



**CLIMATE CONTROL: EXPOSING THE DECARBONIZATION COLLUSION IN ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) INVESTING**

Interim Staff Report of the  
Committee on the Judiciary  
U.S. House of Representatives



June 11, 2024

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## EXECUTIVE SUMMARY

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Competition “produce[s] not only lower prices, but also better goods and services” for all Americans.<sup>1</sup> Collusion, on the other hand, has been described by the Supreme Court as “the supreme evil of antitrust”<sup>2</sup> because it “coordinate[s] reductions in output that result in higher prices for consumers.”<sup>3</sup> Accordingly, U.S. antitrust law prohibits anticompetitive collusion,<sup>4</sup> and “social justifications proffered for [a] restraint of trade . . . do not make it any less unlawful.”<sup>5</sup>

The Committee on the Judiciary is entrusted with the “[p]rotection of trade and commerce against unlawful restraints and monopolies” such as anticompetitive collusion.<sup>6</sup> In exercising this oversight of the adequacy and sufficiency of existing U.S. antitrust laws, the Committee has been investigating apparent collusion between left-wing activists and major financial institutions to impose radical environmental, social, and governance (ESG) goals upon the American people. This collusion not only violates fundamental free market principles, it also threatens to raise costs and reduce choice for millions of American consumers.

The Committee has obtained evidence that a “climate cartel” of left-wing environmental activists and major financial institutions has colluded to force American companies to “decarbonize” and reach “net zero.” Through their commitments to groups such as Climate Action 100+, the members of the climate cartel expressly have agreed to decarbonize the American economy by forcing corporations to disclose their carbon emissions, to reduce their carbon emissions, and to enforce (and reinforce) their disclosure and reduction commitments by handcuffing company leadership and muzzling corporate free speech and petitioning. The climate cartel imposes these radical policies by weaponizing ever-escalating pressure tactics that start with negotiations with corporate management, continue to filing and “flagging” stockholder proxy resolutions, and culminate with taking out the boards of directors at “recalcitrant companies.”<sup>7</sup>

The climate cartel’s members include:

- “convening” and “collaborating” groups like Climate Action 100+, the Net Zero Asset Managers initiative, and the Glasgow Financial Alliance for Net Zero (GFANZ);<sup>8</sup>
- blue state pension funds like the California Public Employees’ Retirement System (CalPERS);

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<sup>1</sup> *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

<sup>2</sup> *Verizon Commc’ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004).

<sup>3</sup> Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 1478d2 (Aug. 2023).

<sup>4</sup> *See* 15 U.S.C. § 1.

<sup>5</sup> *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

<sup>6</sup> Rules of the House of Representatives R. X(1)(1)(16) (2023).

<sup>7</sup> Climate Action 100+, *Work Plan Prepared for CIFF* 6 (July 24, 2020), CERES66958 at CERES66964.

<sup>8</sup> Deposition of Andrew Behar, Chief Executive Officer, As You Sow (Mar. 28, 2024) at 12:19–20, 18:17–19, 22:7, 22, 37:20. The Committee required testimony from Mr. Behar because As You Sow has withheld responsive documentary information from the Committee.

- radical environmental non-profit organizations like Ceres;
- stockholder engagement service providers like As You Sow;
- activist investors like Arjuna Capital, LLC (Arjuna), Trillium Asset Management, LLC, Engine No. 1 LP, and Aviva Investors Americas, LLC, which “acquire a minimal ownership stake . . . to stop climate change, not to make a financial profit”;<sup>9</sup>
- the “Big Three” asset managers BlackRock, Inc. (BlackRock), State Street Global Advisors (State Street), and The Vanguard Group, Inc. (Vanguard), who together own 21.9% and vote 24.9% of the shares of the Standard and Poor’s (S&P) 500;<sup>10</sup> and
- the foreign-owned proxy advisory duopoly of Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co. (Glass Lewis), which have a combined 90% market share and advise mutual funds controlling more than \$27 trillion in assets.<sup>11</sup>

The Committee has received documents from each of these members of the climate cartel. In total, as part of the investigation into ESG collusion, the Committee has now received and reviewed 272,294 documents and 2,565,258 pages of non-public information. Due to their failure to produce responsive material timely and fulsomely, the Committee was forced to issue document subpoenas to GFANZ, Ceres, As You Sow, Arjuna, BlackRock, State Street, Vanguard, ISS, and Glass Lewis.<sup>12</sup> In addition to documentary evidence, the Committee has completed transcribed interviews or depositions of the leaders of key players within the climate cartel.

This interim report focuses primarily upon the collusive conduct of Climate Action 100+, its co-founders Ceres and CalPERS, and its radical member Arjuna. Based upon the evidence obtained by the Committee, the members of the climate cartel are colluding toward a common goal: the “decarbonization” of American industry, which necessarily reduces output and increases prices for American consumers. Thus far, the investigation has revealed how the climate cartel has escalated its attacks on American companies and is forcing companies to slash output of products and services that are critical to Americans’ daily lives. The Committee has found, among other things:

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<sup>9</sup> Letter from ExxonMobil employee to Follow This executive 1 (Mar. 10, 2023), ARJUNA12843 at ARJUNA12844 [hereinafter “Mar. 10, 2023, Letter”].

<sup>10</sup> Lucian Bebchuk & Scott Hirst, *Big Three Power, and Why It Matters*, 102 B.U. L. Rev. 1547, 1552 (2022).

<sup>11</sup> See Chong Shu, *The Proxy Advisory Industry*, 154 J. Fin. Econ. 103810, 1, 29 (2024).

<sup>12</sup> See Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to John Eichlin (Nov. 1, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Matthew Miller (June 14, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Andrew Herman (Nov. 1, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Veronica Renzi (Dec. 11, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Alyssa DaCunha (Dec. 15, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Donald Deng (Dec. 15, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Robert Kelner (Dec. 11, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Aaron Cutler (Dec. 20, 2023); Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Nichol Garzon-Mitchell (Dec. 20, 2023).

- **The climate cartel has declared war on the American way of life.** The climate cartel is waging “a Global World War” for net zero against disfavored American companies, including those in the fossil fuel, aviation, and farming industries that allow Americans to drive, fly, and eat.<sup>13</sup> It has described Climate Action 100+ as “the global Navy,” and compared Ceres’s efforts to “the Army ground troops” and “an ‘air cover’ strategic and silent bombing campaign by a newly funded division of the Air Force.”<sup>14</sup>
- **The climate cartel has agreed to force corporations to “decarbonize.”** Members of groups like Climate Action 100+ expressly commit to engage “with the companies in which [they] invest” to make them reach “net zero [greenhouse gas (GHG)] emissions by 2050” by disclosing their carbon emissions, reducing their carbon emissions, and adopting enforcement mechanisms to strengthen these commitments.<sup>15</sup>
- **The climate cartel “[r]amp[s] up” and “[e]scalate[s]”<sup>16</sup> pressure against corporations on the “wrong side of climate history.”<sup>17</sup>** The climate cartel is “willing to go to the top rung” by filing shareholder resolutions, voting against management, and “replac[ing] board members” with those of its own choosing.<sup>18</sup>
- **The climate cartel seeks to “keep fossil fuels in the ground,” raising prices and reducing output for American consumers.**<sup>19</sup> To reach net zero, as ESG activists demand, “fossil fuel use has to be reduced.”<sup>20</sup> Airplane travel must be “capp[ed] . . . at 2019 levels” and “total flights” must be reduced by 12%.<sup>21</sup> Food demand growth must be “reduce[d],”<sup>22</sup> with beef consumption slashed to “about half of current U.S. levels.”<sup>23</sup>
- **The climate cartel is not done attacking American consumers.** Climate Action 100+ “is about action at this point, not just words/commitments/disclosure.”<sup>24</sup> It has

<sup>13</sup> E-mail from William Gridley to Kirsten Spalding, et al. (Feb. 26, 2020), CERES27804 at CERES27806–07.

<sup>14</sup> *Id.*

<sup>15</sup> Climate Action 100+, *Climate Action 100+ Signatory Handbook 7* (June 2023), <https://www.climateaction100.org/wp-content/uploads/2023/06/Signatory-Handbook-2023-Climate-Action-100.pdf>.

<sup>16</sup> *Work Plan Prepared for CIFF, supra* note 7, at CERES66983.

<sup>17</sup> Climate Action 100+, *2020 Progress Report 9* (2020), GFANZ13103 at GFANZ13111.

<sup>18</sup> *Work Plan Prepared for CIFF, supra* note 7, at CERES66963–64.

<sup>19</sup> Ceres, *Draft Ceres Organizational Profile for the Skoll Foundation 14* (May 1, 2019), CERES59890 at CERES59903.

<sup>20</sup> Transcribed Interview of Danielle Fugere, President & Chief Counsel, As You Sow (Jan. 18, 2024) at 163:4–6. The Committee required testimony from Ms. Fugere because As You Sow has withheld responsive documentary information from the Committee.

<sup>21</sup> Climate Action 100+, *Global Sector Strategies: Investor Actions to Align the Aviation Sector with the IEA’s 1.5° Decarbonisation Pathway 17*, SSGA-HJC.66656 at SSGA-HJC.66673 (Mar. 2022).

<sup>22</sup> World Res. Inst., *Executive Summary (Synthesis)*, <https://research.wri.org/wrr-food/executive-summary-synthesis>.

<sup>23</sup> World Res. Inst., *6 Pressing Questions About Beef and Climate Change, Answered* (Mar. 7, 2022), <https://www.wri.org/insights/6-pressing-questions-about-beef-and-climate-change-answered>.

<sup>24</sup> Climate Action 100+, *Long Term Strategy Meeting 14.10.21 40* (Oct. 14, 2021), CERES59121 at CERES59160.

“mov[ed] beyond simple disclosure requests” and is now making “more ambitious” demands to companies.<sup>25</sup> For the climate cartel, “the job is . . . only just begun.”<sup>26</sup>

The Biden Administration has failed to meaningfully investigate the climate cartel’s collusion—let alone bring enforcement actions against its apparent violations of longstanding U.S. antitrust law. The Committee’s aggressive oversight, however, has led members of Climate Action 100+ to withdraw from the group. On February 15, 2024, BlackRock, State Street, and J.P. Morgan Asset Management—three of the world’s largest asset managers—withdrawed their “nearly \$14 trillion of total assets” under management from Climate Action 100+,<sup>27</sup> leaving the group without any “of the world’s five largest asset managers” as members.<sup>28</sup> By March 1, 2024, Pacific Investment Management Company, LLC and Invesco Ltd.—two of the “large[st] US asset managers still in Climate Action 100+”<sup>29</sup>—had withdrawn as well.<sup>30</sup> Dozens of other members also appear to have left Climate Action 100+ in recent months.<sup>31</sup>

While this interim report examines the collusive conduct of Climate Action 100+, the Committee’s investigation into the broader climate cartel remains ongoing. The Committee will continue to examine the adequacy and enforcement of current antitrust laws to determine whether legislative reforms are necessary to protect competition in the American economy.

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<sup>25</sup> Climate Action 100+, *KPI Summary and Rationale 2* (July 31, 2022), CERES62708 at CERES62709.

<sup>26</sup> E-mail from Anne Simpson to Robert Eccles et al. (June 5, 2021), ENGINENO1-118HJC-PROD-6866 at ENGINENO1-118HJC-PROD-6866.

<sup>27</sup> Simon Jessop & Ross Kerber, *JPMorgan, State Street Quit Climate Group, BlackRock Steps Back*, Reuters (Feb. 15, 2024), <https://www.reuters.com/sustainability/sustainable-finance-reporting/jpmorgan-fund-arm-quits-climate-action-100-investor-group-2024-02-15/>.

<sup>28</sup> Patrick Temple-West & Brooke Masters, *JPMorgan and State Street Quit Climate Group as BlackRock Scales Back*, Fin. Times (Feb. 15, 2024), <https://www.ft.com/content/3ce06a6f-f0e3-4f70-a078-82a6c265ddc2>.

<sup>29</sup> *Id.*

<sup>30</sup> See Simon Jessop, *Invesco Joins List of US Asset Managers to Exit CA100+ Climate Group*, Reuters (Mar. 1, 2024), <https://www.reuters.com/sustainability/invesco-joins-list-us-asset-managers-exit-ca100-climate-group-2024-03-01/>.

<sup>31</sup> See Letter from Sean D. Reyes, Utah Attorney General, et al. to Climate Action 100+ Members 2 (Apr. 3, 2024) [hereinafter “Apr. 3, 2024, Letter”].

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## I. THE CLIMATE CARTEL CONSISTS OF “CONVENING” GROUPS, RADICAL ACTIVISTS, AND FINANCIAL INSTITUTIONS THAT COLLUDE TO KILL CARBON

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Members of the climate cartel include “convening” and “collaborating” groups,<sup>32</sup> blue state pension funds, extremist environmental non-profits, stockholder engagement service providers, activist investors, the “Big Three” asset managers, and the foreign-owned proxy advisory duopoly. Four of its most radical offenders are Climate Action 100+, a group that expressly requires its members to work to decarbonize the companies in which they invest; its co-founders Ceres, an environmental non-profit, and the California Public Employees’ Retirement System (CalPERS), a blue state pension fund; and small activist investor Arjuna Capital, LLC (Arjuna).

### A. Climate Action 100+ and Similar Groups “Convene” and “Coordinate” Collusion

Climate Action 100+ “build[s] on an idea from” CalPERS<sup>33</sup> and was established in December 2017 by Ceres, the United Nations-backed Principles for Responsible Investment (PRI), and similar activist environmentalist groups from Europe, Asia, and Australia and New Zealand.<sup>34</sup> Climate Action 100+ “convene[s]” and “coordinate[s]” financial industry collusion against disfavored corporations.<sup>35</sup> It bills itself as the “largest-ever global investor engagement initiative on climate change,”<sup>36</sup> and has been described as “the global Navy” in the climate cartel’s “Global World War.”<sup>37</sup>

Hundreds of asset managers, asset owners, and stockholder engagement service providers are members of Climate Action 100+.<sup>38</sup> As of 2023, Climate Action 100+ had more than 700 investors with combined assets under management of close to \$68 trillion.<sup>39</sup> Climate Action 100+ members “encompass both mainstream and vanguard investors, and the vanguard investors are leveraging influence of the mainstream investors.”<sup>40</sup> Its members include CalPERS, As You Sow, Arjuna, Trillium Asset Management, LLC (Trillium), Engine No. 1 LP (Engine No. 1), and Aviva Investors Americas, LLC (Aviva)<sup>41</sup>—and, until recently, also included BlackRock, Inc. (BlackRock) and State Street Global Advisors (State Street), two of the largest asset managers in

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<sup>32</sup> Deposition of Andrew Behar, *supra* note 8, at 12:19–20, 18:17–19, 22:7, 22, 37:20.

<sup>33</sup> Climate Action 100+, *Steering Committee Agenda* 28 (Sept. 15, 2022), CERES59024 at CERES59051.

<sup>34</sup> See Climate Action 100+, *About Climate Action 100+*, <https://www.climateaction100.org/about/>.

<sup>35</sup> Deposition of Andrew Behar, *supra* note 8, at 22:19–25, 23:1–5, 39:4–6, 68:21–25, 69:1–7.

<sup>36</sup> *Climate Action 100+ Signatory Handbook*, *supra* note 15, at 4.

<sup>37</sup> E-mail from William Gridley to Kirsten Spalding, et al., *supra* note 13, at CERES27807.

<sup>38</sup> See Climate Action 100+, *Progress Update 2023* 2 (Jan. 31, 2023), <https://www.climateaction100.org/wp-content/uploads/2024/01/Climate-Action-100-Progress-Update-2023.pdf>.

<sup>39</sup> *Id.* at 2, 4. As discussed below, five large asset managers with a combined roughly \$17 trillion in total assets under management withdrew from Climate Action 100+ earlier this year. See discussion *infra* Section I.A.4.

<sup>40</sup> E-mail from David Ziv-Kreger to IIGCC employee et al. (Jan. 29, 2020), CERES17869 at CERES17870.

<sup>41</sup> Climate Action 100+, *Investor Signatories*, [https://www.climateaction100.org/whos-involved/investors/?search\\_investors=aviva&investor\\_type=All](https://www.climateaction100.org/whos-involved/investors/?search_investors=aviva&investor_type=All).

the world.<sup>42</sup> Climate Action 100+ currently is governed by a steering committee that continues to include members from both Ceres and CalPERS.<sup>43</sup>

## 1. Climate Action 100+ Facilitates Collusion that Reduces Output and Increases Prices for Americans

Each member of Climate Action 100+ expressly agrees to engage “with the companies in which [it] invest[s]” to ensure that they “take necessary action on climate change” by “halving [greenhouse gas (GHG)] emissions by 2030 and delivering net zero GHG emissions by 2050, in line with the goals of the Paris Agreement to pursue efforts to limit warming to 1.5°C.”<sup>44</sup>

*Climate Action 100+ requires its members to agree to emissions disclosure, reduction, and governance measures—i.e., to reduce, disclose, and enforce their emissions.*<sup>45</sup>

In particular, Climate Action 100+ requires its members to push the companies in which they invest to *disclose* their carbon emissions, to *reduce* their carbon emissions, and to *enforce* these commitments by:

1. Implement[ing] a *strong governance framework* which clearly articulates the board’s accountability and oversight of climate change risk.
2. Tak[ing] action to *reduce greenhouse gas emissions* across the value chain, including engagement with stakeholders such as

<sup>42</sup> See Bebhuk & Hirst, *supra* note 10. The Vanguard Group, Inc. (Vanguard) never joined Climate Action 100+, but was a member of the Net Zero Asset Managers initiative (NZAM) until December 2022. See Ross Kerber & Noor Zainab Hussain, *Vanguard Quits Net Zero Climate Effort, Citing Need for Independence*, Reuters (Dec. 7, 2022), <https://www.reuters.com/business/sustainable-business/vanguard-quits-net-zero-climate-alliance-2022-12-07/>.

<sup>43</sup> See *About Climate Action 100+*, *supra* note 34.

<sup>44</sup> *Climate Action 100+ Signatory Handbook*, *supra* note 15, at 7. The Paris Agreement is a United Nations-backed international treaty “to strengthen the global response to the threat of climate change” by “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.” Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, 3156 U.N.T.S. 54113.

<sup>45</sup> *Climate Action 100+ Signatory Handbook*, *supra* note 15, at 7.



policymakers and other actors to address the sectoral barriers to transition. This should be consistent with the Paris Agreement’s goal of limiting global average temperature increase to well below 2°C above pre-industrial levels, aiming for 1.5°C. Notably, this implies the need to move towards net-zero emissions by 2050 or sooner.

3. *Provid[ing] enhanced corporate disclosure on and implement[ing] transition plans* to deliver on robust targets. This should be in line with the final recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and other relevant sector and regional guidance, to enable investors to assess the robustness of companies’ business plans and improve investment decision-making.<sup>46</sup>

Thus, “Climate Action 100+ has established a common high-level agenda for company engagement to achieve clear commitments to cut emissions, improve governance and strengthen climate-related financial disclosures.”<sup>47</sup> Its “signatories have agreed there should be a broad common engagement agenda” that “consists of seeking commitments from boards and senior management to: (1) “[p]rovide enhanced *corporate disclosure*”; (2) “[t]ake action to *reduce greenhouse gas emissions*”; and (3) “[i]mplement a strong *governance framework*.”<sup>48</sup>

Other groups in the climate cartel have obtained similar commitments from their members. For example, the Glasgow Financial Alliance for Net Zero (GFANZ)-affiliated NZAM, which is comprised of more than 315 asset managers controlling \$57 trillion in assets under management,<sup>49</sup> requires its members to “[w]ork in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management,” by (1) “[p]ublish[ing] TCFD disclosures, including a climate action plan, annually”; (2) “[i]mplement[ing] a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [their] ambition for all assets under management to achieve net zero emissions by 2050 or sooner”; and (3) “[e]nsur[ing] any relevant direct and indirect policy advocacy [they] undertake is supportive of achieving global net zero emissions by 2050 or sooner.”<sup>50</sup> Likewise, PRI, which includes 5,336 signatories controlling more than \$121 trillion in assets under management,<sup>51</sup> requires its members to (1) “seek appropriate disclosure on ESG issues by the entities in which [they] invest,” (2) “be active owners and incorporate ESG issues into [their] ownership policies and practices,” and (3) “report on [their] activities and progress.”<sup>52</sup>

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<sup>46</sup> *Id.* (emphasis in original).

