environmental responsibility into the University's management of the endowment and began a campaign around this issue.[339] The proposal included fossil fuel divestment.[340]
- On September 21, 2014, SURGE and PSII organized the attendance of over 100 students, alumni, and faculty at the People's Climate March in NYC.[341]

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[331] Nine elected to Princeton Board of Trustees, Princeton University (last visited Jan. 26, 2022).
[332] Julia La Roche, One of the most powerful women on Wall Street leads a team that has generated $1 Billion in fees this year – here's her story, Business Insider (Sept. 10, 2015).
[333] David Vetter, JPMorgan Chase Tops Dirty List of 35 Fossil Fuel - Funding Banks, Forbes (Mar. 18, 2020).
[334] Princeton Sustainable Investment Initiative, Divest Princeton, Facebook.com (Oct. 23, 2019).
[335] SURGE to petition for divestment, The Daily Princetonian (last visited Nov. 22, 2021).
[336] SURGE powers ahead with efforts to raise awareness about fossil fuel divestment, The Daily Princetonian (Oct. 9, 2013).
[337] Singer, Oppenheimer, others discuss fossil fuel divestment at NYC panel, The Daily Princetonian (Oct. 3, 2013).
[338] *Id.*
[339] Marc Fleurbaey, PSII Response Final, Princeton University (May 1, 2015).
[340] *Id.*
[341] Katie Bauman, Even Princeton, The Daily Princetonian (Sept. 24, 2014).

- On December 10, 2014, Princeton Sustainable Investment Initiative (PSII) submitted a formal proposal to the Council of the Princeton University Community (CPUC) Resources Committee.[342] This proposal ultimately gathered over 1,600 signatures from the Princeton community as well as endorsements by eighteen campus groups.[343]
- On February 13, 2015, PSII celebrated Global Divestment Day with activities on campus.[344]
- On March 3, 2015, PSII members met with the Resources Committee.[345]
- On April 15th, 2015, in response to a letter from the Resources Committee Chair Marc Fleurbaey, President Eisgruber spelled out his opposition to divestment from fossil fuel companies.[346]
- On May 1, 2015, the Resources Committee declined to recommend divestment to the Princeton University Board of Trustees.[347]
    - The Committee also rejected PSII's proposal to report the carbon footprint of the endowment on the grounds that there was no standard for calculating it.[348]
    - The Committee also rejected PSII's proposal for a committee to develop sustainable investment guidelines on the grounds that investment policies must be made by the Trustees alone.[349]
- On May 4, 2015, students rose in silent protest as Chair Fleurbaey announced the Resources Committee decision at a CPUC meeting.[350]
- On March 10, 2016, PSII launched a new divestment petition, which garnered over 500 signatures.[351]
- On March 24, 2016, PSII developed a new proposal for University divestment from fossil fuels and accompanied it with a new op-ed in The Daily Princetonian.[352]
- On March 28, 2016, PSII co-sponsored a Whig-Clio Senate Debate on the merits of fossil fuel divestment, and the pro-divestment side won.[353]
- In April 2019, ninety-five percent of undergraduates voting in the Princeton University Undergraduate Student Government Election voted in favor of quantifying Scope III emissions as a step to meeting the university's 2046 carbon neutrality goal.[354]

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[342] Princeton University Sustainable Investment Proposal, Princeton Sustainable Investment Initiative (last visited Dec. 3, 2021).
[343] Princeton Sustainable Investment Initiative Endorsements, on file with Divest Princeton (last visited Dec. 27, 2021).
[344] Princeton Sustainable Investment Initiative, Global Divestment Day Post, Facebook.com (Feb. 13, 2015).
[345] Princeton Sustainable Investment Initiative, Facebook.com (Mar. 3, 2015).
[346] Marc Fleurbaey, Letter to Christopher Eisgruber, Divest Princeton (Mar. 17, 2015).
[347] Fleurbaey, PSII Response Final, *supra* at note 339.
[348] *Id.*
[349] *Id.*
[350] Investment Plan Rejected, Princeton Alumni Weekly (June 3, 2015).
[351] Marcia Brown, Princeton Sustainable Investment Initiative releases petition for divestment, The Daily Princetonian (Mar. 21, 2016).
[352] Cleaning Up Our Investments: The Case for Fossil Fuel Divestment, The Daily Princetonian (Mar. 24, 2016).
[353] Whig-Clio Fossil Fuel Divestment Debate 3/30/16, Princeton University Energy Association (last visited Nov. 22, 2021).
[354] Referendum Question No. 1, Princeton University Undergraduate Student Government Election–Spring 2019 (Mar. 24, 2019).

- On September 20, 2019, over 600 Princeton students, faculty, and community members participated in a climate strike.[355] Participants rallied in Hinds Plaza and marched across campus to stand in solidarity with protesters around the world, demanding immediate and just action on the climate crisis.[356]
- On October 20, 2019, Divest Princeton released an open letter to President Eisgruber, titled "No Donations Until Divestment."[357] Over 900 current and future alumni, faculty, and other members of the Princeton community quickly signed on.
- On October 24, 2019, Divest Princeton protested during President Eisgruber's opening address at the Princeton Environmental Forum,[358] which set the tone for the two days of panels by putting divestment on the agenda.[359] On February 13, 2020 (Fossil Fuel Divestment Day), Divest Princeton submitted a proposal for divestment to the Resources Committee.[360]
    - Divest Princeton members read the proposal aloud in front of Frist Center before marching to Nassau Hall.[361]
    - This protest joined those of peers at nearly sixty universities, all protesting university investments in fossil fuel companies.[362]
- At Princeton's annual Alumni Weekend in February 2020, Divest Princeton students presented the divestment proposal and answered questions.[363] Alumni shared their reasons for supporting divestment and signed up to join the campaign.[364]
- In March 2020, the Resources Committee met for its initial review of Divest Princeton's proposal for divestment.[365]
- On April 28, 2020, Divest Princeton launched its website. Within days, 100 more Princetonians pledged to withhold donations until Princeton divests from fossil fuels.
- On May 1, 2020, the Resources Committee met privately to discuss the divestment proposal and decided that it would "meet with members of Divest Princeton, and continue meeting as a committee over the summer."[366]
- On May 4, 2020, the CPUC held a public meeting in which the Chair of the Resources Committee, Professor Blair Schoene (Geosciences), reported that the committee's review of the divestment proposal was still in the beginning stages and outlined next steps.[367] Students and alumni asked questions concerning why Princeton had previously decided to divest from companies operating in apartheid

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[355] Rose Gilbert, Hundreds take part in Climate Strike protest, The Daily Princetonian (Sept. 22, 2019).
[356] *Id.*
[357] Open Letter, Divest Princeton (last visited Jan. 11, 2022).
[358] Charles Wohlforth, PEI Celebrates 25 Years: Princeton's Hub of Environmental Studies Surveys the Global Challenges Ahead, Princeton Alumni Weekly (Dec. 4, 2019).
[359] *Id.*
[360] Our Proposal, Divest Princeton (Feb. 13, 2020).
[361] Rooya Rahin, Divest Princeton student activists deliver CPUC proposal on steps of Nassau Hall, The Daily Princetonian (Feb. 13, 2020).
[362] Divest Ed, Fossil Fuel Divestment Day 2020 Recap, Facebook.com (Feb. 17, 2020).
[363] Ryan Warsing, Divest Princeton - Alumni Weekend 2020 (Full Video), YouTube.com (May 12, 2020).
[364] *Id.*
[365] May 4 Slides, Divest Princeton (last visited Nov. 22, 2020).
[366] *Id.*
[367] *Id.*

South Africa and Darfur and why the Committee did not consider remaining invested in fossil fuels a political act.[368]

- On May 29, 2020, Divest Princeton hosted a virtual conversation about Princeton's duty to divest from fossil fuels during the University's online Reunions. Speakers included Bob Massie '78, Rebecca Goldburg '80, and Anna Liebowitz '09.[369]
- In May 2020, the Resources Committee shared a report summarizing their 2019-2020 activities.[370]
- On June 29, 2020, after Divest Princeton made multiple requests for a meeting, the Resources Committee met with Divest Princeton.[371]
- On July 9, 2020 Divest Princeton hosted a virtual conversation with Dr. Benjamin Franta about fossil fuel-funded research at universities and disinformation.[372] The context for this discussion was the renewal of the partnership between ExxonMobil and Princeton's Andlinger Center for Energy and the Environment.[373]
- On July 15, 2020, Divest Princeton hosted a conversation with Stephen Heintz, President and CEO of the philanthropic Rockefeller Brothers Fund, to discuss the Fund's evolution from oil money repository to model of fossil fuel divestment.[374] Since the Fund's decision to divest in 2014, it has surpassed expectations with its increasingly sustainable investment portfolio.[375]
- On July 29, 2020, Divest Princeton had a follow up meeting with the Resources Committee.[376]
- In fall 2020, Divest Princeton hosted conversations with climate activists including author and divestment activist Bill McKibben.[377]
- On November 23, 2020 The Editorial Board of *The Daily Princetonian* endorsed divestment from fossil fuels.[378]
- In November 2020, the University Student Government (USG) Referendum on divestment from fossil fuels passed with eighty-two percent of the vote.[379] Seventeen of the nineteen USG candidates endorsed divestment.[380]
- In December 2020, the number of signatories of the open letter to President Eisgruber urging divestment and pledging to withhold donations surpassed 2000, including over 1000 alumni.[381] Over forty campus organizations and over sixty faculty and staff had publicly endorsed the campaign.[382]