<sup>47</sup> Climate Action 100+, *The Three Asks*, <https://www.climateaction100.org/approach/the-three-asks/> [<https://web.archive.org/web/20230327154741/https://www.climateaction100.org/approach/the-three-asks/>].

<sup>48</sup> *Id.* (emphasis in original).

<sup>49</sup> Net Zero Asset Managers Initiative, *The Net Zero Asset Managers Initiative*, <https://www.netzeroassetmanagers.org/>.

<sup>50</sup> Net Zero Asset Managers Initiative, *Commitment*, <https://www.netzeroassetmanagers.org/commitment/>.

<sup>51</sup> Principles for Responsible Inv., *About the PRI*, <https://www.unpri.org/about-us/about-the-pri>.

<sup>52</sup> Principles for Responsible Inv., *What Are the Principles for Responsible Investment?*, <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>.

These collusive decarbonization and net zero commitments necessarily require output reductions and price increases for American consumers, including in the fossil fuel, aviation, and farming industries.<sup>53</sup>

## 2. Climate Action 100+ Escalates and Flags Collusive Engagements Against Disfavored Companies

Climate Action 100+ was “designed to harness the collective influence of” its investor members in order “to spur companies” on the Climate Action 100+ focus list of 170 disfavored companies “to accelerate their emission reductions” and reach net zero.<sup>54</sup> “[T]he success and credibility of [Climate Action 100+] is dependent on [its] ability to show that engagement can have teeth—and that investors are willing to escalate pressure against companies that refuse to act.”<sup>55</sup> Thus, Climate Action 100+ “[e]scalate[s] engagements with laggard focus companies” from negotiating with corporate management, to filing and supporting shareholder resolutions, to “[v]ot[ing] against” and “replac[ing] board members.”<sup>56</sup>

**Part 2. Escalate engagements with laggard focus companies**

**Objectives:**

- Ramp up escalations using a set of tactics tailored to each company engagement trajectory and each geographic region including
  - Shareholder resolutions
  - Votes against one or more board members by CA100+ lead investors
  - Votes against auditors, accounts, auditors, and or compensation committees
  - Investors putting selected focus companies’ bonds on a “Do Not Buy” list
- Establish a credible threat of board member refreshment, by implementing an unprecedented effort to replace board members at one of the world’s very largest companies.

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**Key activities include:**

- Escalating engagements with laggard focus companies using a set of tactics tailored to each company engagement trajectory and each geographic region including:
  - Shareholder resolutions
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  - Investors putting selected focus companies’ bonds on a “Do Not Buy” list
- Establishing a credible threat of board member refreshment, by implementing an unprecedented effort to replace board members at one of the world’s very largest companies.

**Other objectives include:**

- Escalating engagements with laggard focus companies using a set of tactics tailored to each company engagement trajectory and each geographic region including:
  - Shareholder resolutions
  - Votes against one or more board members by CA100+ lead investors
  - Votes against auditors, accounts, auditors, and or compensation committees
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  - Investors putting selected focus companies’ bonds on a “Do Not Buy” list
- Establishing a credible threat of board member refreshment, by implementing an unprecedented effort to replace board members at one of the world’s very largest companies.

*Climate Action 100+ applies escalating “engagement” pressure to disfavored companies that it views as “laggard[s]” in caving to its radical demands.<sup>57</sup>*

For Climate Action 100+, an especially “powerful” tool<sup>58</sup> is flagging “key shareholder proposals and management votes” for support by its members.<sup>59</sup> This flagging process “tell[s]

<sup>53</sup> See discussion *infra* Part IV.

<sup>54</sup> Climate Action 100+, *WORK PLAN 1* (June 23, 2020), CERES72388 at CERES72388; *see generally* Climate Action 100+, *KPIs to CIFF* (June 23, 2020), CERES72399 at CERES72399–413.

<sup>55</sup> Memorandum from Kirsten Spalding to PMT 2 (May 6, 2020), CERES13570 at CERES13571.

<sup>56</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963; *see discussion infra* section III.

<sup>57</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963.

<sup>58</sup> E-mail from Ceres employee to Morgan LaManna et al. (June 2, 2021), CERES9645 at CERES9645.

<sup>59</sup> Climate Action 100+, *2024 Proxy Season & Flagged Shareholder Votes*, <https://www.climateaction100.org/approach/proxy-season/>; *see discussion infra* section I.A.2. Flagging also is significant for votes on members of boards of directors. Heading into the 2021 proxy season, activist investor Engine No. 1 agreed with Ceres “how critical it would be for the [ExxonMobil] director vote to be flagged as part of the [Climate Action 100+] process.” E-mail from Andrew Logan to Kirsten Spalding (Feb. 17, 2021), CERES63603 at CERES63603. Following the

investors which issues are a priority for the initiative”<sup>60</sup> and “[s]trengthen[s] [its] ability to win key votes.”<sup>61</sup> “Votes flagged by [Climate Action 100+] have gotten a high level of attention from the market including proxy advisors such as [Glass, Lewis & Co. (Glass Lewis)] and [Institutional Shareholder Services Inc. (ISS)].”<sup>62</sup> Even “[t]he threat of flagging the resolutions [has] proved successful in pushing companies to make commitments ahead of [annual general meetings] in return for a withdrawal.”<sup>63</sup>

The objective of escalating and flagging engagements is to ensure that “[a]ll companies on the focus list have committed to net zero or gone out of business as investors are no longer providing them with capital.”<sup>64</sup> In other words, Climate Action 100+ has taken it upon itself to “identify[] which companies will be on the right and wrong side of climate history.”<sup>65</sup>

### **3. Climate Action 100+ Bullies and Threatens Asset Managers, Weaponizing Their Clients to Force Them to Join and Obey the Climate Cartel**

Climate Action 100+ leverages aligned asset owners to bully asset managers to join and vote with the climate cartel.

First, the climate cartel bullies asset managers to join. In order to “[i]ncrease results on key votes,” Climate Action 100+ has sought to “[m]ov[e] major asset managers—including Vanguard, State Street, Fidelity—to align with [Climate Action 100+] on voting.”<sup>66</sup> Thus, Climate Action 100+ has discussed coordinating asset *owners* to “aggressively exert pressure on asset *managers* to align votes with [Climate Action 100+] goals.”<sup>67</sup> This is because, as clients, “asset owners are in the best position to shift the frustrating voting behaviors of the ‘big three’” asset managers, BlackRock, State Street, and Vanguard.<sup>68</sup>

For example, after “Blackrock and Vanguard voted against all of the US shareholder proposals backed by” Climate Action 100+ in 2019, Ceres initiated a campaign to pressure several of the world’s largest asset managers, including BlackRock, State Street, and Fidelity, “to align [their] corporate engagements with Climate Action 100+” because doing so “would critically amplify [Climate Action 100+’s] pressure on recalcitrant companies.”<sup>69</sup> As Ceres explained: “[T]here is no disputing the importance of moving [BlackRock, State Street, and Fidelity] to vote for climate proposals” because “they would tip many important votes above

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climate cartel’s replacement of three members of the ExxonMobil board, Climate Action 100+ attributed this unprecedented success in part to having “flagged the Engine No[.] 1 slate on its website.” Climate Action 100+, *Exxon Case Study 3* (July 2021), CALPERS\_4105 at CALPERS\_4107.

<sup>60</sup> Climate Action 100+, *Steering Committee Meeting 3* (Apr. 15, 2021), CERES35007 at CERES35009.

<sup>61</sup> E-mail from Cynthia McHale to Morgan LaManna et al. (Sept. 28, 2020), CERES10362 at CERES10364.

<sup>62</sup> Climate Action 100+, *Steering Committee Agenda 4* (Mar. 17, 2022), CERES62503 at CERES62506.

<sup>63</sup> *KPI Summary and Rationale*, *supra* note 25, at CERES62709.

<sup>64</sup> Climate Action 100+, *Global Steering Committee—Strategy Session 1 8* (Oct. 27, 2020), CERES51901 at CERES51908.

<sup>65</sup> *2020 Progress Report*, *supra* note 17, at GFANZ13111.

<sup>66</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66958.

<sup>67</sup> Climate Action 100+, *Steering Committee Meeting Minutes 2* (Mar. 26, 2020), CERES1260 at CERES1261 (emphasis added).

<sup>68</sup> *Id.*

<sup>69</sup> Climate Action 100+, *Priorities for Expanded Impact 4–5* (Nov. 25, 2019), CERES50191 at CERES50194–95.

50%.”<sup>70</sup> To effect its plan, Ceres “convened large asset owners to align around using their influence as clients of big asset managers” in order to force the asset managers “to step up their climate ambition and leadership”—a situation that gave Ceres “unprecedented leverage.”<sup>71</sup> Indeed, “BlackRock was influenced to join” Climate Action 100+<sup>72</sup> because the Japanese “Government Pension Investment Fund (GPIF)—at \$1.7 trillion the world’s largest pension fund—recently shifted \$50 billion away from BlackRock,”<sup>73</sup> and Lloyds Banking Group subsidiary “Scottish Widows insisted on putting [Climate Action 100+] into [its] asset management contract with BlackRock.”<sup>74</sup>

Second, like other cartels, Climate Action 100+ seeks “to detect and deter defections from [its] collusive strategies”<sup>75</sup> by increasing its “[s]ignatory [a]ccountability.”<sup>76</sup> In particular, Climate Action 100+ “signatories are under scrutiny from a range of stakeholders over their voting records . . . for [Climate Action 100+] flagged votes.”<sup>77</sup> Thus, Climate Action 100+ expects more “pressure on signatories [to] support [its] agenda with votes where possible.”<sup>78</sup>

For example, if “BlackRock [were] not living up to its promise” to the climate cartel, then BlackRock’s “asset owners [could] decide to move their money elsewhere to be managed,” which “could mean billions of dollars in lost revenue to BlackRock.”<sup>79</sup> In particular, Ceres emphasized “that BlackRock [would] be held accountable for [its] votes on shareholder resolutions”—and that if its voting “record [did] not dramatically change, Ceres [was in] a position to organize asset owner partners to call BlackRock to account.”<sup>80</sup> Moreover, “the three other largest asset managers (Fidelity, Vanguard, State Street) [were] facing similar pressure. If they [didn’t] align their voting with [Climate Action 100+], they too risk[ed] losing clients and revenue.”<sup>81</sup>

#### **4. Climate Action 100+ Signatories Withdraw from the Group Following the Launch of the Committee’s Oversight Investigation**

Members of Climate Action 100+ have withdrawn from the group following the launch of the Committee’s investigation into their anticompetitive collusion. On February 15, 2024, BlackRock, State Street, and J.P. Morgan Asset Management (JPAM)—three of the world’s largest asset managers—withdrawed their “nearly \$14 trillion of total assets” under management from Climate Action 100+,<sup>82</sup> leaving the group without any “of the world’s five largest asset managers” as members.<sup>83</sup> BlackRock specifically withdrew because Climate Action 100+’s

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<sup>70</sup> E-mail from Rob Berridge to Ceres employee (Nov. 21, 2019), CERES9649 at CERES9649.

<sup>71</sup> E-mail from Ceres employee to Northstar executive et al. (Feb. 20, 2020), CERES27685 at CERES27685.

<sup>72</sup> Climate Action 100+, *Proposal for Increasing Ambition 1* (Mar. 26, 2020), CERES63234 at CERES63234.

<sup>73</sup> E-mail from David Ziv-Kreger to KR Foundation employee (Jan. 15, 2020), CERES14474 at CERES14474.

<sup>74</sup> *Proposal for Increasing Ambition*, *supra* note 72, at CERES63234.

<sup>75</sup> Margaret C. Levenstein & Valerie Y. Suslow, *What Determines Cartel Success?*, 44 J. Econ. Lit. 43, 44 (2006).

<sup>76</sup> Climate Action 100+, *Steering Committee Agenda 15–16* (Dec. 17, 2020), CERES1214 at CERES1228–29.

<sup>77</sup> Memorandum from Cynthia McHale to CIFF 2–3 (Mar. 21, 2021), CERES23002 at CERES23003–04.

<sup>78</sup> *Long Term Strategy Meeting 14.10.21*, *supra* note 24, at CERES59159.

<sup>79</sup> E-mail from David Ziv-Kreger to KR Foundation employee *supra* note 73, at CERES14474.

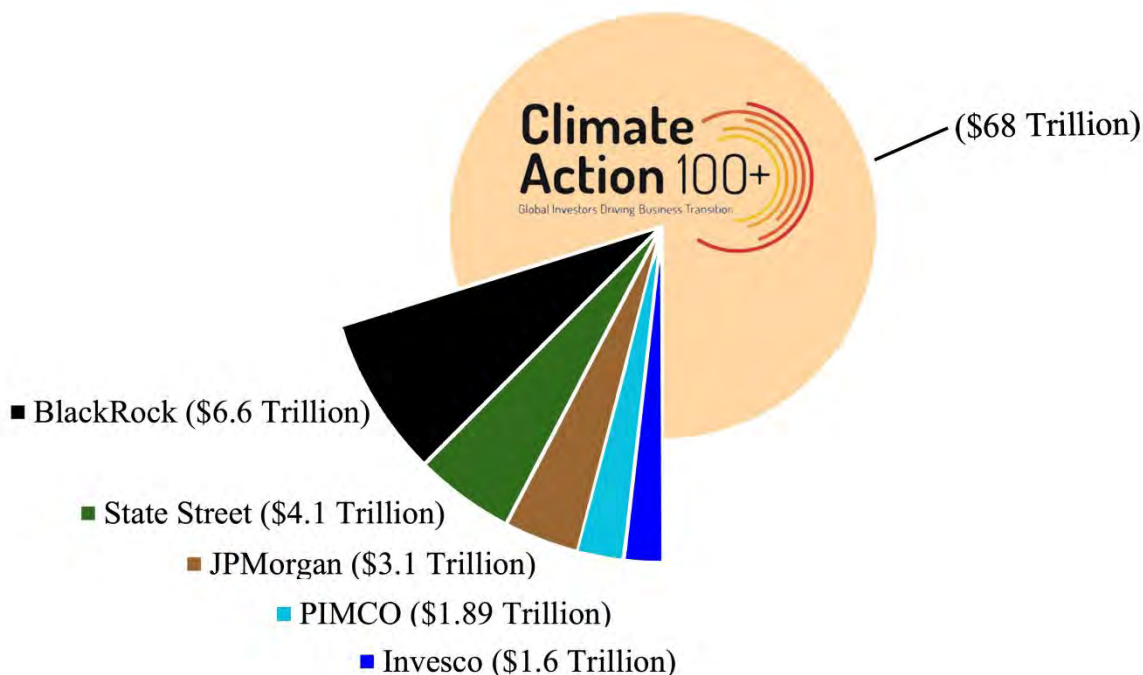
<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Jessop & Kerber, *supra* note 27.

<sup>83</sup> Temple-West & Masters, *supra* note 28.

strategy “conflicted with US laws requiring money managers to act solely in clients’ long-term economic interest.”<sup>84</sup> State Street similarly explained that it left Climate Action 100+ because the group’s “requirements for signatories [were] not consistent with [State Street’s] independent approach to proxy voting and portfolio company engagement.”<sup>85</sup> JPAM, which recently emphasized that it “does not work in concert with other investors on investment matters and makes its own independent decisions concerning investee companies,” bluntly stated that it “determined that it will no longer participate in Climate Action 100+ engagements.”<sup>86</sup>



*The Committee’s investigation has led a large slice of pie—\$17 trillion worth of assets under management—to depart Climate Action 100+ in recent months.*<sup>87</sup>

Soon after those three asset managers left the group, two of the “large[st] US asset managers still in Climate Action 100+”<sup>88</sup> also withdrew from the group.<sup>89</sup> Specifically, the next day, on February 16, 2024, Pacific Investment Management Company, LLC (PIMCO), an asset manager with \$1.89 trillion in assets under management,<sup>90</sup> left Climate Action 100+, emphasizing that “PIMCO operates its own portfolio-relevant engagement activities with issuers on sustainability.”<sup>91</sup> Two weeks later, on March 1, 2024, Invesco Ltd. (Invesco), an asset

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See Jessop & Kerber, *supra* note 27; PIMCO, *Our Firm*, <https://www.pimco.com/en-us/our-firm/>; *Bond Manager PIMCO Withdraws from Climate Action 100+ Investor Coalition*, Reuters (Feb. 16, 2024), <https://www.reuters.com/markets/us/bond-manager-pimco-withdraws-climate-action-100-investor-coalition-2024-02-16/>.

<sup>88</sup> Temple-West & Masters, *supra* note 28.

<sup>89</sup> Jessop & Kerber, *supra* note 27.

<sup>90</sup> PIMCO, *supra* note 87.

<sup>91</sup> *Bond Manager PIMCO Withdraws from Climate Action 100+ Investor Coalition*, *supra* note 87.

manager with over \$1.6 trillion in assets under management,<sup>92</sup> withdrew from Climate Action 100+, indicating that Invesco believed that its “clients’ interests in this area are better served through [its] existing investor-led and client-centric issuer engagement approach.”<sup>93</sup>

Dozens of other members also appear to have left Climate Action 100+ in recent months.<sup>94</sup> Despite the recent defections of a number of its members, including its largest asset managers, Climate Action 100+ remains a formidable force and a continuing threat to the welfare of American consumers. As Climate Action 100+ recently boasted: “hundreds of investor signatories remain committed to ensuring 170 of the largest greenhouse gas emitters reduce emissions, improve governance, and strengthen climate-related financial disclosures.”<sup>95</sup>

## **B. Ceres and Other Radical Activists Set the ESG Agenda and Make Increasingly Extreme Demands**

Ceres was established in 1989 by Joan Bavaria,<sup>96</sup> the former president of activist investor Trillium and the “‘founding mother’ of ESG investing.”<sup>97</sup> It is a left-wing environmental non-profit that describes itself as “working to accelerate the transition to a cleaner, more just, and sustainable economy” by “inspir[ing] the world’s most influential investors and companies with the greatest impact on our economy to urgently act,”<sup>98</sup> and has compared itself to both “the Army ground troops” and “a newly funded division of the Air Force” conducting an “‘air cover’ strategic and silent bombing campaign” in the climate cartel’s “Global World War.”<sup>99</sup> Like Climate Action 100+, Ceres “convenes” and “coordinates” financial industry collusion against disfavored corporations.<sup>100</sup> Ceres’s Investor Network includes more than 220 investors controlling combined assets under management of \$44 trillion.<sup>101</sup> Its members include CalPERS, As You Sow, Arjuna, Trillium, Engine No. 1, Aviva, BlackRock, and State Street.<sup>102</sup>

Ceres co-founded and continues to help lead Climate Action 100+.<sup>103</sup> In addition, Ceres also co-founded NZAM and the Paris Aligned Asset Owners, both of which coordinate investors to pressure companies to decarbonize and reach net zero.<sup>104</sup>

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<sup>92</sup> Invesco, *Invesco Ltd. Announces April 30, 2024 Assets Under Management* (May 9, 2024), <https://invesco2021tf.q4web.com/news/news-details/2024/Invesco-Ltd.-Announces-April-30-2024-Assets-Under-Management/default.aspx>.

<sup>93</sup> See Jessop, *supra* note 30.

<sup>94</sup> See Apr. 3, 2024, Letter, *supra* note 31, at 2.

<sup>95</sup> Climate Action 100+, *Climate Action 100+ Reaction to Recent Departures* (Feb. 26, 2024), <https://www.climateaction100.org/news/climate-action-100-reaction-to-recent-departures/>.

<sup>96</sup> Ceres, *About Us*, <https://www.ceres.org/about>.

<sup>97</sup> Trillium, *40 Years of Investing for a Better World 3* (2022), <https://www.trilliuminvest.com/documents/40-year-brochure>.

<sup>98</sup> *About Us*, *supra* note 96.

<sup>99</sup> E-mail from William Gridley to Kirsten Spalding, et al., *supra* note 13, at CERES27807.

<sup>100</sup> Deposition of Andrew Behar, *supra* note 8, at 18:17–18, 22:7, 38:21–24, 39:4–6, 68:21–23, 69:1–8.

<sup>101</sup> Ceres, *Home*, <https://www.ceres.org/>.

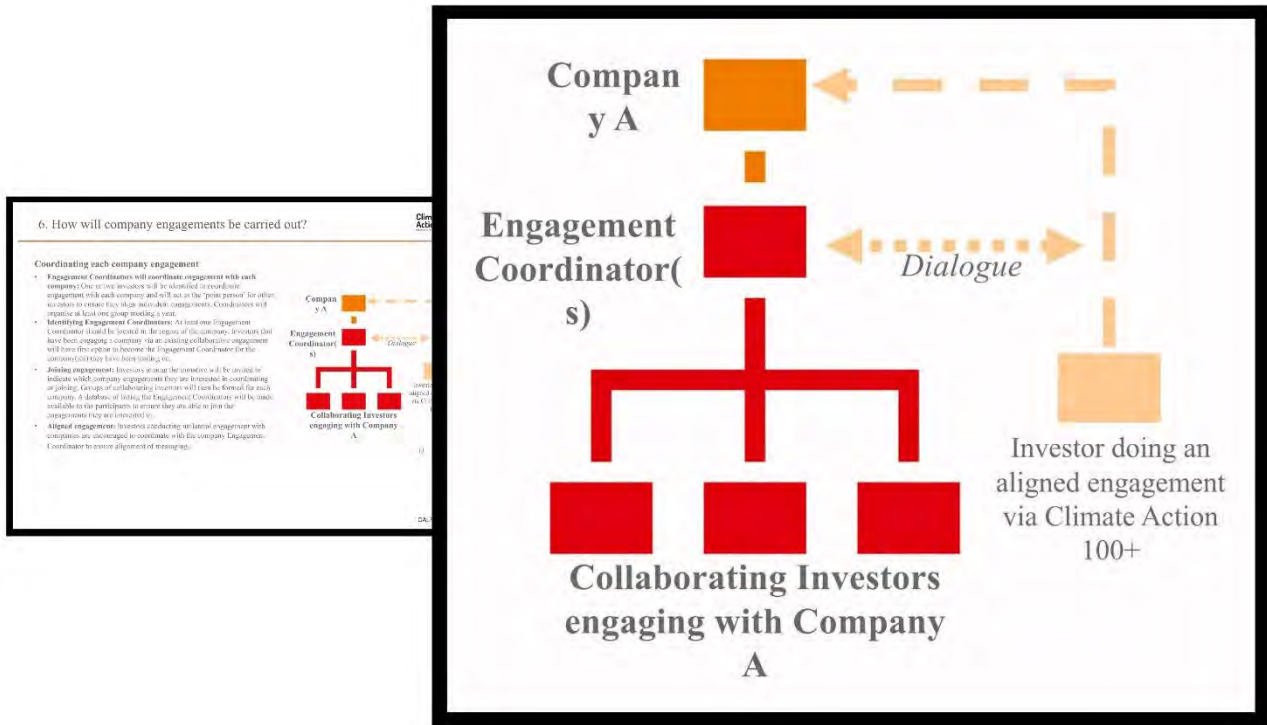
<sup>102</sup> Ceres, *Ceres Investor Network*, <https://www.ceres.org/networks/investor>.

<sup>103</sup> See discussion *supra* Section I.A.

<sup>104</sup> See The Investor Agenda, *Confidential Update for the Children’s Investment Fund Foundation (CIFF)* 8 (Oct. 2021), CERES66630 at CERES66637; Paris Aligned Asset Owners, *Governance*, <https://www.parisalignedassetowners.org/governance/>.

# 1. Ceres Coordinates Collusive Engagements Against Disfavored Companies

Ceres believes that the world economy is “highly responsive” to the interests of “[l]arge institutional investors [with] . . . vast global assets” that “have the ability to drive far reaching impact”—including “among the thousands of public and private companies they own.”<sup>105</sup> Thus, Ceres “lead[s] a coordinated push to harness the extraordinary power of financial system leaders to accelerate the transition of the global economy to net-zero by steering massive flows of capital . . . away from investments that lock in greenhouse gas emissions.”<sup>106</sup> In other words, Ceres “leverag[es] the financial sector to . . . mov[e] all actors in the financial system . . . to commit to, pursue, and promote a just, global transition to net-zero emissions.”<sup>107</sup>



*Climate Action 100+ also visually illustrates the pressure that it places on companies.*<sup>108</sup>

To bully companies to reduce fossil fuel consumption and production, Ceres “recruit[s], educate[s], and mobilize[s] investors along the engagement continuum”<sup>109</sup> and “[u]s[es] ‘harder-nosed’ tools to increase pressure on financial actors, such as benchmarking performance . . . and shareholder engagement.”<sup>110</sup> These efforts include “[d]evelop[ing] specific plans for engaging each of the major asset managers (e.g., BlackRock, Vanguard, Fidelity, State Street) and asset

<sup>105</sup> Ceres, *The Ceres Net Zero Finance Initiative: Harnessing the Power of Investors, Banks, and Insurers to Accelerate Climate Mitigation* 5 (July 2, 2021), CERES2871 at CERES2875.

<sup>106</sup> Ceres, *Net-Zero Finance Campaign: Updated 5-Year Plan* 6 (Mar. 2020), CERES37663 at CERES37668.

<sup>107</sup> *Id.*

<sup>108</sup> Climate Action 100+, *Investor Briefing Pack: Overview of the Climate Action 100+ and How to Join* 13 (Oct. 18, 2017), CALPERS\_48039 at CALPERS\_48051.

<sup>109</sup> Child. ’s Inv. Fund Found., *Ceres Long Form Grant Agreement* 2 (Mar. 2022), CERES85238 at CERES85239.

<sup>110</sup> *Net-Zero Finance Campaign: Updated 5-Year Plan*, *supra* note 106, at CERES37671.

owners” to reduce emissions throughout their portfolios.<sup>111</sup> Ceres does so by supporting “shareholder resolutions to adopt net-zero goals” at companies “that are not working with Ceres and those that are moving too slow or are less willing to act.”<sup>112</sup> When Ceres does not get the results that it has demanded, it may escalate to coordinating “investor campaigns to replace directors.”<sup>113</sup>

Significantly, Ceres’s engagements may be even more extreme than those coordinated through Climate Action 100+. “[W]hen [Climate Action 100+] engagement do[es]n’t move fast enough, that triggers bringing in a parallel group of more ambitious investors . . . to escalate” in “good cop, bad cop” engagements.<sup>114</sup> There, Ceres may “[e]ngage behind the scenes with more activist NGOs” and “benefit[s] from having a ‘left flank’ of groups creating pressure on the actors in the financial system.”<sup>115</sup>

Ceres’s objective is to make “access to finance dependent on the transition to net-zero” by “fundamental[ly] rewrit[ing] . . . the rules for capital formation.”<sup>116</sup> Specifically, Ceres aims to “[t]ighten[] the availability” of project “financing and coverage from investors, banks, and insurers” in order to “bend the curve faster towards a 1.5°C. [*sic*] future.”<sup>117</sup> Succinctly stated: Ceres “is focused on where the money is—and on redirecting it.”<sup>118</sup>

## **2. Ceres Coordinates Collusion through the Ceres Investor Portal—But Has Refused to Produce its Contents in Response to the Committee’s Subpoena**

Ceres maintains a password-protected web platform known as the Ceres Investor Portal that is used by the climate cartel for “[e]ngagement coordination, tracking, and support” as well as “[m]onitor[ing] upcoming votes.”<sup>119</sup> The Ceres Investor Portal “[c]ontains [a] full database of all engagements (proposals, dialogues, letters) that [Ceres] ha[s],”<sup>120</sup> including engagements orchestrated through Climate Action 100+. <sup>121</sup> Of particular significance, the Ceres Investor Portal has served as “the primary means of communication” for shareholder engagements,<sup>122</sup> housing a “[m]essaging function,” “[n]otes from meetings,” “[a]nalysis from Ceres . . . and lead investors on companies,” and “[c]ollaborating investor lists.”<sup>123</sup>

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<sup>111</sup> *Id.* at CERES37675–76.

<sup>112</sup> *Id.* at CERES37676, CERES37678.

<sup>113</sup> *Id.*

<sup>114</sup> Ceres, *Prep for CIFF Call Focused on 5 Sectors 3* (Dec. 14, 2021), CERES85006 at CERES85008; see E-mail from AIGCC employee to Asset Management One employee (Jul. 15, 2020), CALPERS\_9765 at CALPERS\_9765.

<sup>115</sup> *Net-Zero Finance Campaign: Updated 5-Year Plan, supra* note 106, at CERES37673, CERES37678.

<sup>116</sup> *Id.* at CERES37668, CERES37670.

<sup>117</sup> *Id.* at CERES37668.

<sup>118</sup> *Id.* at CERES37669.

<sup>119</sup> Ceres, *Ceres Investor Portal 10* (May 2018), CERES15943 at CERES15952.

<sup>120</sup> *Id.* at CERES15963.

<sup>121</sup> E-mail from Morgan LaManna to PRI employee (Nov. 19, 2018), CERES75900 at CERES75900.

<sup>122</sup> E-mail from Church of Commissioners for England employee to Exxon Climate Action 100+ Supporting Investors (June 12, 2018), CALPERS\_4417 at CALPERS\_4418.

<sup>123</sup> Climate Action 100+, *Ceres North America Engagement Working Group Webinar 18* (Feb. 5, 2019), CERES75072 at CERES75090.



## Appendix B: Where is the Tracker in Salesforce?

1. When in Lightning, Click on the App Launcher

The screenshot shows the Salesforce Lightning interface. At the top, there is a navigation bar with the Ceres logo and a search bar. Below the navigation bar, there is a sidebar with the App Launcher icon (a grid of colored squares) highlighted by a red arrow. The main content area displays a table titled "Investor Network Trainers (20)". The table has columns for NAME, DATE, ORGANIZATION/CONTACT, and STATUS. The first few rows of the table are:

NAME	DATE	ORGANIZATION/CONTACT	STATUS
Email for updated engage...	Nov 30, 2017	Trillium Asset Management	Waiting on R...
Inviting David Crane to speak on Science Breakout at Ceres Conference 2018	Dec 4, 2017	David Crane	Waiting on R...
Carbon Pricing Conference Panel - Jonas Krien	Dec 15, 2017	Trillium Asset Management	Waiting on R...
Oped on Clean Energy in NC?	Dec 22, 2017	Rye Barcott	Request Sent...
Pension Committee	Jan 5, 2018	Jodi Neuman	Waiting on R...
Ceres/GRI Investor masterfile roundtable briefings	Jan 6, 2018	Arselise Duenette	Waiting on R...
Investor Materiality Briefing 2/1 - invitation request	Jan 14, 2018	Michael Penkinson	Waiting on R...
SF Sustainability Dinner	Feb 1, 2018	Jonas Krien	Waiting on R...
Invite Jonas/Team to Sac Advio Day	Feb 20, 2018	Trillium Asset Management	Waiting on R...
MacroClimate Invite - April Sac Advio Day	Feb 20, 2018	MacroClimate LLC	Waiting on R...

At the bottom of the table, there is a link labeled "Activated Investor Portal Users".

4. You'll then see all the Investor Network Trackers that currently exist, or you can create a new one ("NEW" button)

The screenshot shows the Salesforce Lightning interface for "Investor Network Trackers". At the top, there is a navigation bar with the Ceres logo and a search bar. Below the navigation bar, there is a sidebar with the App Launcher icon (a grid of colored squares) highlighted by a red arrow. The main content area displays a table titled "Investor Network Trackers". The table has columns for INCR TRACKER NAME, ORGANIZATION, YEAR, LAST MODIFIED BY, and CREATED DATE. The first few rows of the table are:

INCR TRACKER NAME	ORGANIZATION	YEAR	LAST MODIFIED BY	CREATED DATE
1 INCR Tracker - 0113	New Forests Advisory Inc	2018	Rebecca Bar	5/18/2018 2:27 PM
2 INCR Tracker - 0007	University of California	2016	John Paul Dantanus	6/1/2016 2:01 PM
3 INCR Tracker - 0110	Gavi Alliance	2018	Rebecca Bar	5/10/2018 11:47 AM
4 INCR Tracker - 0087	Fidelity Investments	2017	Rebecca Bar	5/8/2017 5:20 PM
5 INCR Tracker - 0026	DBL Partners	2016	Rebecca Bar	9/6/2016 11:56 AM
6 INCR Tracker - 0012	California State Teachers' Retirement System	2016	Rebecca Bar	7/13/2016 4:26 AM
7 INCR Tracker - 0027	K&I Global Investors	2016	Rebecca Bar	9/14/2016 10:24 AM
8 INCR Tracker - 0015	BlackRock, Inc.	2016	Rebecca Bar	7/20/2016 9:02 AM
9 INCR Tracker - 0047	New York State Comptroller	2016	Rebecca Bar	10/31/2016 4:02 PM
10 INCR Tracker - 0022	Presbyterian Church (USA)	2016	Rebecca Bar	8/24/2016 12:28 PM
11 INCR Tracker - 0089	Mekens Capital Management	2017	Rebecca Bar	5/22/2017 2:00 PM
12 INCR Tracker - 0109	Parametric	2018	Rebecca Bar	4/11/2018 4:58 PM
13 INCR Tracker - 0108	Natixis Investment Management	2018	Rebecca Bar	4/11/2018 4:55 PM
14 INCR Tracker - 0107	Nephila Capital	2018	Rebecca Bar	4/11/2018 4:52 PM

At the top right of the table, there is a "New" button highlighted by a red arrow.

*Ceres produced these screenshots of the Ceres Investor Portal to the Committee on July 7, 2023—yet Ceres’s counsel claimed not to be familiar with the Ceres Investor Portal on a call with Committee staff nearly four months later on October 24, 2023.<sup>124</sup>*

Despite the centrality of the Ceres Investor Portal to the climate cartel’s operations and possible antitrust violations, and its obvious responsiveness to the categories of information demanded by the Committee’s subpoena,<sup>125</sup> Ceres has refused to provide the Committee with meaningful access to these materials. To date, despite the Committee’s repeated

<sup>124</sup> Memorandum from Ceres employee to Relationship Managers 3, 5 (May 22, 2018), CERES11369 at CERES11371, CERES11373.

<sup>125</sup> See Subpoena at 1 (June 14, 2023).

engagement,<sup>126</sup> Ceres has not produced the Ceres Investor Portal to the Committee “in a form . . . in which it is ordinarily maintained or in a reasonably usable form.”<sup>127</sup> Nor has Ceres provided the Committee with access to the Ceres Investor Portal itself, despite the Committee’s repeated requests that it do so.<sup>128</sup> Instead, Ceres has produced *just three documents*, consisting of spreadsheets that were *exported* from data stored in searchable format on the Ceres Investor Portal<sup>129</sup>—even though the Ceres Investor Portal “[c]ontains [a] full database of all engagements”<sup>130</sup> and has served as “the primary means of communication” for shareholder engagements.<sup>131</sup> The format of this limited amount of material that Ceres did produce was degraded such that it was not reasonably usable in the Committee’s investigation.

The screenshot shows a document management interface. At the top, there is a list of documents with columns for Title, Body, Post Item Type, and Visibility. Below this is a table with columns: Name, Id, Engagem, Engagem, C, Da, D, L, Li, O, Research, Notes, c. The table contains several rows of data, including reports on lobbying, GHG targets, and climate-related transition plans. A green 'XLS' button with arrows pointing to the table is visible on the right side of the screenshot.

Name	Id	Engagem	Engagem	C	Da	D	L	Li	O	Research	Notes	c
Report on lobbying (BA, 2023 Resolution)	a015c0001a015c00000J	Boeing Co.									<p>[1] <a href="https://www.politico.eu/article/brussels-eu-media-pa	
Report on lobbying in line with net zero GHG com	a015c0001a015c00000H	Boeing Co.									<p>[1] <a href="https://www.ipcc.ch/report/ar6/syr/downloads/rep	
Report on GHG targets and transition plan (1.5C	a015c0001a015c00000c	Boeing Co.									<p>[1] <a href="https://www.seattletimes.com/business/boeing-pow	
Report on lobbying (BA, 2024 Resolution)	a01V4000a01V400000C	Boeing Co.									<p>[1] <a href="https://www.seattletimes.com/business/boeing-pow	
Report on risks from oil and gas exploration and	a015c0001a015c00000J	Exxon Mobil Corporation										
Report on climate-related just transition plan (XO	a015c0001a015c00000J	Exxon Mobil Corp									<p><em style="font-size: 12px;">As co-lead investor of the Climate Action 100+	
Report on climate-related transition plan (XOM, 2	a015c0001a015c00000J	Exxon Mobil Corp									<p>Dialogue coordinated through the UK Transition Plan Taskforce</p>	
Climate Action 100+ Agenda (XOM, 2023 Dialogu	a015c0001a015c00000J	Exxon Mobil Corporation										
Vote against board chair/CEO (XOM, 2023 Direct	a015c0001a015c00000J	Exxon Mobil Corporation										
Needs Review (XOM, 2023 Resolution)	a015c0001a015c00000J	Exxon Mobil Corporation									<p>[1] See, e.g., City and County of Honolulu v. ExxonMobil et al. 1C	

*Ceres belatedly produced three spreadsheets of data exported from the Ceres Investor Portal on March 22, 2024. They are virtually unreadable.*<sup>132</sup>

As the Committee continues its investigation, it will continue to press for Ceres’s full compliance with the Committee’s subpoena. All options remain on the table to ensure that the Committee receives the information that it needs.

<sup>126</sup> See Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Mindy Lubber (Dec. 31, 2022) [hereinafter “Dec. 31, 2022, Letter”]; see also Letter from Rep. Jim Jordan, Chairman, Comm. on the Judiciary, to Mindy Lubber (May 5, 2023) [hereinafter “May 5, 2023, Letter”].

<sup>127</sup> Fed. R. Civ. P. 34(b)(2)(E)(ii).

<sup>128</sup> See Dec. 31, 2022, Letter, *supra* note 126; see also May 5, 2023, Letter, *supra* note 126.

<sup>129</sup> See Letter from Matthew Miller to Rep. Jim Jordan, Chairman, Comm. on the Judiciary 1 (Mar. 22, 2024).

<sup>130</sup> *Ceres Investor Portal*, *supra* note 119, at CERES15963.

<sup>131</sup> E-mail from Church of Commissioners for England employee to Exxon Climate Action 100+ Supporting Investors, *supra* note 122, at CALPERS\_4417.

<sup>132</sup> *Ceres, Exxon Boeing Walmart Spreadsheet*, CERES82584; *Ceres, Exxon Boeing Walmart Bulk Query Result Spreadsheet*, CERES82585; *Ceres, Exxon Investor Network Groups Spreadsheet*, CERES82586.

### C. California Public Employees' Retirement System (CalPERS) and Other Asset Owners Use Retirees's Money to Advance Their Left-Wing Agenda

CalPERS, the largest public pension fund in the United States, “serves more than 2 million members”<sup>133</sup> and controls more than \$485 billion in assets.<sup>134</sup> It claims to be “united with investors around the globe to engage with the world’s largest greenhouse gas emitters to do more to step up actions on climate change.”<sup>135</sup> Specifically, “CalPERS is committed to achieving portfolio emissions in line with the 1.5-degree Celsius target” agreed to by Climate Action 100+ because CalPERS claims that “[c]limate change poses one of the top three risks to” its portfolio.<sup>136</sup>

#### 1. CalPERS Helped Found and Helps Lead Climate Action 100+

Upon “evaluat[ing] [its] public assets’ carbon footprint,” CalPERS “discovered emissions were heavily concentrated” with “only 80” of the more than ten thousand companies in its portfolio “responsible for 50% of the GHG emissions.”<sup>137</sup> Thus, CalPERS determined that “[t]he future emissions (emission trajectory) created by these companies is critical to whether the global economy meets the Paris Agreement.”<sup>138</sup> As a result, CalPERS worked with Ceres, PRI, and similar activist environmentalist groups to launch Climate Action 100+ to focus on engaging “[t]he world’s top, publicly-traded, systemically-important carbon emitters” and other “[c]ompanies with significant opportunity to drive the transition to a low-carbon economy.”<sup>139</sup>

CalPERS held the inaugural chair of Climate Action 100+<sup>140</sup> and “continues to have a significant leadership role serving as a member of the Climate Action 100+ Steering Committee.”<sup>141</sup> In addition, CalPERS is a board member of Ceres, a founding signatory of PRI, and a member and former steering committee leader of the GFANZ-affiliated Net-Zero Asset Owner Alliance (NZAOA).<sup>142</sup>

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<sup>133</sup> CalPERS, *CalPERS Story*, <https://www.calpers.ca.gov/page/about/organization/calpers-story>.