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[368] Campaign Timeline, Divest Princeton (last visited Jan. 19, 2022).
[369] Cornell, Brown, and UC Have Done It: Why Can't We?, Facebook.com (last visited Nov. 30, 2021).
[370] Resource Committee Reports, Princeton University (last visited Nov. 23, 2021).
[371] CPUC Resources Committee Dissociation Recommendations Report, Princeton University (May 10, 2021).
[372] Divest Princeton, Oil Money Runs Deep: A Talk With Ben Franta, Facebook.com (July 9, 2020).
[373] Molly Seltzer, Andlinger Center and Exxonmobil Renew Agreement to Advance Clean Energy Technologies and Transition, Andlinger Center for Energy and the Environment (July 2, 2020).
[374] A New Standard for Standard Oil, Facebook.com (last visited Nov. 20, 2021).
[375] *Id.*
[376] Campaign Timeline, *supra* at note 368.
[377] Divest Princeton, Bill McKibben: The Right Side of the Future, YouTube.com (Nov. 16, 2020).
[378] Daily Princetonian Editorial Board, Editorial Board: Vote yes on both referenda, The Daily Princetonian (Nov. 23, 2020).
[379] USG Referendum, Divest Princeton (last visited Nov. 23, 2021).
[380] *Id.*
[381] Open Letter, Divest Princeton (last visited Jan. 19, 2022).
[382] *Id.*

- In January 2020, Divest Princeton co-coordinator Anna Hiltner '23 discussed the intersections of black activism and environmentalism on the Orange Table podcast.[383]
- In February 2021, Divest Princeton was endorsed by Oregon Senator Jeff Merkley '82, Canadian Green Party Leader Annamie Paul '01, and Maryland Rep. John Sarbanes '84.[384]
- In February 2021, *The Daily Princetonian* published a three part series by guest contributors from Divest Princeton about donations and power at Princeton.[385]
- On February 10, 2021, author Anand Giridharadas spoke at the Princeton School of Public and International Affairs.[386] In response to a question from Divest Princeton, Giradharadas said, "It's particularly egregious, then, when institutions in that place don't exert power. I think what a lot of these (divestment campaigners) are raising is: if not a Harvard, or a Yale, or a Princeton, then who?"[387]
- On February 23, 2021, Divest Princeton hosted a presentation entitled "Why Divesting is a Good Investment Strategy" featuring three alumni speakers.[388]
- On March 22, 2021, at a Council of the Princeton University Community meeting, the Resources Committee presented its preliminary findings with recommendations to be delivered on May 3 at the next CPUC meeting.[389]
- On April 24, 2021, Divest Princeton hosted a socially distanced rally on campus.[390]
- On May 3, 2021, the Resources Committee presented its recommendations to the CPUC.[391]
- On May 10, 2021, the CPUC Resources Committee published the report it sent to the Trustees.[392]
- On May 27, 2021, the Board of Trustees announced its decision to move ahead with "selective dissociation" and the creation of a new committee.[393] The Board did not provide a timeline for this process.
- On May 28, 2021, Divest Princeton published a critical response to the decision.[394]
- On June 23, 2021, Divest Princeton asked the administration a series of questions about the next steps and asked to be involved in this new phase for which there is no procedure on the CPUC website.[395]