<sup>134</sup> CalPERS, *Public Employees' Retirement Fund (PERF) Monthly Update* (Apr. 30, 2024), <https://www.calpers.ca.gov/docs/perf-monthly-update.pdf>.

<sup>135</sup> Climate Action 100+, *Speaker Prep Memorandum with Remarks 4* (Dec. 6, 2017), CALPERS\_5908 at CALPERS\_5911.

<sup>136</sup> CalPERS, *Sustainable Investment and the Path to Net Zero 3, 27* (Jan. 5, 2022), CALPERS\_1861 at CALPERS\_1863, CALPERS\_1887.

<sup>137</sup> CalPERS, *Climate Change*, <https://www.calpers.ca.gov/page/investments/sustainable-investments-program/climate-change>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> CalPERS, *CalPERS' Investment Strategy on Climate Change: First Report in Response to the Taskforce on Climate-Related Financial Disclosure 17* (June 2020), CALPERS\_100 at CALPERS\_118.

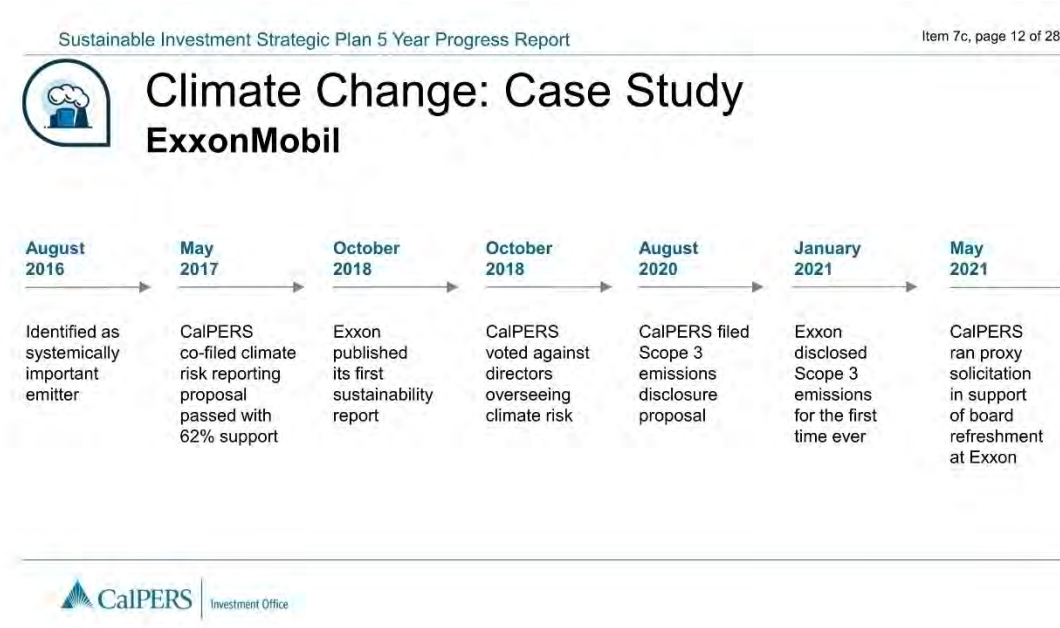
<sup>141</sup> CalPERS, *CalPERS United Nations Net Zero Asset Owner Alliance Partnership*, <https://www.calpers.ca.gov/page/investments/sustainable-investments-program/climate-change/united-nations-net-zero-asset-owner-alliance-partnership>.

<sup>142</sup> CalPERS, *2016–21 Sustainable Investment Strategic Plan: Five Year Progress Report 4*, CALPERS\_72 at CALPERS\_75.

## 2. CalPERS Aggressively Engages and Tries to Take Control of ExxonMobil

CalPERS has “assumed the lead role for 22 of the companies identified for engagement” by Climate Action 100+—“the largest number engaged by a single asset owner in the initiative.”<sup>143</sup> “Through collaborative engagement [CalPERS] will ask these companies to curb emissions, strengthen climate-related financial disclosures, and improve governance on climate change.”<sup>144</sup> CalPERS “generally support[s] greenhouse gas emission proposals” as well as “proposals seeking greater disclosure of a company’s environmental practices.”<sup>145</sup>

In particular, CalPERS doggedly has pursued ExxonMobil, the United States’ largest oil and gas company.<sup>146</sup> CalPERS has served as a lead investor for Climate Action 100+’s ExxonMobil engagement.<sup>147</sup> As illustrated in the CalPERS “Case Study” graphic below, CalPERS escalated its engagement with ExxonMobil from filing shareholder proposals, to voting against ExxonMobil directors, to supporting Climate Action 100+’s efforts to replace the incumbent board with directors of the climate cartel’s choosing:



CALPERS\_0000083

*CalPERS presented the escalation of its engagement with ExxonMobil as a “case study” in its sustainable investment strategic plan five-year progress report.*<sup>148</sup>

<sup>143</sup> CalPERS’ Investment Strategy on Climate Change: First Report in Response to the Taskforce on Climate-Related Financial Disclosure, *supra* note 140, at CALPERS\_118.

<sup>144</sup> Speaker Prep Memorandum with Remarks, *supra* note 135, at CALPERS\_5911.

<sup>145</sup> CalPERS, CalPERS Proxy Voting Guidelines 9 (May 2022), CALPERS\_182 at CALPERS\_192.

<sup>146</sup> Companies Market Cap, Largest Oil and Gas Companies by Market Cap, <https://companiesmarketcap.com/oil-gas/largest-oil-and-gas-companies-by-market-cap/>.

<sup>147</sup> Exxon Case Study, *supra* note 59, at CALPERS\_4105–10.

<sup>148</sup> 2016–21 Sustainable Investment Strategic Plan: Five Year Progress Report, *supra* note 142, at CALPERS\_83.

Although the ExxonMobil board replacement campaign was driven by “pipsqueak” activist investor Engine No. 1, which had “roughly \$50 million in company shares against ExxonMobil’s “market capitalization of nearly \$247 billion,”<sup>149</sup> CalPERS played a pivotal role in the effort. Specifically, CalPERS “publicly supported” the campaign, its proxy solicitation was “flag[ged] as a key vote,”<sup>150</sup> and CalPERS met with Vanguard to solicit its vote for the board replacement.<sup>151</sup> Climate Action 100+’s then-Steering Committee Chair and CalPERS’s then-Managing Investment Director, Board Governance & Sustainability Anne Simpson said that “there ought to be consequences of Exxon’s decision to seek removal of [an emissions reduction] resolution” at the Securities and Exchange Commission (SEC) and that “Exxon’s board members should have hell to pay.”<sup>152</sup> Ceres concurred that “[t]he need for escalation at Exxon seems to have arrived,” and stood “poised to amplify and support the next investor-led action as usual.”<sup>153</sup>

That effort to “refresh” the board at ExxonMobil was a tremendous success for the climate cartel, resulting in the replacement of three of the company’s directors with “climate activists . . . backed publicly by three of the largest pension funds in the U.S. and Climate Action 100+ signatories—CalPERS, [the California State Teachers Retirement System (CalSTRS)], and the New York State Common Retirement Fund.”<sup>154</sup> Nevertheless, Ms. Simpson proclaimed afterward that the climate cartel’s “job is . . . only just begun.”<sup>155</sup> Indeed, on May 29, 2024, “CalPERS voted against all sitting members of ExxonMobil’s board of directors, including Chief Executive Officer Darren Woods, at the company’s annual general meeting” because ExxonMobil dared to challenge a radical “shareholder resolution . . . involv[ing] ExxonMobil’s efforts to address climate change.”<sup>156</sup>

#### **D. Arjuna Capital and Other Activist Investors Hold Small Stakes but Make Draconian Demands of Corporations**

Arjuna was founded in 2013 by former Trillium Senior Vice President & Chief Strategist Farnum Brown and is an activist asset manager with around \$458 million in assets under management.<sup>157</sup> In Arjuna’s view, the United States is “facing a second civil war . . . led by a pro-white, pro-Christian agenda.”<sup>158</sup> Arjuna believes that this war “will be fought by the investors who have a voice in how corporate America responds.”<sup>159</sup> Although relatively small,

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<sup>149</sup> E-mail from Gasthalter employee to Charlie Penner et al. (May 26, 2021), ENGINENO1-118HJC-PROD-14550 at ENGINENO1-118HJC-PROD-14555.

<sup>150</sup> *Id.* at CALPERS\_4107.

<sup>151</sup> See E-mail from Anne Simpson to Vanguard employee (May 17, 2021), CALPERS\_3163 at CALPERS\_3163.

<sup>152</sup> Climate Action 100+, *Steering Committee Subset Meeting Minutes* 3 (Feb. 26, 2019), CERES24135 at CERES24137.

<sup>153</sup> E-mail from Cynthia McHale to Anne Simpson (Apr. 2, 2019), CALPERS\_26293 at CALPERS\_26293; E-mail from Morgan LaManna to Anne Simpson et al. (Apr. 2, 2019), CALPERS\_26293 at CALPERS\_26294.

<sup>154</sup> Ceres, *Narrative Report to Yajilarra Trust* 5 (July 30, 2021), CERES29333 at CERES29337.

<sup>155</sup> E-mail from Anne Simpson to Robert Eccles et al., *supra* note 26, at ENGINENO1-118HJC-PROD-6866.

<sup>156</sup> CalPERS, *CalPERS Votes Against ExxonMobil Directors for Anti-Shareholder Lawsuit* (May 29, 2024), <https://www.calpers.ca.gov/page/newsroom/calpers-news/2024/calpers-votes-against-exxonmobil-directors-for-anti-shareholder-lawsuit>. ExxonMobil’s lawsuit is discussed below. See discussion *infra* Section I.D.1.

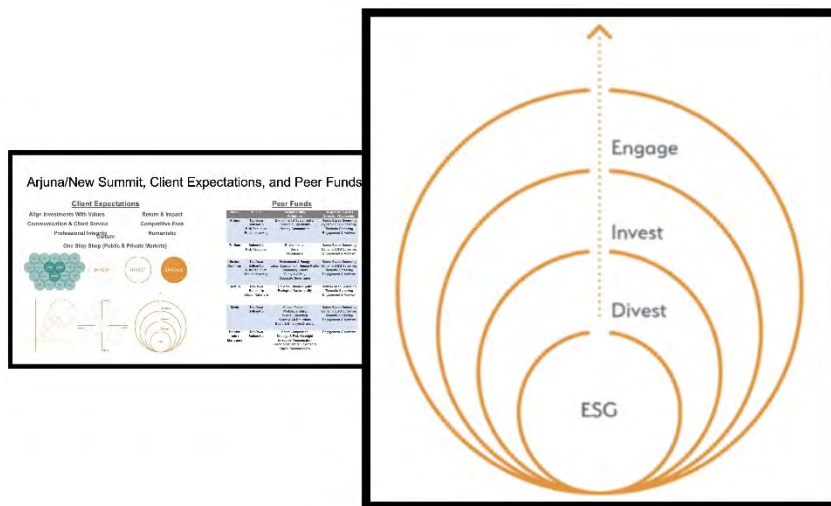
<sup>157</sup> Arjuna Capital, LLC, Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers (Form ADV) (Mar. 28, 2024).

<sup>158</sup> Arjuna Capital, *Shareholder Engagement* 1 (Jan. 2021), ARJUNA5177 at ARJUNA5177.

<sup>159</sup> *Id.* at 5178.

Arjuna sees itself as “the gadfly that shines a light on [a] company’s serious flaws before all of its shareholders.”<sup>160</sup> It is a member of both Climate Action 100+ and NZAM.<sup>161</sup>

Arjuna believes that “active engagement is essential” in a “world of widening inequality, fragile democracies, and increasing climate risk.”<sup>162</sup> The importance that Arjuna places on engagement is reflected in the figure below from an internal Arjuna strategy presentation.



*Arjuna’s take on ESG investing includes divesting from disfavored companies, investing in favored companies, and engaging companies to change them from the inside.*<sup>163</sup>

Arjuna makes investments in companies that it believes it “can influence for the better, often in spite of, but sometimes because of their serious flaws,”<sup>164</sup> and also will “use clients’ legacy holdings to engage oil and gas companies.”<sup>165</sup> Further, Arjuna “press[es] companies in [its] clients’ investment portfolios to also commit to net zero” because Arjuna’s own “net zero goals are only as good as the goals of the underlying companies in [its] portfolios.”<sup>166</sup>

In particular, Arjuna aggressively engages and seeks to destroy fossil fuel companies. Under well-established principles of corporate law, “directors have a fiduciary duty to act in the best interests of the corporation’s stockholders.”<sup>167</sup> This duty means that corporations must try to maximize shareholder value by “mak[ing] as much money as possible while conforming to the basic rules of the society.”<sup>168</sup> Arjuna, however, believes that oil companies only may seek to

<sup>160</sup> E-mail from Farnum Brown to Arjuna All (May 20, 2021), ARJUNA15901 at ARJUNA15902.

<sup>161</sup> Climate Action 100+, *Investor Signatories*, <https://www.climateaction100.org/whos-involved/investors/page/2/>; NZAM, *Arjuna Capital*, <https://www.netzeroassetmanagers.org/signatories/arjuna-capital-2/>.

<sup>162</sup> Arjuna Capital, 2023 Impact 2 (2023), <https://static1.squarespace.com/static/5bc65db67d0c9102cca54b74/t/65cb e54d712c615ec481f661/1707861327081/Arjuna+Capital+-+2023+Impact+Report.pdf>.

<sup>163</sup> Arjuna Capital, *Arjuna Strategy*, ARJUNA6227 at ARJUNA6234.

<sup>164</sup> E-mail from Farnum Brown to Arjuna All, *supra* note 160, at ARJUNA15902.

<sup>165</sup> Arjuna Capital, *Draft Shareholder Piece 2* (Oct. 19, 2022), ARJUNA19398 at ARJUNA19399.

<sup>166</sup> *Id.* at ARJUNA19398.

<sup>167</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985).

<sup>168</sup> Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. Times (Sept. 13, 1970), <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>.

“maximize returns’ *within* a 1.5-degree global-temperature-rise threshold, but not beyond it.”<sup>169</sup> Thus, Arjuna has “exercised the share ownership of a few clients with Exxon and Chevron stock to press for change” that would fundamentally alter—if not entirely destroy—those companies.<sup>170</sup>

In 2021, Arjuna filed a radical shareholder proposal to convert Chevron, the United States’ second-largest oil company,<sup>171</sup> into a “public benefit corporation” that can “make decisions that promote the interests of *stakeholders*, such as employees and communities, without having to justify those decisions as also advancing *shareholders*’ interest in receiving profits.”<sup>172</sup> Arjuna acknowledged that, “[a]s a conventional corporation, directors may fear they will breach their fiduciary duties if they make decisions that might undercut the individual company’s financial returns,”<sup>173</sup> and that Chevron’s opposition to reducing “emissions . . . arising from customers’ use of its products” appeared to “be tied directly to [Chevron’s] commitment to capturing higher returns as a conventional corporation.”<sup>174</sup> In contrast, Arjuna’s proposed transformation could lead Chevron “to take the steps that are necessary to constrain average global warming to 1.5 °C (*such as reducing its fossil-fuel production*), even if the steps cannot be justified by the board as necessarily optimizing its long-term profits.”<sup>175</sup> Chevron’s stockholders overwhelmingly rejected Arjuna’s proposal by a vote of 97% to 3%.<sup>176</sup>

Apparently undeterred, for the 2024 proxy season, Arjuna filed a shareholder proposal that would require ExxonMobil to “further accelerat[e] the pace of [its] emission reductions.”<sup>177</sup> Arjuna did so even though ExxonMobil had made clear to Arjuna that doing so would require it to reduce “demand for [its] products,”<sup>178</sup> and even though ExxonMobil shareholders “roundly rejected . . . similar proposals” in both 2022 and 2023.<sup>179</sup>

ExxonMobil filed suit to challenge Arjuna’s resolution, explaining that it

seeks to replace ExxonMobil management’s substantial expertise and well-considered business judgment with [Arjuna’s] preferred approach for reducing GHG emissions at an accelerated pace in artificial isolation. In doing so, the [resolution] seeks to directly interfere with management’s business judgment and micromanage

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<sup>169</sup> Shareholder Engagement (July 2021), <https://static1.squarespace.com/static/5bc65db67d0c9102cca54b74/t/61127a9168dc6b1eef94a55e/1628600977692/Arjuna+Shareholder+Engagement+-+3Q.2021+-+Climate+Tipping+Point.pdf> (emphasis added).

<sup>170</sup> *Id.*

<sup>171</sup> *Largest Oil and Gas Companies by Market Cap*, *supra* note 146.

<sup>172</sup> Arjuna Capital, *Shareholder Rebuttal to Chevron Corp.* 2 (Apr. 2021), ARJUNA13397 at ARJUNA13398 (emphasis added).

<sup>173</sup> *Id.* at ARJUNA13399.

<sup>174</sup> *Id.* at ARJUNA13400–01.

<sup>175</sup> *Id.* at ARJUNA13401 (emphasis added).

<sup>176</sup> Ceres, *Become a Benefit Corporation (CVX, 2021 Resolution)* (2021), <https://engagements.ceres.org/ceres/engagementdetailpage?recID=a011H00000BsplqQAB>.

<sup>177</sup> Compl. ¶¶ 8, 66, 105, *Exxon Mobil Corp. v. Arjuna Cap. LLC*, (No. 24-69) (N.D. Tex. Jan. 21, 2024).

<sup>178</sup> Arjuna Capital, *ExxonMobil Pre-Engagement Call with Co-Filers Notes* 1 (Feb. 7, 2023), ARJUNA12822 at ARJUNA12822.

<sup>179</sup> *Exxon Mobil Corp. v. Arjuna Cap. LLC*, No. 24-69, 2024 WL 2331803, at \*1 (N.D. Tex. May 22, 2024).

ExxonMobil’s core business—the energy and petrochemical products and services that ExxonMobil offers. . . . [T]he [resolution] seeks to usurp the role of management and the board to impose [Arjuna’s] personal policy preferences through a shareholder proposal process that was not designed or intended for such use.<sup>[180]</sup>

In response, Arjuna withdrew its proposal.<sup>181</sup> Nevertheless, on May 22, 2024, the court denied Arjuna’s motion to dismiss, allowing ExxonMobil’s lawsuit to move forward.<sup>182</sup> The court explained that Arjuna “follow[s] a ‘Trojan Horse’ model, aggregating enough shares to vote in various corporations and submitting proposals designed to combat climate change and reduce Big Oil’s greenhouse gas emissions,” and that ExxonMobil’s “position is a rational response to entities categorically opposed to Big Oil. Exxon is big. And Exxon is Oil. And another court has already found [Arjuna] has leadership”—specifically, its Managing Partner and Chief Investment Officer Natasha Lamb—“that’s ‘manifestly biased’ against Exxon.”<sup>183</sup>

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## II. THE CLIMATE CARTEL MAKES INCREASINGLY EXTREME DEMANDS TO CORPORATIONS, FROM DISCLOSURE TO REDUCTION TO ENFORCEMENT OF CARBON COMMITMENTS

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Rather than divest from disfavored companies, the climate cartel seeks to change their very nature through “engagement.” In the view of the climate cartel, “divestment doesn’t actually help with decarbonization” because “[i]t just moves assets around from one company to another.”<sup>184</sup> Further, “once investors sell out they are no longer able to apply pressure to company boards.”<sup>185</sup> After all, an investor “can’t engage with EXXON if they don’t hold it.”<sup>186</sup>

Moreover, because an index fund like those managed by the “Big Three” asset managers, BlackRock, State Street, and Vanguard, “can’t just divest from the companies in its index,” “the main lever of influence for a passive fund is stewardship and engagement.”<sup>187</sup> As Vanguard has explained:

The majority of our assets under management are tracking market based indexes. For products which track these indexes, changing portfolio construction (tilting or divestment) is not an option; engagement is a key lever available to meaningfully move index funds towards net zero through encouraging companies to transition

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<sup>180</sup> Compl., *supra* note 177, ¶¶ 73–74.