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[383] Divest Princeton, Exxon Mobil, and the Intersectionality of Environmentalism, The Orange Table (Jan. 17, 2021).
[384] Endorsements, Divest Princeton (last visited Nov. 30, 2021).
[385] Lynne Archibald, Naomi Cohen-Shields, Joseph Giguere, Alex Nguyen, & Tom Taylor, Princeton's Donors Fund Climate Denial, The Daily Princetonian (last visited Nov. 30, 2021).
[386] The Coming Age of Reform: What Does Real Change Look Like?, Princeton School of Public and International Affairs (Feb. 10, 2021).
[387] *Id.*
[388] Divest Princeton, Why Divesting is a Good Investment, Youtube.com (Feb. 24, 2021).
[389] CPUC March 2021, Divest Princeton (last visited Nov. 30, 2021).
[390] Rallies on campus, Divest Princeton (last visited Jan. 19, 2022).
[391] BoT Announcement May 2021, Divest Princeton (last visited Nov. 23, 2021).
[392] CPUC Resources Committee Dissociation Recommendations Report, *supra* at note 371.
[393] Denise Valenti, Princeton University widens net-zero goals and lays out dissociation process to advance action on climate change, Princeton University (May 27, 2021).
[394] Divest Princeton Statement, Divest Princeton (May 28, 2021).
[395] Divest Princeton Follow Up to BoT Announcement, Divest Princeton (June 23, 2021).

- On June 29, 2021, the administration responded: "The administrative process to implement the dissociation actions approved by the Board of Trustees will be expert driven and accountable to the Board. Members of the Princeton community, including Divest Princeton, can remain engaged and updated on the process and its progress through the CPUC."[396]
- On September 1, 2021, as the remnants of Hurricane Ida moved into the northeast, students and staff on campus were told to shelter in basements because of tornado warnings.[397] Basements around campus flooded, as was predicted by the flash flooding warnings.[398] At least twenty-five people in New Jersey were killed.[399]
- On September 20, 2021, at a CPUC meeting for which the agenda included an "[u]pdate on principles and process to govern dissociation," the Faculty panel was announced.[400] The panel will give recommendations to another new committee which will then report back to the Trustees.[401]
- On September 24, 2021 Divest Princeton and students at Princeton High School hosted a Global Climate Strike and Divestment Rally in front of Nassau Hall.[402]
- On October 27, 2021, Princeton's Andlinger Center for Energy and the Environment invited its parner ExxonMobil, along with Dow and Occidental Petroleum, to speak at their annual conference.[403] Divest Princeton protested outside and asked questions that went unanswered inside.[404]
- On October 27, 2021, Divest Princeton's Hannah Reynolds '22 published an op ed calling for divestment in *The Nation*.[405]
- As of January 2022, Divest Princeton's Open Letter has been signed by more than 3000 Princetonians,[406] making it the third-largest petition in Princeton's history.[407]

Despite strong support for fossil fuel divestment among members of the Princeton community, Princeton's leaders have refused to engage with the question in good faith.

- Princeton's stated commitment to partial divestment fails to satisfy its fiduciary obligations or to meaningfully engage with the concerns of divestment campaigners.
    - On May 27, 2021, the Board of Trustees authorized an "administrative process for dissociating from companies engaged in climate disinformation campaigns or that are involved in the thermal coal and tar sands segments of

[396] James Matteo, Response to Divest Princeton, Divest Princeton (June 29, 2021).
[397] Andrew Somerville, Campus buildings flood, students take shelter amid tornado warning, The Daily Princetonian (Sept. 1, 2021).
[398] *Id.*
[399] Jeffrey Mays, As Ida Deaths Rise, N.Y. Leaders Look Toward Future Storms, The New York Times (Sept. 3, 2021).
[400] Council of the Princeton University Community, Princeton University (Sept. 20, 2021).
[401] Fossil Fuel Dissociation Process, Princeton University (last visited Nov. 23, 2021).
[402] Rallies on campus, *supra* at note 390.
[403] *Id.*
[404] *Id.*
[405] Hannah Reynolds, What Will It Take for Princeton to Finally Take Bold Climate Action?, The Nation (Oct. 27, 2021).
[406] Open Letter, Divest Princeton (last visited Feb. 1, 2022).
[407] Princeton Petition History, Princeton University (last visited Feb. 1, 2022).

the fossil fuel industry."[408] On September 20, 2021, the Board announced the creation of a faculty panel and a new administrative committee which "will use the panel's findings to propose to the Board of Trustees a set of actionable criteria for dissociation and a process for implementing them, now and in the future."[409]