<sup>181</sup> See *Exxon Mobil Corp.*, 2024 WL 2331803, at \*2.

<sup>182</sup> See *id.* at \*14.

<sup>183</sup> *Id.* at \*5.

<sup>184</sup> Transcribed Interview of Mary Schapiro, Vice Chair, GFANZ (Feb. 14, 2024) at 156:19–157:8; Transcribed Interview of Mark Carney, Co-Chair, GFANZ (Apr. 17, 2024) at 73:12–74:15, 94:22–95:15, 99:3–7. The Committee required testimony from Ms. Schapiro and Mr. Carney because GFANZ has withheld responsive documentary information from the Committee.

<sup>185</sup> Aviva Invs., *Our Global Responsible Investment Approach: Annual Review 2018* 46–47 (2018), AV169 at AV214–15.

<sup>186</sup> E-mail from Adam Seitchik to Farnum Brown & Natasha Lamb (Dec. 29, 2021), ARJUNA16161 at ARJUNA16161.

<sup>187</sup> Transcribed Interview of Mary Schapiro, *supra* note 184, at 156:19–157:8; see *id.* at 132:2–7.



to a low carbon economy. Furthermore, substantial shifts in the global economy are required for market based indexes to achieve net zero emissions by 2050 or sooner.<sup>188</sup>

**Phase 2 Mission Statement**

**Climate Action 100+**

**Initiative Goal** – To ensure CA100+ focus companies halve their absolute greenhouse gas (GHG) emissions<sup>1</sup> by 2030 at a global level<sup>2</sup>, in line with a trajectory to reach net-zero emissions by 2050<sup>3</sup>

**Support the CA**

**Company expectations as per the CA100+ Net-Zero Company Benchmark**

- 1.5°C aligned GHG emissions reduction targets
- Decarbonisation strategy to deliver these targets
- 1.5°C aligned capital expenditure
- 1.5°C aligned climate policy engagement (direct and indirect lobbying)
- Appropriate climate governance and incentive schemes
- Strategy to ensure a just transition for impacted workers and communities
- TCFD aligned disclosure and climate-scenario planning
- 1.5 aligned accounting practices, financial statements and audits

1. Covering all... 2. Recognising... 3. Consistent with the Paris Agreement goal of limiting global temperature increase to 1.5°C with low or no overshoot (equivalent to the IPCC Special Report on 1.5°C pathway P1 or net zero emissions by 2050). The IIGCC Emissions Gap Report 2021 estimates that total global emissions will need to fall by approximately 55% by 2050 (compared with 1990 levels) in order to meet 1.5°C. Achieving this rate of decarbonisation at CA100+ focus companies will only be possible if complemented by strong policy action from governments and regulators, as outlined by groups such as the Investors' Agenda.

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*Climate Action 100+’s “expectations” include various demands that companies disclose, reduce, and enforce carbon commitments.*<sup>189</sup>

The climate cartel’s collusive efforts to impose decarbonization on the American economy generally can be described as seeking (1) “[c]limate [r]isk [d]isclosure,” (2) “[a]ctions to [r]educe GHG emissions,” and (3) enforcement (and reinforcement) of these disclosure and reduction commitments from corporations.<sup>190</sup> Significantly, the climate cartel is escalating its substantive demands of corporations along this disclose-reduce-enforce axis. Climate Action 100+ has said that it is “moving beyond simple disclosure requests and now . . . making more action-oriented requests” and “more ambitious asks” of companies.<sup>191</sup> In other words, Climate Action 100+ engagements are “about action at this point, not just words/commitments/disclosure.”<sup>192</sup> Netherlands-based stockholder engagement service provider Follow This, which expressly “buy[s] shares in order to work on [its] mission to stop climate change, not to make a financial profit,”<sup>193</sup> has framed the climate cartel’s demand escalation even more bluntly as a “Trojan horse”:

The [Paris-compliant targets] resolution asks for something that nobody can be against. This will ultimately result in the fulfilment [sic] of our mission: as soon as a company aligns its targets with Paris, it will conclude that there is no room for further investments in exploring for more oil and gas. The company will therefore stop exploring for more oil and gas and start exploring for new business models. Therefore: Trojan horse.<sup>194</sup>

<sup>188</sup> E-mail from Vanguard employee to Vanguard employee et al. (Sept. 27, 2021), VAN\_HJC\_30030 at VAN\_HJC30032.

<sup>189</sup> Climate Action 100+, *Strategy Summary for Funders* 6 (Jan. 4, 2022), CERES3848 at CERES3853.

<sup>190</sup> Climate Action 100+, *Steering Committee Agenda* 29 (Sept. 27, 2018), CERES31773 at CERES31801.

<sup>191</sup> *KPI Summary and Rationale*, *supra* note 25, at CERES62709.

<sup>192</sup> *Long Term Strategy Meeting 14.10.21*, *supra* note 24, at CERES59160.

<sup>193</sup> Follow This, *Buying a Share*, <https://www.follow-this.org/how-it-works/>.

<sup>194</sup> Follow This, *For Investors*, <https://www.follow-this.org/for-investors/>.

Thus, each of the climate cartel’s escalating asks—disclosure, reduction, and enforcement—is intended to decarbonize. Moreover, each necessarily reduces output and increases prices for American consumers.<sup>195</sup>

### A. First, the Climate Cartel Seeks Immaterial Disclosure of Carbon Emissions

The climate cartel pressures corporations to make immaterial “climate-related financial disclosures.”<sup>196</sup> Generally, these demands “seek information about how companies plan to address carbon asset risks and disclose what they are doing to retool for a low-carbon economy.”<sup>197</sup> “[M]ost common is a request that the company assess and disclose its business model response to global climate regulations aimed at limited warming to 2°C, the goal of the Paris Agreement.”<sup>198</sup> Another frequent demand is that corporations make more exhaustive disclosures of climate governance, strategy, risk management, and metrics and targets.<sup>199</sup>

Disclosing emissions is likely to lead, both directly and indirectly, to reduced output of disfavored, carbon-intensive products. Directly, disclosure requirements may cause fossil fuel companies to “limit[] the amount of capital that is allocated to the exploration and development of fossil fuel reserves,” which in turn will reduce their output.<sup>200</sup> Indirectly, climate disclosures may subject all companies to increased attack by government regulators and activists alike. “Corporate behavior can be influenced by consumer reaction and activist targeting, but knowledge of those practices is a prerequisite.”<sup>201</sup> As As You Sow President and Chief Counsel Danielle Fugere explained to the Committee in her transcribed interview, “they first need to have the full information before they set a target.”<sup>202</sup> In other words, activists “want to use the information to prod companies to change policies in socially-motivated directions,” and may use emissions disclosures “to organize boycotts, demonstrations, and social media campaigns against ‘brown’ companies.”<sup>203</sup>

There is no legitimate procompetitive justification for requiring additional emissions disclosures, as they are immaterial and would harm the disclosing company. Even before the SEC’s recent adoption of rules mandating specific climate-related disclosures,<sup>204</sup> longstanding federal securities law required “compan[ies] to disclose known risks that are material to [their]

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<sup>195</sup> See discussion *infra* Part IV.

<sup>196</sup> Climate Action 100+, *2023 Proxy Season: An Introduction to Flagged Votes* (Mar. 8, 2023), <https://www.climateaction100.org/news/flagged-votes-and-proxy-season-an-introduction/>.

<sup>197</sup> Heidi Welsh & Michael Passoff, As You Sow et al., *Proxy Preview 2020* 6 (Apr. 3, 2020).

<sup>198</sup> Madison Condon, *Externalities and the Common Owner*, 95 Wash. L. Rev. 1, 24 (2020).

<sup>199</sup> *Steering Committee Agenda*, *supra* note 190, at CERES31794; see Task Force on Climate-related Financial Disclosures, *Recommendations of the Task Force on Climate-related Financial Disclosures* 14 (June 2017).

<sup>200</sup> Condon, *supra* note 198, at 40.

<sup>201</sup> *Id.*

<sup>202</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 126:7.

<sup>203</sup> Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2021 Colum. Bus. L. Rev. 840, 851–52 (2021).

<sup>204</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21,668 (Mar. 28, 2024). The effective date of the SEC’s rule has been “delayed indefinitely” due to legal challenge. The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date, 89 Fed. Reg. 25,804, 25,804 (Apr. 12, 2024).

future operations and financial position[s].”<sup>205</sup> Information “is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote” or invest, and would view it as “significantly alter[ing] the ‘total mix’ of information made available.”<sup>206</sup> This means that investors already have been provided with all of the information that matters—and, conversely, that anything that has not been disclosed is “trivial information.”<sup>207</sup> Thus, the climate cartel’s disclosure demands seek immaterial information that is not relevant to the decision of whether and how to invest.

Absent collusion, it is unclear why a company voluntarily would disclose information about its carbon emissions. Companies already “have the best information about their [own] exposure to climate risk.”<sup>208</sup> Making disclosures shares this information with “the firm’s industry competitors, suppliers, and customers [and] weakens the firm’s competitive advantage and bargaining position.”<sup>209</sup> Conversely, by keeping immaterial emissions information confidential, a company may be able to avoid harm from “both regulatory action and reputational damage.”<sup>210</sup> Indeed, voluntarily making such disclosures is exactly the sort of “act[ion] contrary to [one’s] own independent interest” that may give rise to an inference of conspiracy.<sup>211</sup>

## **B. Second, the Climate Cartel Seeks Reduction of Carbon Emissions that Require Output Reductions**

The climate cartel also pressures corporations to reduce their emissions.<sup>212</sup> These demands often seek the adoption of “GHG reduction targets aligned with the Paris Agreement’s ambition of maintaining global temperature rise to 1.5 degrees Celsius.”<sup>213</sup> Another frequent demand is for corporations to commit to specific “[t]ransition plans” for *how* they will effect these emissions reductions.<sup>214</sup> Notably, Climate Action 100+ is now “ask[ing] companies to not only disclose but to implement robust transition plans.”<sup>215</sup>

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<sup>205</sup> Mahoney & Mahoney, *supra* note 203, at 851; *see, e.g.*, 17 C.F.R. § 229.105(a) (requiring “discussion of the material factors that make an investment in the registrant or offering speculative or risky”).

<sup>206</sup> *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

<sup>207</sup> *Id.* at 233 (quoting *TSC Indus. Inc.*, 426 U.S. at 448).

<sup>208</sup> Condon, *supra* note 198, at 42.

<sup>209</sup> *Id.* at 78 n.381.

<sup>210</sup> *Id.* at 39.

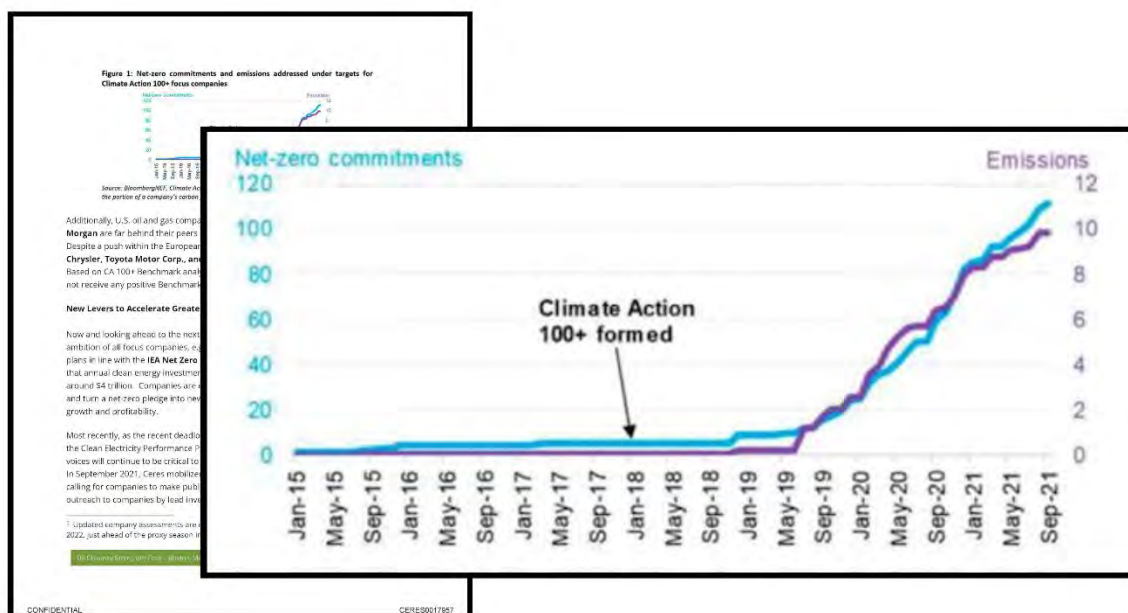
<sup>211</sup> *Kreuzer v. Am. Acad. of Periodontology*, 735 F.2d 1479, 1488 (D.C. Cir. 1984); *see Interstate Cir. v. United States*, 306 U.S. 208, 221 (1939) (inferring agreement “from the course of conduct of the alleged conspirators”).

<sup>212</sup> *See 2023 Proxy Season: An Introduction to Flagged Votes*, *supra* note 196.

<sup>213</sup> Heidi Welsh & Michael Passoff, As You Sow et al., *Proxy Preview 2023* 22 (Mar. 27, 2023); *see Condon, supra* note 198, at 27 (“Most reduction commitments ask firms to reduce emissions in line with the goals of the Paris Agreement, enough to keep warming below 2°C.”).

<sup>214</sup> *Steering Committee Agenda*, *supra* note 190, at CERES31891.

<sup>215</sup> Climate Action 100+, *Climate Action 100+ Phase 2: Summary of Changes* 6, <https://www.climateaction100.org/wp-content/uploads/2023/06/CA100-Phase-2-Summary-of-Changes.pdf>.



Since the formation of Climate Action 100+, the number of its focus companies making net zero commitments and setting emissions targets increased dramatically.<sup>216</sup>

The effect—and intent—of such proposals is to reduce output, which increases prices for American consumers. “[E]missions reductions proposals at their core seek” to “reduce supply.”<sup>217</sup> Indeed, reducing emissions necessarily requires reduced output in disfavored, carbon-intensive industries like fossil fuels, aviation, and agriculture.<sup>218</sup> For example, as ExxonMobil explained in its lawsuit against Arjuna, reducing its emissions would force ExxonMobil “to reduce or eliminate production and sell fewer of certain products.”<sup>219</sup>

There is no legitimate procompetitive justification for emissions reduction targets. “The social justifications proffered for [a] restraint of trade . . . do not make it any less unlawful.”<sup>220</sup> Unsurprisingly, “companies themselves argue that their self-interest points sharply away from” voluntarily reducing their emissions.<sup>221</sup> Further, in demanding carbon reduction commitments, the members of the climate cartel fundamentally “are arguing that they themselves have a better understanding of the growth that will be needed to meet expected demand than the executives who work within the energy industry.”<sup>222</sup> As ExxonMobil explained in its lawsuit, Arjuna’s emissions reduction proposal “seeks to directly interfere with management’s business judgment

<sup>216</sup> Ceres, *Climate Action 100+: Global Investors Driving Business Transition 3* (Oct. 2021), CERES17955 at CERES17957.

<sup>217</sup> Condon, *supra* note 198, at 55.

<sup>218</sup> See discussion *infra* Part IV.

<sup>219</sup> Compl., *supra* note 177, ¶ 84; see discussion *supra* Section III.A.

<sup>220</sup> *Superior Ct. Trial Laws. Ass’n*, 493 U.S. at 424; see discussion *supra*.

<sup>221</sup> Condon, *supra* note 198, at 31.

<sup>222</sup> *Id.* at 27.

and micromanage ExxonMobil’s core business—the energy and petrochemical products and services that ExxonMobil offers.”<sup>223</sup>

### **C. Finally, the Climate Cartel Seeks to Enforce and Reinforce Decarbonization by Handcuffing Corporate Management and Muzzling Free Speech and Petitioning**

The climate cartel further pressures corporations to enforce—and reinforce—their carbon disclosure and reduction commitments, including by handcuffing corporate management and muzzling corporate free speech and petitioning.<sup>224</sup> Each of these demands is intended “to detect and deter defections from [the climate cartel’s] collusive strategies.”<sup>225</sup>

#### **1. The Climate Cartel Seeks to Restrain Corporate Executives and Directors**

At the executive level, demands to tie corporate compensation to climate “progress” seek to force companies to “incorporate climate change performance” and “progress towards achieving the company’s GHG reduction targets” in “senior executive[] remuneration arrangements.”<sup>226</sup> Climate Action 100+ has indicated that it intends to “focus[] on executive compensation to ensure targets get actually achieved.”<sup>227</sup> At the board level, demands for board oversight of climate issues seek to require “Board or Board committee oversight of the management of climate change risks,” including “a position at the Board level with responsibility for climate change.”<sup>228</sup> Both types of demands infringe upon the board’s freedom to manage the corporation for the benefit and in the best interests of its stockholders.<sup>229</sup>

#### **2. The Climate Cartel Seeks to Silence Corporate Speech and Petitioning**

With regard to limits on corporate speech and petitioning, the snake is eating its own tail: “[i]nstitutional investors are simultaneously arguing both that fossil fuel companies are failing to respond to imminent climate regulation, and also requesting that they stop thwarting this regulation, so as to hasten its imminence.”<sup>230</sup> Demands to silence corporate speech and petitioning “ask[] companies to provide enhanced disclosure to ensure that climate-related lobbying activities are consistent with the goals of the Paris Agreement and/or with the respective company’s own climate strategies and targets.”<sup>231</sup> Thus, the climate cartel seeks to limit companies’ speech and petitioning to only “activities in accordance with the goals of the Paris Agreement.”<sup>232</sup>

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<sup>223</sup> Compl., *supra* note 177, ¶ 73; *see* discussion *supra* Section I.D.

<sup>224</sup> *See Steering Committee Agenda*, *supra* note 190, at CERES31801.

<sup>225</sup> Levenstein & Suslow, *supra* note 75, at 44.

<sup>226</sup> Climate Action 100+, *Net Zero Company Benchmark 2.0* 33 (Mar. 2023).

<sup>227</sup> *Long Term Strategy Meeting 14.10.21*, *supra* note 24, at CERES59159.

<sup>228</sup> *Net Zero Company Benchmark 2.0*, *supra* note 226, at 33.

<sup>229</sup> *See* 8 Del. Code § 141(a) (“The business and affairs of every corporation . . . shall be managed by or under the direction of a board of directors . . .”).

<sup>230</sup> Condon, *supra* note 198, at 32.

<sup>231</sup> Climate Action 100+, *2023 Proxy Season: An Introduction to Climate Lobbying* (Mar. 29, 2023), <https://www.climateaction100.org/news/2023-proxy-season-an-introduction-to-climate-lobbying/>.

<sup>232</sup> *Net Zero Company Benchmark 2.0*, *supra* note 226, at 30.

In addition to reinforcing anticompetitive emissions disclosure and reduction commitments, limiting free speech and petitioning is likely to lead to reduced output of disfavored products because of its potential impact on public policy. Restricting corporate speech and petitioning “can only serve to help the implementation of regulatory measures,” which “will in turn lead to actual emissions reductions.”<sup>233</sup> As Climate Action 100+ has admitted, “decarbonization and lobbying activities are intrinsically linked” because “the speed of decarbonization required to reach goals of the Paris Agreement is contingent on an enabling policy environment.”<sup>234</sup>

There is no legitimate procompetitive justification for restrictions on corporate speech and petitioning. Such “proposals do not serve the best interests of the target companies.”<sup>235</sup> Rather, these demands seek to limit the output of ideas, just as their substantive effect is to limit the output of disfavored products. That censorship stands against not just antitrust law but fundamental principles of American liberty: “[t]he remedy for speech that is false is speech that is true. . . . The theory of our Constitution is that the best test of truth is the power of the thought to get itself accepted in the competition of the market.”<sup>236</sup>

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### **III. THE CLIMATE CARTEL APPLIES ESCALATING “ENGAGEMENT” PRESSURE ON CORPORATIONS, FROM NEGOTIATING WITH MANAGEMENT TO FILING AND FLAGGING RESOLUTIONS TO TAKING OUT BOARD DIRECTORS**

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The climate cartel has made this clear: it will escalate its tactics against corporations to ensure that they adopt radical, output-reducing decarbonization policies. Internal documents produced to the Committee in this investigation have revealed Climate Action 100+’s plan to “[r]amp up” and “[e]scalate engagements with laggard focus companies.”<sup>237</sup> Ceres has suggested that “pressuring boards remains one of the few avenues for investors to force companies to act,”<sup>238</sup> and Climate Action 100+ has indicated that it intends “to increase engagement with boards to put more pressure on management.”<sup>239</sup> Lest there be any doubt about the climate cartel’s intentions, Climate Action 100+ has emphasized that “it is important to demonstrate that investors are willing to go to the top rung” in order “to generate bold action.”<sup>240</sup>

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<sup>233</sup> Condon, *supra* note 198, at 38–39.