  - However, the Board specified that "[t]he criteria to dissociate will be based on current and prospective actions of companies in the fossil fuel industry, rather than past actions.[410] While "current or prospective actions" would seem to make sense as a criterion for dissociation, in practice it falls short, since climate disinformation from the fossil fuel industry is never announced or acknowledged. Even when caught red-handed, fossil fuel companies deny responsibility for disinformation.[411]
  - Fossil fuel companies continuously create new strategies for disinformation. For example, companies such as ExxonMobil now use "paltering" in which "[N]o individual sentence [is] 100 percent false, but together they [create] a misleading impression of the company and its climate efforts."[412]
  - By including an exemption from dissociation for companies "that can prove they can meet a rigorous standard for greenhouse gas emissions," the Trustees have created a back door for companies to evade the dissociation process.[413]
  - As of the time of this filing, Princeton University is still invested in companies engaged in climate disinformation campaigns and in coal and tar sands companies. Furthermore, even if they were carried out, these partial measures fail to satisfy Princeton's fiduciary obligations.
- Divest Princeton has never been permitted to formally meet with the President or the Trustees.
  - Four months after Divest Princeton submitted its proposal, it met with the Resources Committee for the first time.[414] The Committee made its recommendations in May 2021.[415] The Trustees debated for a month. It took a further three months for the new panel and committee to be created.[416]
  - Now, nearly two years after Divest Princeton began the process with its divestment proposal, Divest Princeton members, students and alumni have been denied a seat at the table. None of the following new bodies include students, alumni, or Divest Princeton members: the two committees tasked with studying divestment; the Faculty Panel on Dissociation Metrics, Principles, and Standards; and the Administrative Committee.[417]

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[408] Valenti, Princeton University widens net-zero goals and lays out dissociation process to advance action on climate change, *supra* at note 393.
[409] *See* Fossil Fuel Dissociation Process, *supra* at note 401.
[410] *See* Valenti, Princeton University widens net-zero goals, *supra* at note 393.
[411] Jeff Brady, Exxon Lobbyist Caught On Video Talking About Undermining Biden's Climate Push, NPR (July 1, 2021).
[412] Emily Atkin, How Exxon duped "The Daily," Heated.world (Nov. 17, 2021).
[413] Jocelyn Timperley, The truth behind corporate climate pledges, The Guardian (July 26, 2021).
[414] *See* CPUC Resources Committee Dissociation Recommendations Report, *supra* at note 371.
[415] *Id.*
[416] *See* Fossil Fuel Dissociation Process, *supra* at note 401.
[417] *Id.*

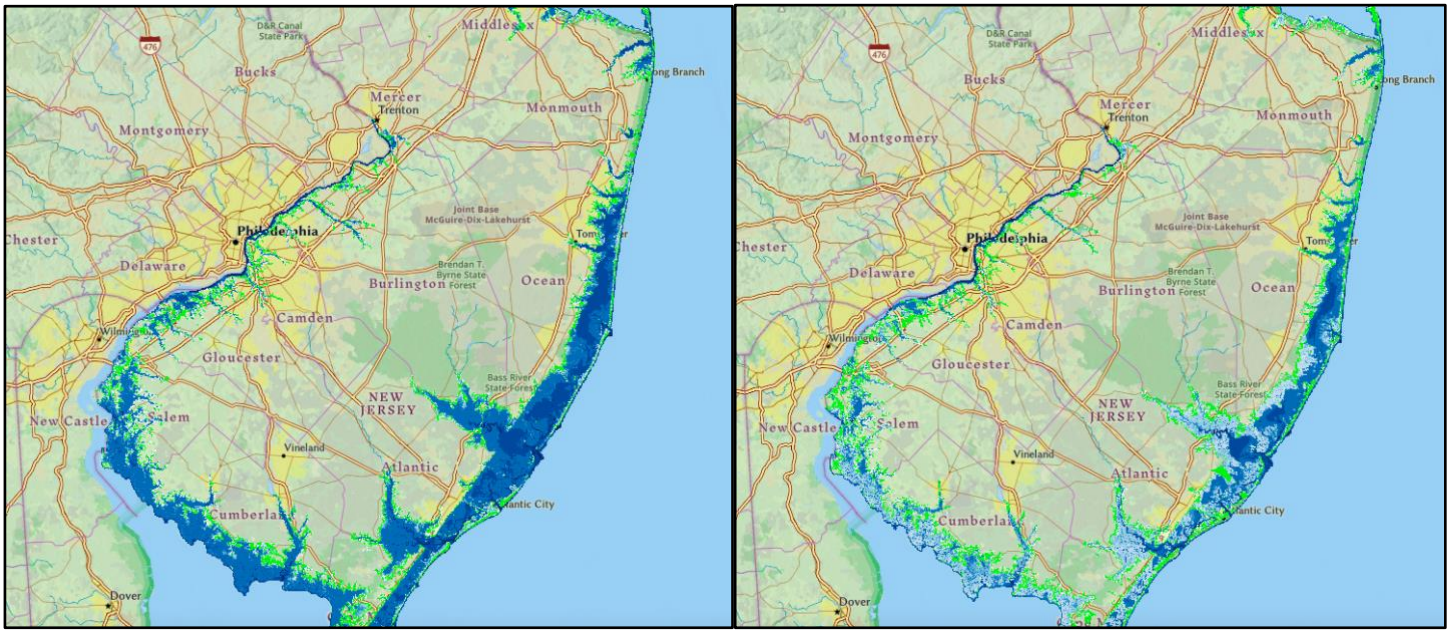
- The original guidelines on divestment do not include these bodies,[418] so the choice to exclude all students, alumni and Divest Princeton members was made by the President.[419] At the CPUC meeting on November 8th, 2021, President Eisgruber confirmed that he had chosen the committee members himself.

Conclusion

The Division of Consumer Affairs is responsible for ensuring that charitable assets are allocated appropriately and for investigating charitable managers' violations of fiduciary duties. We ask that you investigate the violations described above and that you take action to ensure that the investment activity of the Board no longer harms the Princeton community, the State of New Jersey, or the public.

[418] Guidelines for Resources Committee Consideration of Investment-Driven "Social Responsibility" Issues, Princeton University (last visited Nov. 23, 2021).
[419] Lia Opperman, CPUC discusses dissociation, COVID updates, Diversity, Equity, and Inclusion Report, The Daily Princetonian (Nov. 9, 2021).

Appendix A



Simulated map of the southern half of New Jersey with six feet (left) and two feet (right) of sea level rise. Source: New Jersey Flood Mapper (last visited Feb. 15, 2022).

Appendix B

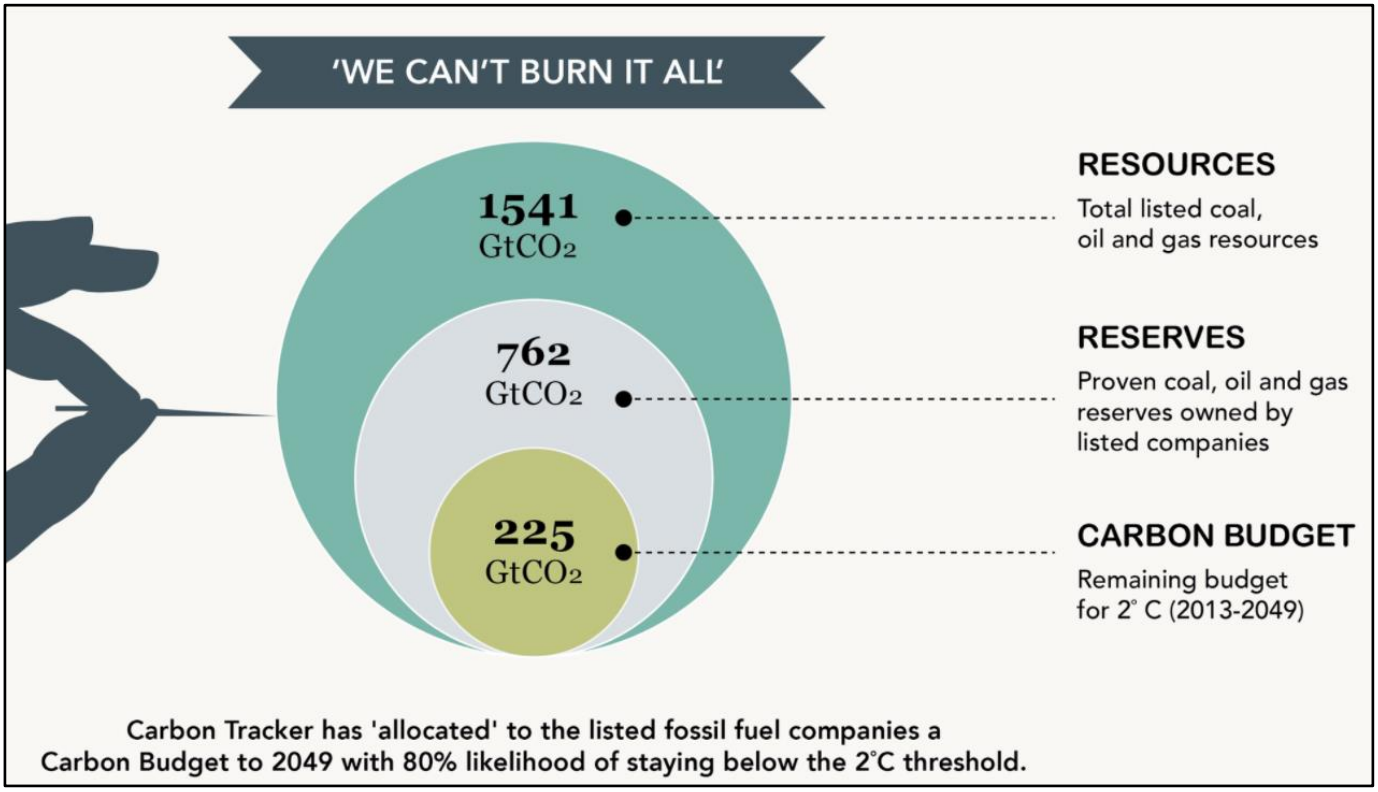


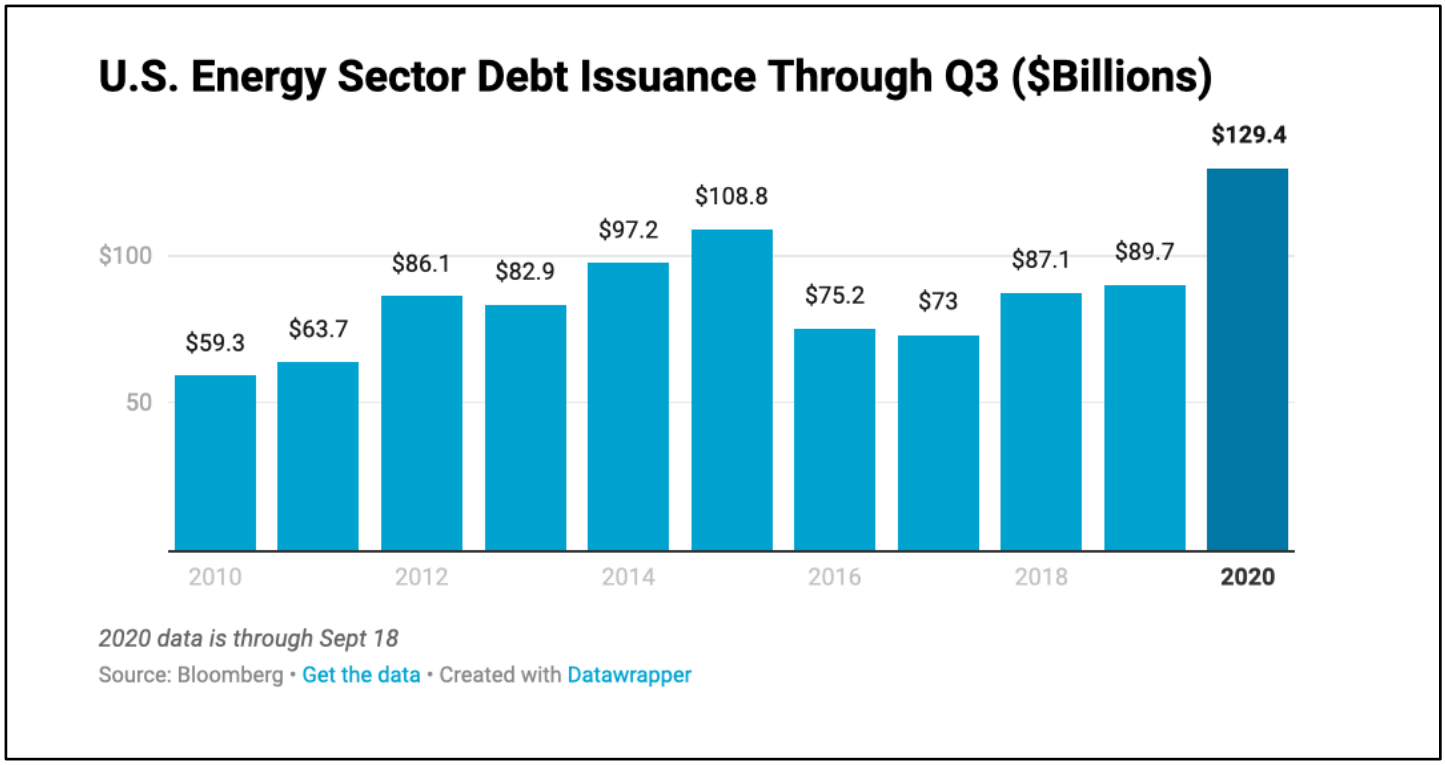
Illustration of carbon bubble, as reprinted in Katharine Earley, Carbon Tracker measures oil and coal risk for investors, The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix C

Comparison of ten-year performance of S&P 500 Energy Index[420] (white) with S&P 500 Index (blue).[421] Created using comparison tool at S&P 500 Dow Jones Indices (as of Jan. 3, 2022).