<sup>234</sup> *2023 Proxy Season: An Introduction to Climate Lobbying*, *supra* note 231.

<sup>235</sup> Condon, *supra* note 198, at 32.

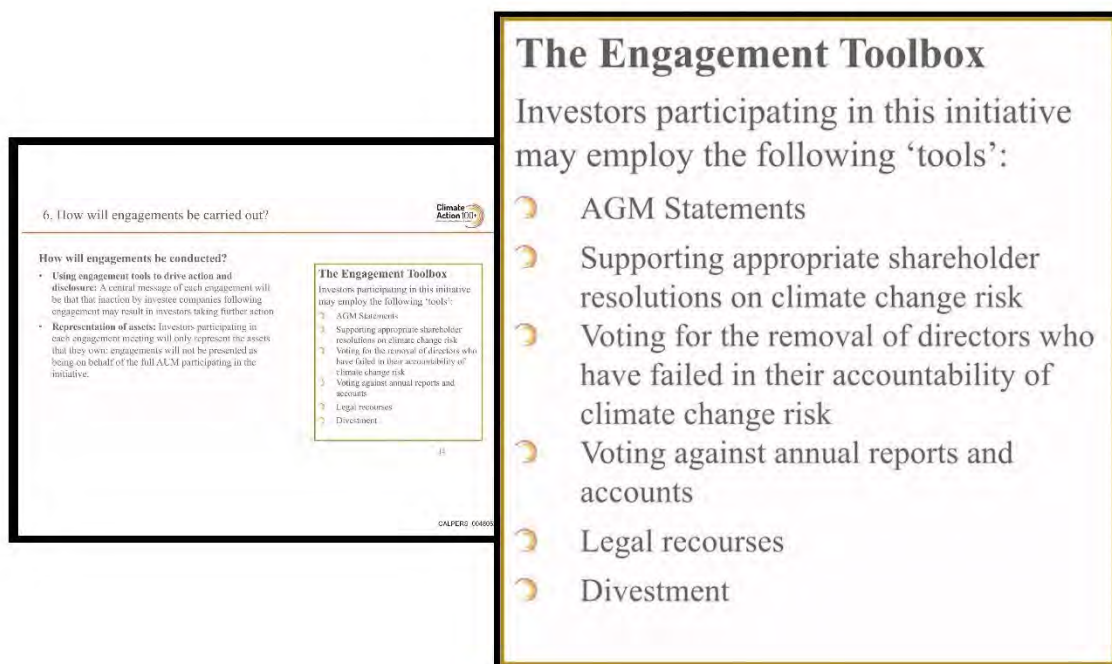
<sup>236</sup> *United States v. Alvarez*, 567 U.S. 709, 727–28 (2012) (cleaned up).

<sup>237</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963.

<sup>238</sup> Memorandum from Kirsten Spalding to PMT, *supra* note 55, at CERES13571.

<sup>239</sup> *Long Term Strategy Meeting 14.10.21*, *supra* note 24, at CERES59159.

<sup>240</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66964.



*The Climate Action 100+ “engagement toolbox” includes shareholder resolutions and the removal of corporate directors.<sup>241</sup>*

Generally, this escalation proceeds in three steps: first, the climate cartel negotiates with corporate management; second, the climate cartel files and flags shareholder resolutions; and third, the climate cartel votes against and replaces members of the board of directors.

### **A. First, the Climate Cartel Negotiates with and Threatens Management**

First, members of the climate cartel leverage their stock holdings to demand meetings with senior corporate leadership. Dominant stockholders like the “Big Three” asset managers, who *each* held an average of between 4.5% and 9.7% of every S&P 500 company as of the end of 2021, have the power to command meetings with company executives and directors on their own.<sup>242</sup> As You Sow Chief Executive Officer Andrew Behar explained this to the Committee in his deposition: “BlackRock owns about 7 percent of every company. And so as a shareholder, they have, you know, a certain amount of influence when they tell the company they’d like to meet and talk about material risks . . . BlackRock writes a letter, they get a meeting.”<sup>243</sup> Indeed, the “Big Three” appears to hold hundreds and hundreds of such meetings each year: BlackRock conducted more than 3,700 engagements with companies in 2023, 1,402 of which concerned “[c]limate and natural capital” matters;<sup>244</sup> State Street conducted 940 engagements with

<sup>241</sup> *Investor Briefing Pack: Overview of the Climate Action 100+ and How to Join*, *supra* note 108 .

<sup>242</sup> Hirst & Bebchuk, *supra* note 10, at 1556.

<sup>243</sup> Deposition of Andrew Behar, *supra* note 8, at 108:25–109:25.

<sup>244</sup> BlackRock, *Investment Stewardship Annual Report 12* (2024), <https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2023-summary.pdf>.

companies in 2023, more than 160 of which concerned “climate-related risk management”;<sup>245</sup> and Vanguard conducted 1,659 engagements with 1,334 companies in 2023.<sup>246</sup> Conversely, activist gadfly investors, who often “acquire a minimal ownership stake . . . to work on [their] mission to stop climate change, not to make a financial profit,” may lack the influence required to obtain such meetings on their own.<sup>247</sup> Accordingly, small investors band together and aggregate their holdings through initiatives like Climate Action 100+ and stockholder engagement service providers like As You Sow to obtain such meetings. For example, as Mr. Behar euphemistically explained to the Committee, Climate Action 100+ “was created . . . [s]o shareholders could convene and . . . do it in joint . . . meeting[s] with ten shareholders [rather] than ten separate meetings.”<sup>248</sup>

These meetings—and the lurking threat of escalation to shareholder proposals and director votes—have proven tremendously successful in getting the climate cartel what it wants at the expense of corporations and their stockholders. “Many times [the climate cartel’s] questions are answered during an engagement and the company agrees with [its] terms . . . .”<sup>249</sup> Such an outcome—a bloodless victory for the climate cartel, if not for American corporations and consumers—is the climate cartel’s preference. As Mr. Behar explained to the Committee during his deposition, “we hope that 100 percent of the companies we engage would say, great idea, let’s go do it and we’d never have to escalate. It’s expensive for us and takes more resources than having a conversation.”<sup>250</sup> Correspondingly, as As You Sow President and Chief Counsel Danielle Fugere understatedly has acknowledged, “[c]ompanies don’t like to necessarily have proposals filed.”<sup>251</sup> That is unsurprising: corporations may spend as much as \$150,000 to consider a single shareholder resolution, in addition to diverting time and resources that could be spent elsewhere.<sup>252</sup>

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<sup>245</sup> State Street Global Advisors, *Stewardship Report 2023* 15, 39 (May 2024), <https://www.ssga.com/us/en/institutional/ic/library-content/assets/pdf/global/asset-stewardship/2024/asset-stewardship-report-2023.pdf>.

<sup>246</sup> Vanguard, *Investment Stewardship 2023 Annual Report* 10 (Feb. 2024), [https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/investment\\_stewardship\\_2023\\_annual\\_report.pdf](https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/investment_stewardship_2023_annual_report.pdf).

<sup>247</sup> Mar. 10, 2023, Letter, *supra* note 9, at ARJUNA12844.

<sup>248</sup> Deposition of Andrew Behar, *supra* note 8, at 22:19–24.

<sup>249</sup> As You Sow, *2022 Shareholder Impact Review: Changing Corporations for Good* 4 (Sept. 20, 2022), [https://www.asyousow.org/s/AsYouSow2022\\_Shareholder-Impact-Review-Report\\_v7\\_FIN\\_20220920.pdf](https://www.asyousow.org/s/AsYouSow2022_Shareholder-Impact-Review-Report_v7_FIN_20220920.pdf).

<sup>250</sup> Deposition of Andrew Behar, *supra* note 8, at 71:3–6.

<sup>251</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 89:21.

<sup>252</sup> Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, 85 Fed. Reg. 70,240, 70,274 (Nov. 4, 2020).



## B. Second, the Climate Cartel Challenges Management with Shareholder Resolutions

The image shows a presentation slide titled "Proxy Voting" with a list of benefits. The slide is partially overlaid by a larger, semi-transparent version of itself. The background slide includes sections for "Benefits", "Drawbacks", and "Ceres' Example". The foreground slide focuses on the "Benefits" section.

Benefits	Drawbacks	Ceres' Example
<ul style="list-style-type: none"><li>Use of <b>collective pressure</b> to influence corporate management</li><li>Forces management to carefully <b>consider and clarify their position</b> on an issue</li><li><b>Encourages other investors</b> to think about an issue because it is up for consideration</li></ul>	<ul style="list-style-type: none"><li>Companies may interpret non-binding votes as a sign that they are doing nothing on the issue</li><li>Investors may suffer <b>low votes</b></li></ul>	<ul style="list-style-type: none"><li><b>2-degree scenario analysis.</b> Co-owners to provide pre-declared ExxonMobil asking the company</li></ul>

**Proxy Voting**

**Benefits**

- Use of **collective pressure** to influence corporate management
- Forces management to carefully **consider and clarify their position** on an issue
- Encourages other investors** to think about an issue because it is up for consideration

ESG  
We write a proxy voting toolkit to help people align their voting.  
Benchmarking the mutual funds on how they vote their proxy.  
2 DEGREE  
These pre-declarations of support created peer pressure among  
private 50% of shareholders voting to support the proposal as a  
company's largest shareholder. Majority votes were also secured  
by 10% and considered precedent setting.

CONFIDENTIAL CERES0059914

*According to Ceres, a benefit of proxy voting is the “[u]se of collective pressure to influence corporate management.”<sup>253</sup>*

Where discussions with corporate management do not yield the results that the climate cartel wants, its shareholder members will file resolutions seeking to impose output-reducing decarbonization policies upon corporations, and its initiative members will “flag” these resolutions for support by other members of the climate cartel. As Ms. Fugere explained to the Committee during her transcribed interview, when corporations are “either unwilling to meet or unwilling to take the actions that [it] want[s],” the climate cartel will “escalate or . . . push the issues further” by “fil[ing] shareholder resolutions . . . . Where a company is not providing information requested by a shareholder or maybe where they are not taking action that investors think are necessary to reduce risk and to protect shareholder value, they can file a proposal.”<sup>254</sup> Her colleague Mr. Behar testified more bluntly: “In the case where [companies] are more reticent, then we use our legal rights as shareholders to file a shareholder resolution.”<sup>255</sup> Such resolutions may be filed by investors who hold as little as \$2,000 of stock in a company.<sup>256</sup> Their numbers have increased dramatically in recent years. According to the Harvard Law School Forum on Corporate Governance, the number of filed shareholder resolutions increased from 447 in 2020 and 449 in 2021, to 522 in 2022, to 616 in 2023.<sup>257</sup>

<sup>253</sup> Ceres, *Ceres' Dominant Strategic Driver: Moving Companies Through Investor Engagement 5* (2018), CERES39910 at CERES39914.

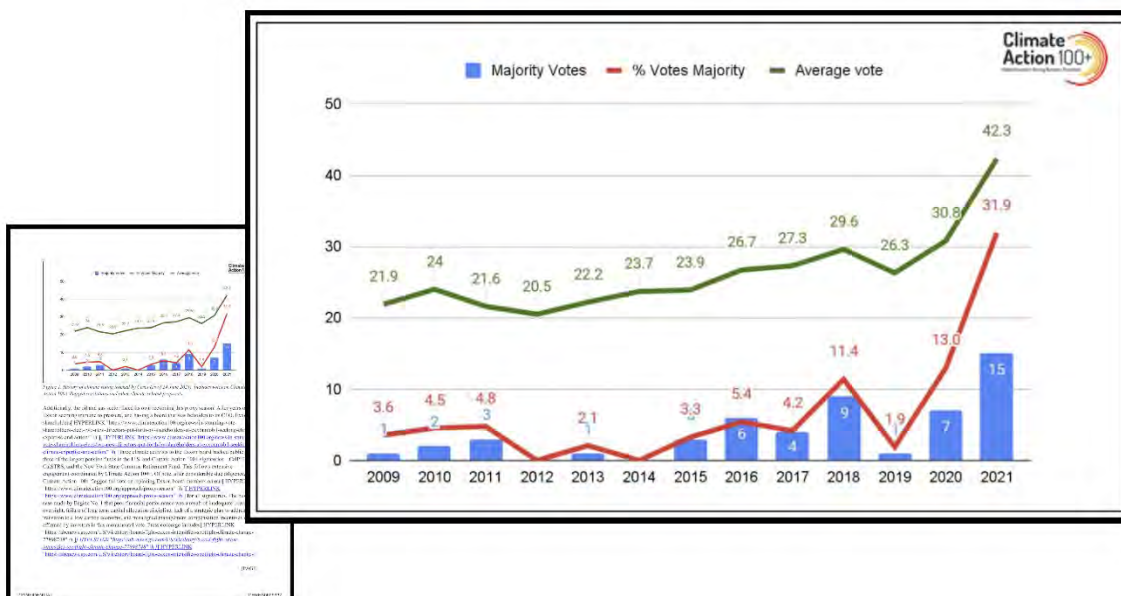
<sup>254</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 19:9–12, 114:7–10.

<sup>255</sup> Deposition of Andrew Behar, *supra* note 8, at 14:10–11.

<sup>256</sup> See 17 C.F.R. § 240.14a-8 (2022).

<sup>257</sup> Lindsey Stewart, *Proxy Voting Insights: Key ESG Resolutions* (Oct. 4, 2023), <https://corpgov.law.harvard.edu/2023/10/04/proxy-voting-insights-key-esg-resolutions/>.

Documents reviewed by the Committee in this investigation have confirmed that the climate cartel will threaten and use shareholder resolutions until corporations bow. Climate Action 100+’s stated plan is to “[r]amp up escalations using a set of tactics . . . including . . . [s]hareholder resolutions.”<sup>258</sup> Members across the climate cartel have embraced this escalation tactic. For example, State Street takes the position that, “[w]here initial engagement attempts with individual portfolio companies do not achieve the desired outcome, . . . [it] may escalate concerns by . . . [s]upporting relevant shareholder resolutions.”<sup>259</sup> Similarly, Arjuna has explained that it “engage[s] companies . . . and attempt[s] to provide education . . . . If [it] finds a company is reluctant to provide this transparency to investors, [it]’ll take the issue to the annual meeting to allow other investors to weigh in.”<sup>260</sup>



*Climate Action 100+ has boasted that its flagging process increased shareholder votes.*<sup>261</sup>

The efficacy and impact of these resolutions is enhanced by their being “flagged” by members of the climate cartel. Climate Action 100+ flags stockholder proposals so that its “signatories are informed of votes with potential to advance the goals of the initiative.”<sup>262</sup> Documents produced to the Committee have revealed that Climate Action 100+ viewed “[c]reat[ing] a sub-set of . . . ‘Climate Action 100+ flagged resolutions’ in order to inform investor voting priorities” and “establish[] discipline” as a “[k]ey activit[y]” to “[s]trengthen [its] ability to win key votes.”<sup>263</sup> Likewise, Ceres has boasted of “how powerful [this] flagging process is”: because investors “know [they]’re being scrutinized on how [they] vote,” it creates “accountability for investors.”<sup>264</sup> As Ceres has explained:

<sup>258</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963.

<sup>259</sup> State Street Global Advisors, *Stewardship Report 2023*, *supra* note 245, at 20.

<sup>260</sup> Antoinette Giblin, *In-Depth: Q&A with Arjuna Capital* (Apr. 3, 2024), <https://www.diligent.com/en-gb/resources/blog/in-depth-q-and-a-with-arjuna-capital>.

<sup>261</sup> *Narrative Report to Yajilarra Trust*, *supra* note 154, at CERES29337.

<sup>262</sup> Climate Action 100+, *Climate Action 100+ Vote Flagging Process 1*, CALPERS\_50243 at CALPERS\_50243.

<sup>263</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66958–59.

<sup>264</sup> E-mail from Ceres employee to Morgan LaManna, *supra* note 58, at CERES9645.

[F]lagging votes was a crucial process in creating additional accountability for investors during the 2021 proxy season, as signatories were made aware that their votes towards flagged resolutions would be under scrutiny. It also provided a platform to educate investors as well as leading proxy advisors on voting—particularly focusing on [asset managers] with low votes in 2020—to ultimately be able to coordinate investor signatories in public support of Climate Action 100+ flagged votes.<sup>[265]</sup>

Resolutions do not have to succeed at the stockholder vote for them to be successes for the climate cartel. “[S]hareholder proposals,” after all, “typically are non-binding on the company, even if they are approved by a shareholder vote.”<sup>266</sup> Nevertheless, As You Sow Chief Executive Officer Andrew Behar testified in his deposition that, even where just “30 percent of [corporate] shareholders think this is a good idea,” As You Sow will “sit down with the company” for it to “look at [the proposal] a little more closely.”<sup>267</sup> Similarly, from 2018 through last year, Glass Lewis’s expectation was “that boards should engage with shareholders and demonstrate some initial level of responsiveness” when as few as “20% or more of shareholders vote contrary to management” because even “a 20% threshold is significant enough to warrant a close examination of the underlying issues and an evaluation of whether the board responded appropriately following the vote.”<sup>268</sup> Ceres has recognized as much, asserting that “20% or more support has been considered the threshold by which company boards should demonstrate some level of responsiveness to address the concerns of shareholders.”<sup>269</sup>

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<sup>265</sup> *Narrative Report to Yajilarra Trust*, *supra* note 154, at CERES29336 (emphasis added).

<sup>266</sup> Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a–8, 87 Fed. Reg. 45,052, 45,067 (July 27, 2022).

<sup>267</sup> Deposition of Andrew Behar, *supra* note 8, at 56:10–12.

<sup>268</sup> Glass Lewis, *2023 Policy Guidelines* 10, <https://www.glasslewis.com/wp-content/uploads/2022/11/US-Voting-Guidelines-2023-GL.pdf>; see Glass Lewis, *2018 Policy Guidelines* 7, [https://www.glasslewis.com/wp-content/uploads/2017/11/US\\_Guidelines\\_2018.pdf](https://www.glasslewis.com/wp-content/uploads/2017/11/US_Guidelines_2018.pdf).

<sup>269</sup> Ceres, *Narrative Report to the Children’s Investment Fund Foundation (CIFF)* 8 (July 29, 2022), CERES62685 at CERES62693.

**Shareholder Proposals**

**Benefits**

- **High success rate** in terms of securing corporate commitments (45% of social, environmental and sustainability resolutions filed in 2018 were withdrawn)
- Proposals **create urgency** as there is a timeline for the company to respond
- **Provides leverage** for filer due to management's preference to avoid resolutions going to a public vote
- Facilitates **board level involvement**

**Ceres' Examples**

• In 2017, Ceres Shareholder Initiative for Climate & Sustainability coordinated, developed and filed 17 more than 20 and forced related shareholder resolutions.

Historically, Ceres has played a central role in engaging investors on climate related issues, including the resolutions, understanding the issue and prior research, engaging the user advisors, and raising awareness about greater focus on climate risk in the media.

"Significant proposals have caused impact in many ways in terms of setting corporate commitments, disclosing and public risk of climate and environmental resolutions were submitted in 2018. It is powerful because of the deadlines tied to the filing process and the strong desire by many investors to proceed with the vote."

It provides small investors with an avenue to voice their concerns and provides an opportunity for good stakeholder community.

*Ceres has emphasized the “leverage” and “urgency” that it derives from resolutions.*<sup>270</sup>

Moreover, the climate cartel often will withdraw resolutions upon reaching agreement with—that is, extracting a concession from—corporate management. As You Sow President and Chief Counsel Danielle Fugere explained that if a corporation “were to agree on actions, [As You Sow] could withdraw the proposal . . . kind of like reaching a settlement in a lawsuit.”<sup>271</sup> When climate cartel members like As You Sow do so, “it is always as part of an agreement with company management.”<sup>272</sup> By way of example, Ms. Fugere explained:

So let’s say we have asked a company to set greenhouse gas emissions targets because they’ve—they have disclosed emissions, and then we begin talking with them and we—through those discussions find out that they actually haven’t covered all of the emission scopes. And maybe they say that they have X amount of scope [three] emissions, but if they had provided more detail to shareholders, we might find out that that was just company travel. Or, for banks, it might be the buildings. So a very small part of their emissions. In that case, what we might agree with the company is, “Okay, agree to fully disclose your emissions because we now found out that you did not,” and they would agree to do that.<sup>[273]</sup>

A great number of shareholder resolutions are in fact withdrawn in exchange for extracting an agreement with corporate management. Climate Action 100+ has explained that “[t]he threat of flagging the resolutions proved successful in pushing companies to make commitments ahead of [annual general meetings] in return for a withdrawal” and that, “[i]f

<sup>270</sup> Ceres’ Dominant Strategic Driver: Moving Companies Through Investor Engagement, *supra* note 253, at CERES39913.

<sup>271</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 90:14–19.

<sup>272</sup> *Id.* at 125:18–20.

<sup>273</sup> *Id.* at 125:23–126:6.

withdrawals were counted in the overall figure of the number of flagged resolutions, then [Climate Action 100+] would be vastly exceeding [its] Targets.”<sup>274</sup> Likewise, Ms. Fugere testified that for “a significant portion”—“either 40 or 60 percent”—of As You Sow’s proposals, it is “able to reach resolutions with companies and withdraw.”<sup>275</sup>

### C. Finally, the Climate Cartel Seeks to Change the Board

When corporate management does not yield to negotiations and resolutions, the climate cartel seeks to change the board of directors. Climate Action 100+ has explained that its escalation tactics include “[v]otes against one or more board members.”<sup>276</sup> Ceres has confirmed that a condition on \$3.7 million of funding to Climate Action 100+ was “[r]apid escalation of engagement to fire directors who fail to deliver transition plans aligned with Paris, with a vanguard of activist investors taking the lead.”<sup>277</sup> Likewise, State Street has indicated that it “may escalate [its] concerns by . . . [v]oting against relevant board members.”<sup>278</sup> Such “[v]ote no’ campaigns essentially seek to withhold as many votes as possible from the board nominees who have been targeted. By achieving a compelling ‘withhold’ vote . . . the campaign seeks to send a strong message to the company’s board of directors that shareholders are dissatisfied.”<sup>279</sup>

“However, a ‘vote no’ campaign does not propose alternative candidates for the board”—and the climate cartel has revealed a willingness and the ability to go even further by replacing corporate directors with those of its own choosing.<sup>280</sup> In 2020, Climate Action 100+ plotted to “[e]stablish a credible threat of board member refreshment, by implementing an unprecedented effort to replace board members at one of the world’s very largest companies,” ExxonMobil.<sup>281</sup> “[G]oing after Exxon” in such an aggressive fashion would “show [Climate Action 100+] has teeth,” according to one internal e-mail produced to the Committee.<sup>282</sup> That effort to “refresh” the board at ExxonMobil was a tremendous success for the climate cartel, resulting in the replacement of three of the company’s directors with “climate activists . . . backed publicly by . . . Climate Action 100+ signatories.”<sup>283</sup> Now, companies “cannot ignore” the demands of the climate cartel “without subjecting their board members to possible replacement.”<sup>284</sup> “When recalcitrant companies demonstrate that other escalation tactics are not working,” the climate cartel may “take concerted action to refresh the board of directors.”<sup>285</sup>

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<sup>274</sup> *KPI Summary and Rationale*, *supra* note 25, at CERES62709.

<sup>275</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 126:13–15.

<sup>276</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963.

<sup>277</sup> E-mail from David Ziv-Kreger to Kirsten Spalding et al. (Mar. 16, 2020), CERES62751 at CERES62752.

<sup>278</sup> *Stewardship Report 2023*, *supra* note 245, at 29.

<sup>279</sup> E-mail from Cynthia McHale to Mindy Lubber et al. (Feb. 8, 2020), CERES54034 at CERES54034.

<sup>280</sup> *Id.* at CERES54034.

<sup>281</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66963.

<sup>282</sup> E-mail from David Ziv-Kreger to Kirsten Spalding et al., *supra* note 277, at CERES62752.

<sup>283</sup> *Narrative Report to Yajilarra Trust*, *supra* note 154, at CERES29337; *see discussion supra* Section I.D.

<sup>284</sup> *Narrative Report to Yajilarra Trust*, *supra* note 154, at CERES29338.

<sup>285</sup> *Work Plan Prepared for CIFF*, *supra* note 7, at CERES66964.

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#### IV. THE CLIMATE CARTEL RESTRAINS TRADE BY REDUCING OUTPUT OF FOSSIL FUELS, FLIGHTS, AND FOOD

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The climate cartel’s agreements to decarbonize and reach net zero necessarily mean decreased output and increased prices for American consumers. The implications of this anticompetitive collusion are particularly stark in key sectors such as fossil fuels, aviation, and farming—the very industries that allow Americans to drive, fly, and eat.

##### A. Keep It “in the Ground”: Fossil Fuels

Demand for energy is growing and will continue to grow. By 2022, “total primary energy consumption” was “around 3% above the 2019 pre-COVID level,” and both oil and coal “consumption continued to increase.”<sup>286</sup> The Organization of the Petroleum Exporting Countries (OPEC) has predicted that “[g]lobal primary energy demand” will increase 23% by 2045.<sup>287</sup> Similarly, the U.S. Energy Information Administration predicts that “[g]lobal energy consumption” will increase 34% by 2050.<sup>288</sup> Fossil fuels will remain a key part of meeting the world’s increasing energy needs: in 2045, “oil will remain the fuel with the largest share,” and “the combined share of oil and gas” is projected to be 54%—i.e., continuing to represent the majority of energy use.<sup>289</sup>

However, despite civilization’s basic need for energy, the climate cartel wants fossil fuels to “stay in the ground” because “carbon emissions would be lower [if] that coal or that gas or that oil wouldn’t be dug out or excavated and burned.”<sup>290</sup> According to Climate Action 100+ “research partner” Carbon Tracker,<sup>291</sup> “a warming of 1.5°C is already effectively locked in” and “no new oil & gas project would be compliant” with net zero.<sup>292</sup> “Emissions from existing and planned energy infrastructure would alone exceed the carbon budget by 66%.”<sup>293</sup> In other words, continued fossil fuel consumption and production are incompatible with the decarbonization agenda—and the climate cartel loudly has called for fossil fuel output to be reduced.

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<sup>286</sup> Energy Inst., *Statistical Review of World Energy* 3 (2023),

[https://www.energyinst.org/\\_data/assets/pdf\\_file/0004/1055542/EI\\_Stat\\_Review\\_PDF\\_single\\_3.pdf](https://www.energyinst.org/_data/assets/pdf_file/0004/1055542/EI_Stat_Review_PDF_single_3.pdf).

<sup>287</sup> Org. of the Petrol. Exporting Countries, *Executive Summary 2023* 6 (2023), [https://vert.eco/wp-content/uploads/2023/10/ES\\_WOO\\_2023.pdf](https://vert.eco/wp-content/uploads/2023/10/ES_WOO_2023.pdf).

<sup>288</sup> U.S. Energy Info. Admin., *International Energy Outlook 2023* 8 (Oct. 2023), [https://www.eia.gov/outlooks/ieo/pdf/IEO2023\\_Narrative.pdf](https://www.eia.gov/outlooks/ieo/pdf/IEO2023_Narrative.pdf).

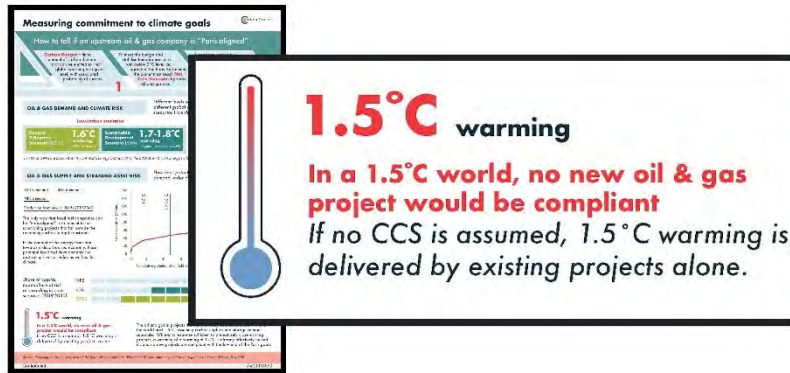
<sup>289</sup> Org. of the Petrol., *supra* note 287, at 8–9.

<sup>290</sup> Transcribed Interview of Mary Schapiro, *supra* note 184, at 134:18–135:3; see Transcribed Interview of Mark Carney, *supra* note 184, at 88:3–11.

<sup>291</sup> Carbon Tracker Initiative, *Climate Action 100+ Alignment Assessments Methodology* 1 (Mar. 2022), [https://www.climateaction100.org/wp-content/uploads/2021/11/CTI-CA100-Benchmark-Alignment-Indicators-Methodology\\_Nov21.pdf](https://www.climateaction100.org/wp-content/uploads/2021/11/CTI-CA100-Benchmark-Alignment-Indicators-Methodology_Nov21.pdf)

<sup>292</sup> Carbon Tracker Initiative, *Measuring Commitment to Climate Goals* 1 (2019), AV18990 at AV18990.

<sup>293</sup> GFANZ, *Net-Zero Transition Plan (NZTP) Workshop: The Four Key Financing Strategies* 30, GFANZ2634 at GFANZ2663.



*Climate Action 100+ “research partner” Carbon Tracker has said that net zero does not allow for any new oil and gas projects—and that, without carbon capture and storage (CCS), existing fossil fuel projects alone would cause 1.5°C of global warming.*<sup>294</sup>

On the consumption side, reaching net zero would require draconian “declines in the use of coal, oil and gas”<sup>295</sup>: as much as 98% for coal,<sup>296</sup> 94% for oil, and 86% for fossil fuels overall.<sup>297</sup> Thus, As You Sow President and Chief Counsel Danielle Fugere testified that “ultimately fossil fuel use has to be reduced.”<sup>298</sup> Likewise, Carbon Tracker has stated that “the use of oil, gas and coal will need to peak and fall in absolute terms, and soon.”<sup>299</sup> GFANZ has said that global oil supplies must fall between 55% to 79% and gas supplies between 54% to 93% by 2050.<sup>300</sup> Further, GFANZ Co-Chair Mark Carney testified to the Committee that “more than half of the world’s coal reserves need to stay in the ground in order for the world to be in line with Paris.”<sup>301</sup>

On the production side, the climate cartel has said that “most oil and gas companies will need to substantially lower their production of fossil fuels.”<sup>302</sup> Trillium has explained that “continuing to finance fossil fuel expansion is incompatible with a net-zero by 2050 scenario.”<sup>303</sup>

<sup>294</sup> *Measuring Commitment to Climate Goals*, *supra* note 292, at AV18990.

<sup>295</sup> Int’l Energy Agency, *Net Zero by 2050*, <https://www.iea.org/reports/net-zero-by-2050>.

<sup>296</sup> Int’l Energy Agency, *Net Zero By 2050: A Roadmap for the Global Energy Sector* 21 (May 2021), [https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf](https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf).

<sup>297</sup> See State of Cal., *California Releases World’s First Plan to Achieve Net Zero Carbon Pollution* (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

<sup>298</sup> Transcribed Interview of Danielle Fugere, *supra* note 20, at 163:4–6.

<sup>299</sup> Carbon Tracker Initiative, *Comment on Chevron and Scope 3 Emissions Considerations* 1 (Feb. 2019), CALPERS\_40605 at CALPERS\_40605.

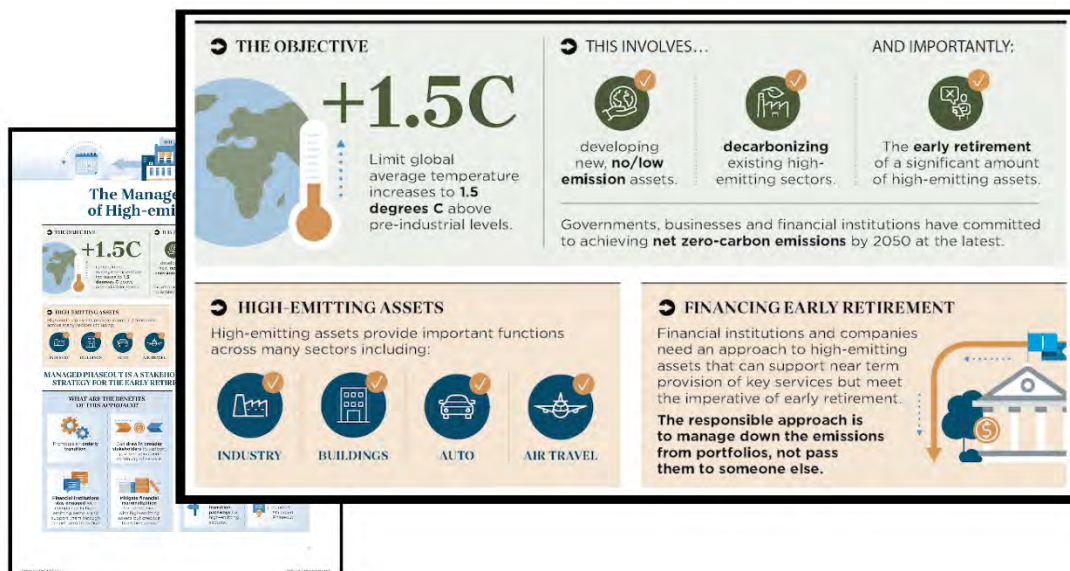
<sup>300</sup> GFANZ, *Net-Zero Pathways Analysis and Expectations for Transition Plans: Oil and Gas* 30, GFANZ54611 at GFANZ54654.

<sup>301</sup> Transcribed Interview of Mark Carney, *supra* note 184, at 100:23–25.

<sup>302</sup> TPI employee et al., *Establishing a “Net Zero Standard” for the Oil and Gas Sector: Proposed Final Draft* 7, 15 (Feb. 9, 2021), CALPERS\_7103 at CALPERS\_7109, CALPERS\_7117.

<sup>303</sup> Trillium, *2021 Impact Report* 27 (2021), <https://web.archive.org/web/20221002061031/https://www.trilliuminvest.com/sustainability-related-disclosures/firm-impact-report-2021>.

“No new oil and natural gas fields are needed in the net zero pathway,”<sup>304</sup> and thus “no new oil and gas fields must be developed.”<sup>305</sup> One Climate Action 100+ member succinctly stated: “there is no need for any new oil.”<sup>306</sup> Similarly, GFANZ has said that “there is no rationale for financing new coal projects.”<sup>307</sup>



GFANZ admits that “Managed Phaseout” means the “early retirement” of “assets provid[ing] important functions across many sectors.”<sup>308</sup>

Even worse, the climate cartel has called for the premature retirement of existing, productive fossil fuel assets. These early facility retirements would occur “[b]efore the end of their technically useful life”<sup>309</sup> and while they are “still economically profitable.”<sup>310</sup> GFANZ has emphasized that “[t]he early retirement of many physical assets in high-emitting sectors before the end of their operational lifespan is essential to reducing global emissions.”<sup>311</sup> Such high-emitting assets include “coal mines, fossil-fuel power stations, oil fields, and gas pipelines.”<sup>312</sup>

<sup>304</sup> Majority Action, *Presentation to Glass Lewis Follow This, Arjuna, Majority Action 3* (Apr. 11, 2022), ARJUNA5707 at ARJUNA5709.

<sup>305</sup> UN Env’t Programme Fin. Initiative, *Net-Zero Asset Owner Alliance Sets Expectations for Oil and Gas Investments and Calls on Companies and Policymakers to Align With 1.5C Pathways* (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

<sup>306</sup> E-mail from BNP Paribas Asset Management employee to UBS employee et al. (Nov. 10, 2022), CALPERS\_37025 at CALPERS\_37025.

<sup>307</sup> GFANZ, *Statement on “No New Coal” from Michael Bloomberg, Mark Carney and Mary Schapiro 1*, GFANZ41799 at GFANZ41799.

<sup>308</sup> GFANZ, *The Managed Phaseout of High-Emitting Assets 7* (2022), GFANZ186 at GFANZ193.

<sup>309</sup> Transcribed Interview of Mark Carney, *supra* note 184, at 98:17–21; *see* Transcribed Interview of Mary Schapiro, *supra* note 184, at 133:21–23.

<sup>310</sup> Transcribed Interview of Mary Schapiro, *supra* note 184, at 133:24–134:1.

<sup>311</sup> *Net-Zero Transition Plan (NZTP) Workshop: The Four Key Financing Strategies*, *supra* note 293, at GFANZ2663.

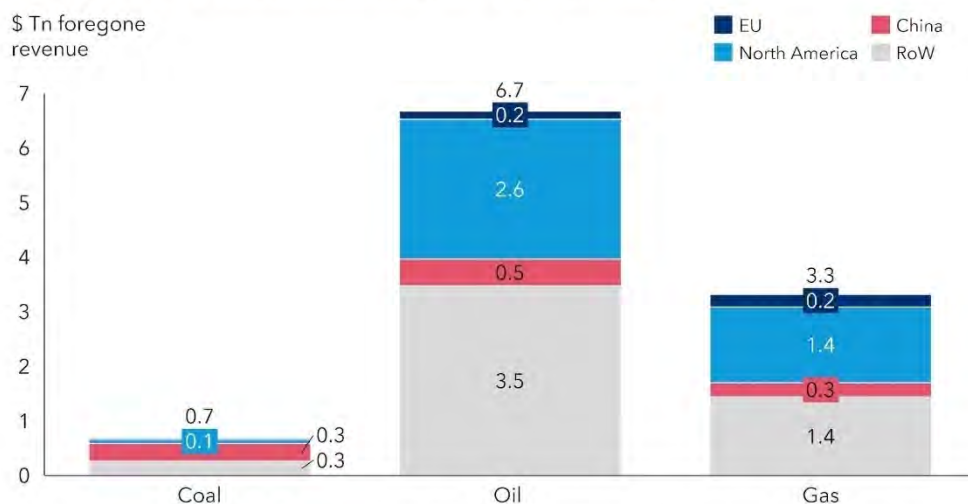
<sup>312</sup> *The Managed Phaseout of High-Emitting Assets*, *supra* note 308, at GFANZ195–96.



Likewise, Carbon Tracker has said that the “premature[] clos[ure of] existing projects” is necessary to avoid “a warming of 1.5°C.”<sup>313</sup>

As You Sow Chief Executive Officer Andrew Behar testified in his deposition that “an oil and gas company [could not] reach net zero while continuing to produce fossil fuels.”<sup>314</sup> Thus, the climate cartel has acknowledged that “reaching net zero demands a comprehensive strategic commitment from an oil and gas company to transform its business.”<sup>315</sup> GFANZ estimates that there would be “\$10.5 [trillion in] forgone revenue from fossil fuel extraction in 1.5C pathway relative to business as usual”—including more than \$4 trillion in North America alone.<sup>316</sup>

Appendix A: \$10.5tn foregone revenue from fossil fuel extraction in 1.5C pathway relative to business as usual 3.5C pathway



Source: Mercure, JF., Salas, P., Vercoulen, P. et al. Reframing incentives for climate policy action. Nat Energy

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*The climate cartel’s quest for net zero would cost North American fossil fuel producers more than \$4 trillion in revenue.*<sup>317</sup>

The impact on American producers, and the jobs they create and support, would be profound. ExxonMobil, the United States’ largest oil company, would need to cut production by

<sup>313</sup> *Measuring Commitment to Climate Goals*, supra note 292, at AV18990.