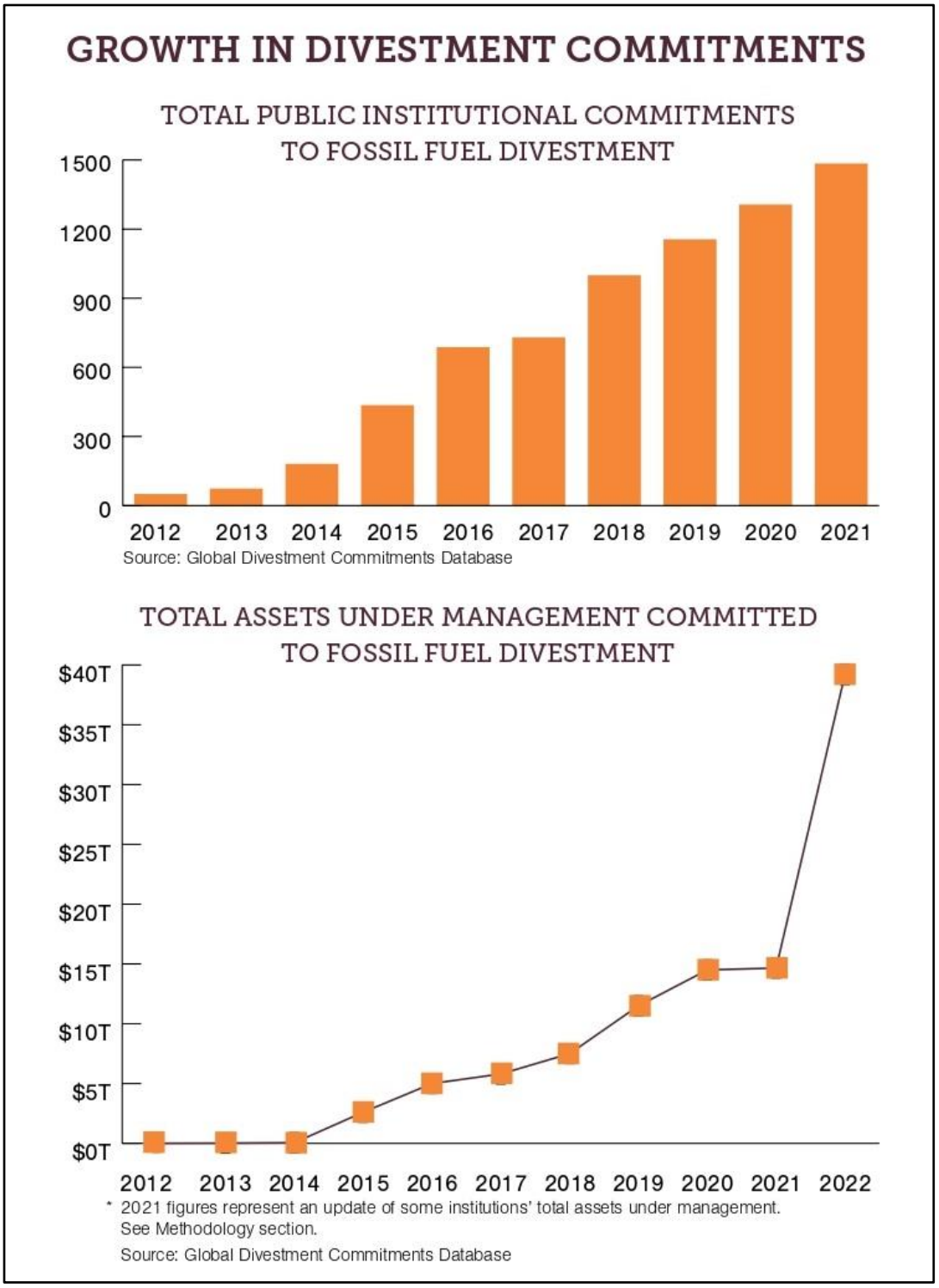
[420] The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.
[421] The energy sector's recovery in late 2020 came in part thanks to a large bailout of corporate debt markets by the federal government. *See* Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke,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

Appendix D



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

Appendix E



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