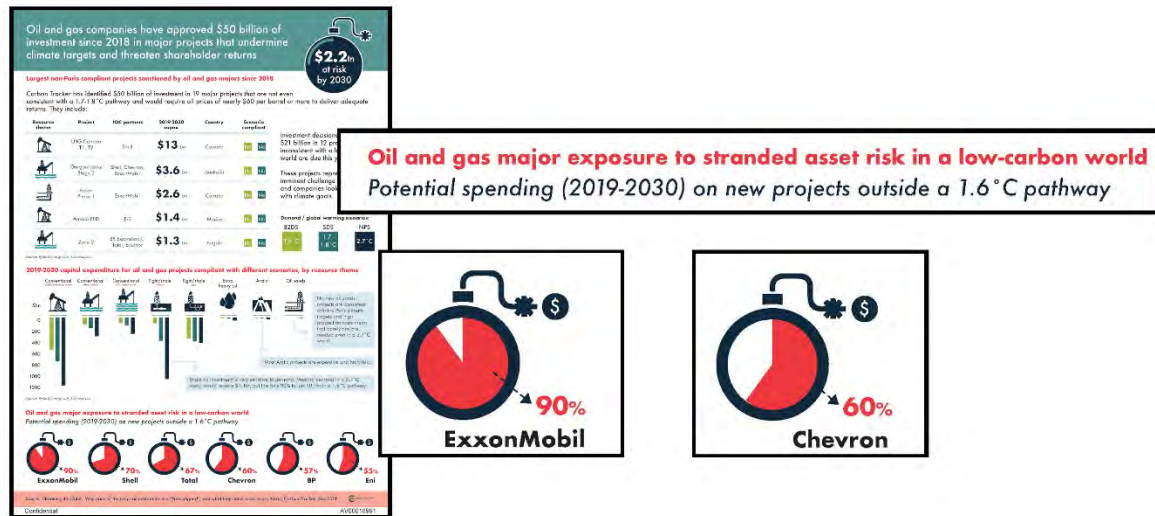
<sup>314</sup> Deposition of Andrew Behar, supra note 8, at 27:9–11.

<sup>315</sup> TPI employee et al., supra note 302, at CALPERS\_7109, CALPERS\_7117.

<sup>316</sup> GFANZ, *The Managed Phaseout of High Emitting Assets: Exhibits* (May 2022), GFANZ47120 at GFANZ47136.

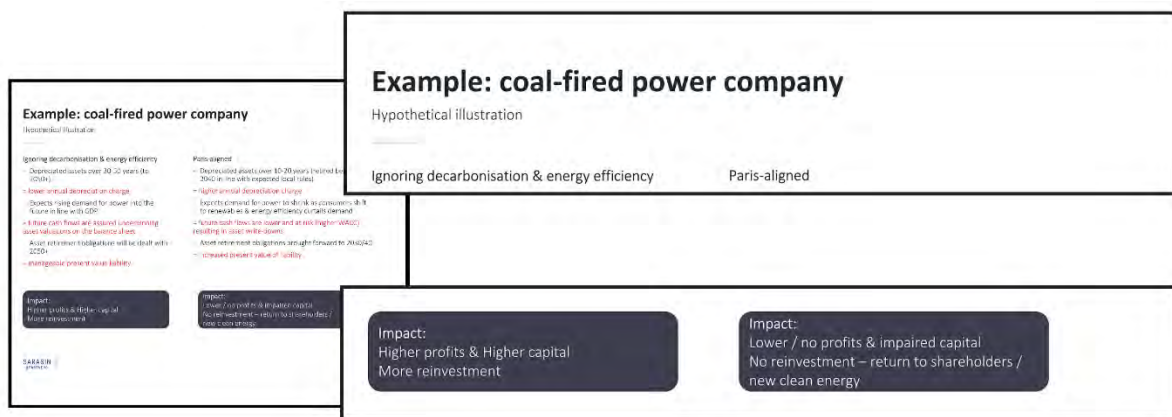
<sup>317</sup> *Id.*

55%.<sup>318</sup> Chevron, America’s second-largest oil producer, would need to reduce output by 57%.<sup>319</sup> At ConocoPhillips, the nation’s third-largest oil company, production would need to fall by 85%.<sup>320</sup>



According to Climate Action 100+ “research partner” Carbon Tracker, 90% of ExxonMobil’s new project spending and 60% of Chevron’s is incompatible with net zero.<sup>321</sup>

As one Climate Action 100+ member summed it up: “Ignoring decarbonisation & energy efficiency” leads to “[h]igher profits & [h]igher capital” and “[m]ore reinvestment”; “Paris-aligned” investing leads to “[l]ower / no profits & impaired capital” and “[n]o reinvestment”<sup>322</sup>:



A Climate Action 100+ member set forth the costs of “Paris-aligned” investing.<sup>323</sup>

<sup>318</sup> E-mail from PRI employee to AIR Capital employee et al. (Dec. 2, 2019), BLK-HJC-62577 at BLK-HJC-62583.

<sup>319</sup> Presentation to Glass Lewis, Follow This, Arjuna, Majority Action, supra note 304, at ARJUNA5712; see Chevron, Our History: Market Expansion 1980–2001, <https://www.chevron.com/who-we-are/history>; see also Largest Oil and Gas Companies by Market Cap, supra note 146.

<sup>320</sup> E-mail from PRI employee to AIR Capital employee et al., supra note 318, at BLK-HJC-62583.

<sup>321</sup> Measuring Commitment to Climate Goals, supra note 292, at AV18991.

<sup>322</sup> Sarasin & Partners, Paris-aligned Accounting 4 (July 2020), CALPERS\_40079 at CALPERS\_40082.

<sup>323</sup> See id.

The fossil fuel output reductions demanded by the climate cartel would cause significant pain at the pump. Senate Democrats have acknowledged that collusion in oil production “may have increased gasoline, diesel fuel, heating oil, and jet fuel costs in a way that has materially harmed virtually every American household and business,” as “hardworking Americans end up paying the price through higher costs for gas, fuel, and related consumer products.”<sup>324</sup> Even worse, fossil fuel output reductions would require radical changes in Americans’ daily lives and to American industry, such as “end[ing] sales of new internal combustion engine cars by 2035.”<sup>325</sup> Indeed, Climate Action 100+ has indicated that it intends to engage American automakers to force them “to significantly scale deployment of electric vehicles and phase out production of vehicles with internal combustion engines.”<sup>326</sup> Likewise, Ceres boasts that it “has made important contributions” in transitioning the automotive industry, which has “decrease[d] demand for oil and discourage[d] investment in new sources of supply—helping to keep fossil fuels in the ground.”<sup>327</sup>

## B. Death to Flying Things: Aviation and Air Travel

Aviation demand is expected to continue to grow. From 2010 to 2019, passenger air travel increased by “around 6%” per year.<sup>328</sup> PRI has predicted that “[t]he aviation industry [will] grow 5% per year for the foreseeable future.”<sup>329</sup> Similarly, the International Energy Agency (IEA) predicts that passenger air travel “[d]emand would grow more than threefold globally between 2020 and 2050,” with “[a]bout 60% of this growth . . . in emerging market[s] and developing economies.”<sup>330</sup> Even GFANZ concedes that “global air passenger demand is expected to grow by 3%–4% annually up to 2040, despite the impacts of COVID-19.”<sup>331</sup>

However, despite the importance of air travel to exercising Americans’ “fundamental right . . . to travel” across a vast country,<sup>332</sup> the climate cartel views aviation as an impediment to its net zero ambitions. As PRI has explained, while “the aviation industry currently consumes 3% of the global carbon budget,” that amount may “increase to 20% by 2050” “[d]ue to in-sector growth and emission reductions in other industries.”<sup>333</sup> Thus, Climate Action 100+ has suggested that, to reach net zero, aviation

emissions need to have peaked by 2025 and by 2030 need to be 23% lower than in 2019 (the pre-pandemic level). Emissions in the sector will need to fall by 80% between 2019 and 2050, leaving some

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<sup>324</sup> Letter from Sen. Charles Schumer et al. to Merrick Garland, Attorney General, & Jonathan Kanter, Assistant Attorney General 3 (May 30, 2024).

<sup>325</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296, at 19.

<sup>326</sup> Climate Action 100+, *The Climate Action 100+: Investors Driving Corporate Action Proposal* 13 (Apr. 2018), CERES43806 at CERES43819.

<sup>327</sup> *Draft Ceres Organizational Profile for the Skoll Foundation*, *supra* note 19, at CERES59903.

<sup>328</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296, at 135.

<sup>329</sup> Principles for Responsible Inv., *Aviation and Climate Change: An Essential Sector Overview for Investors* 12 (Mar. 21, 2020), CALPERS\_10730 at CALPERS\_10741.

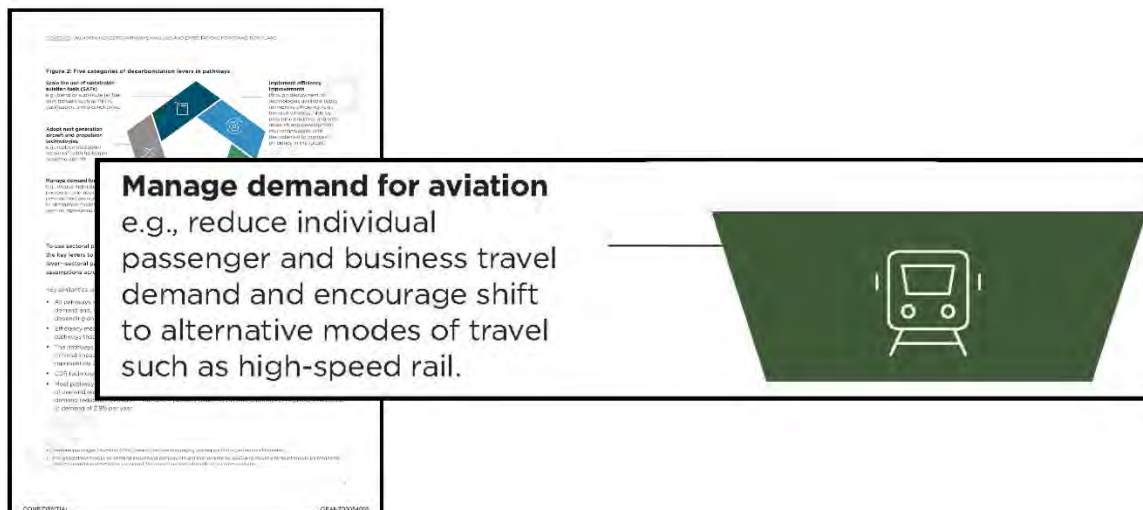
<sup>330</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296, at 84–85.

<sup>331</sup> GFANZ, *Net-Zero Pathways Analysis and Expectations for Transition Plans: Aviation* 14, GFANZ54989 at GFANZ55014.

<sup>332</sup> *Jones v. Helms*, 452 U.S. 412, 417 (1981).

<sup>333</sup> *Aviation and Climate Change: An Essential Sector Overview for Investors*, *supra* note 329, at CALPERS\_10740.

residual emissions from aviation in 2050 . . . to be covered by negative emissions, so that the global energy system can reach net-zero emissions by 2050.<sup>334</sup>



*“Manag[ing] demand for aviation”—that is, reducing demand and shifting travelers away from air travel—is a primary “decarbonization lever” for the climate cartel.<sup>335</sup>*

Such drastic emissions reductions necessarily require output reductions. Climate Action 100+ has been clear: sustainable aviation fuels “and new technologies alone are not sufficient to achieve the deep emissions reductions required.”<sup>336</sup> Rather, “demand management is now a central part of the agenda for decarbonising the aviation sector.”<sup>337</sup> That euphemistic term for output reduction “refers to the actions taken . . . to limit the demand for jet fuel through the curtailment of demand for air transportation.”<sup>338</sup> More specifically:

Demand management will require policy interventions, which may take the form of market-based measures (e.g., carbon pricing, passenger flight taxes, frequent flyer levies); regulation (e.g., banning short-haul domestic flights where there is [a high-speed rail] alternative . . . ; company disclosure requirements around corporate travel; and public awareness campaigns. In addition, aviation companies themselves can take measures to manage demand or bring about behavioural changes, for example, by ending frequent flyer reward programmes, ending advertising campaigns that target growth in developed markets with already high per-capita flights, disclosing the carbon footprint of flights at the point of ticket

<sup>334</sup> *Global Sector Strategies: Investor Actions to Align the Aviation Sector with the IEA’s 1.5° Decarbonisation Pathway*, *supra* note 21, at SSGA-HJC.66660.

<sup>335</sup> *Net-Zero Pathways Analysis and Expectations for Transition Plans: Aviation*, *supra* note 331, at GFANZ 54995.

<sup>336</sup> *Id.* at SSGA-HJC.66661.

<sup>337</sup> *Id.* at SSGA-HJC.66665.

<sup>338</sup> *Id.* at SSGA-HJC.66681.

purchase or by entering into partnerships with rail operators to offer combined air and train tickets.<sup>339</sup>

Even Climate Action 100+ acknowledges that these draconian restrictions on passenger air travel “will be unwelcome for the aviation sector . . . and will present challenges for both aviation companies and investors.”<sup>340</sup> For its part, IEA admits that the radical “types of behavioural changes” that the climate cartel would impose on Americans “would have some effect on nearly everyone’s daily life.”<sup>341</sup>

The climate cartel has been remarkably precise in setting forth the output reductions that it would effect in the aviation sector. Specifically, Climate Action 100+ would “reduce total flights by . . . 12%.”<sup>342</sup> Identically, IEA would “reduc[e] the number of flights by . . . 12%.”<sup>343</sup> Further, despite predicting continued growth in consumer demand for passenger aviation, the climate cartel would cap air travel at 2019 levels, raising prices and reducing the availability of flights. Specifically, the climate cartel calls for:

- Keeping business travel to 2019 levels
- Capping long-haul flights of more than 6 hours for leisure reasons at 2019 levels
- Shifting demand to high-speed rail . . .<sup>344</sup>

### C. “Cows Are the New Coal”: Food and Agriculture

Food demand also will continue to grow. Climate Action 100+ predicts that consumer demand for food will increase, and that “the consumption of carbon intensive foods including red meat is expected to increase with rising incomes in emerging markets.”<sup>345</sup> Likewise, the United Nations-backed World Resources Institute (WRI) estimates that “overall food demand is on course to increase by more than 50 percent” between 2010 and 2050, that “demand for animal-based foods” is set to increase “by nearly 70 percent,” and that demand for ruminant meat—“cattle, sheep, and goats”—“is projected to grow by 88 percent between 2010 and 2050.”<sup>346</sup>

However, despite the fundamental human need for food, the climate cartel sees agriculture as a leading source of greenhouse gas emissions. Climate Action 100+ has stated that

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<sup>339</sup> *Id.* at SSGA-HJC.66673 (cleaned up).

<sup>340</sup> *Id.* at SSGA-HJC.66661.

<sup>341</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296, at 67, 70.

<sup>342</sup> *Global Sector Strategies: Investor Actions to Align the Aviation Sector with the IEA’s 1.5° Decarbonisation Pathway*, *supra* note 21, at SSGA-HJC.0066673 (emphasis added).

<sup>343</sup> *Net Zero by 2050: A Roadmap for the Global Energy Sector*, *supra* note 296, at 85.

<sup>344</sup> Principles for Responsible Inv., *Climate Action 100+ Warns that the Aviation Industry Must Take Urgent Action to Keep 1.5°C Within Reach* (Mar. 10, 2022), <https://www.unpri.org/news-and-press/climate-action-100-warns-that-the-aviation-industry-must-take-urgent-action-to-keep-15c-within-reach/9644.article>.

<sup>345</sup> Climate Action 100+, *Global Sector Strategies: Recommended Investor Expectations for Food and Beverage* 19 (Aug. 2021), VAN\_HJC\_50783 at VAN\_HJC\_50802.

<sup>346</sup> World Res. Inst., *Creating a Sustainable Food Future* 1–2 (Dec. 2018), [https://research.wri.org/sites/default/files/2019-07/WRR\\_Food\\_Full\\_Report\\_0.pdf](https://research.wri.org/sites/default/files/2019-07/WRR_Food_Full_Report_0.pdf).

“the food and agriculture sector has a disproportionate impact on climate change.”<sup>347</sup> Similarly, GFANZ has identified agriculture as having a high “[m]ateriality of emissions” and as being a high-priority industry sector.<sup>348</sup> WRI frames the issue more starkly: “feeding the planet would . . . releas[e] enough GHG emissions to exceed the 1.5°C and 2°C warming targets enshrined in the Paris Agreement—even if emissions from all other human activities were entirely eliminated.”<sup>349</sup>

Thus, Climate Action 100+ expressly has called for “coordinated and collaborative action” by investors to align the agricultural sector with net zero—including through output reduction and “a demand-side shift in diets away from emission intensive food like beef to a plant-rich diet.”<sup>350</sup> WRI similarly has suggested that a “sustainable food future” requires “reduce[d] growth in demand for food and agricultural products” and “shifting the diets of high meat consumers toward plant-based foods.”<sup>351</sup>

The climate cartel’s demands for agricultural output reductions are perhaps loudest when it comes to beef. As the founder of an agriculture-focused ESG investor network infamously put it: “cows are the new coal.”<sup>352</sup> Accordingly, Ceres has suggested that “global per capita meat consumption must be reduced to around 1.5 burgers per person per week”—“around a 35% reduction from current consumption levels.”<sup>353</sup> The impact on American beef consumers would be more pronounced: such a reduction to just “50 calories a day” of ruminant meat would be only “about half of current U.S. levels.”<sup>354</sup>

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<sup>347</sup> *Global Sector Strategies: Recommended Investor Expectations for Food and Beverage*, *supra* note 345, at VAN\_HJC\_50796.

<sup>348</sup> GFANZ, *Additional Sector Selection* 7 (Jan. 2022), GFANZ18149 at GFANZ18155.

<sup>349</sup> *Creating a Sustainable Food Future*, *supra* note 346, at 1–2.

<sup>350</sup> *Global Sector Strategies: Recommended Investor Expectations for Food and Beverage*, *supra* note 345, at VAN\_HJC\_50791, 802.

<sup>351</sup> *Creating a Sustainable Food Future*, *supra* note 346, at 1–2.

<sup>352</sup> Planet Tracker & Changing Markets Found., *Hot Money: 40 Financial Institutions Are Funding a Climate-changing Agri-methane Footprint* 11 (Jan. 2023), SSGA-HJC.324209 at SSGA-HJC.324219.

<sup>353</sup> Ceres, *The Investor Guide to Climate Transition Plans in the U.S. Food Sector* 20 (May 2022), [https://assets.ceres.org/sites/default/files/reports/2022-05/FF\\_TransitionPlaninFoodSector\\_FINAL\\_LR\\_May22.pdf](https://assets.ceres.org/sites/default/files/reports/2022-05/FF_TransitionPlaninFoodSector_FINAL_LR_May22.pdf)

<sup>354</sup> *6 Pressing Questions About Beef and Climate Change, Answered*, *supra* note 23.

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## CONCLUSION

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The Committee’s ongoing investigation into collusion between left-wing activists and major financial institutions has revealed that a climate cartel is working to decarbonize the U.S. economy—with disastrous implications for American consumers. The climate cartel has declared war on our way of life, escalating its attacks on free markets and demanding that companies slash output of the critical products and services that allow Americans to drive, fly, and eat.

The Biden Administration has failed to act upon the climate cartel’s apparent violations of longstanding U.S. antitrust law. The Committee, in contrast, is actively investigating their anticompetitive behavior. Following the launch of this investigation, dozens of members have withdrawn from Climate Action 100+, including three of the world’s largest asset managers: BlackRock, State Street, and JPAM.

Despite the damage it has caused, the climate cartel has made clear that it intends to press for ever-more radical demands, and that it views its “job [a]s . . . only just begun.”<sup>355</sup> The Committee will continue to fulfill its duty examine the sufficiency of federal law to “[p]rotect[] trade and commerce against unlawful restraints and monopolies” such as the climate cartel’s anticompetitive collusion.<sup>356</sup> The Committee will supplement this interim report as necessary.

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<sup>355</sup> E-mail from Anne Simpson to Robert Eccles et al., *supra* note 26, at ENGINENO1-118HJC-PROD-6866.

<sup>356</sup> Rules of the House of Representatives R. X(1)(l)(16) (2023).