Testimony of the Green Education and Legal Fund to the Senate Finance Committee
on the issue of divesting the NYS Common Retirement Fund from fossil fuels
as outlined in S.2126 / A.1536
April 30, 2019

My name is Mark Dunlea and I am chair of the Green Education and Legal Fund. I am also part of the leadership team for the People of Albany United for Safe Energy (PAUSE) and an advisor to, and former member of, the steering committee of 350NYC.

We wish to thank Senator Krueger and Assemblymember Ortiz for the opportunity to testify in support of S.2126 / A.1536. The legislation requires the New York State Comptroller to divest the Common Retirement Fund, currently worth about $210 billion, from its holdings in the top 200 publicly traded fossil fuel companies (about $4.5 billion). Divestment from coal companies must be completed within one year, and from all other fossil fuel companies by January 1, 2024. Overall about $12 billion in public pension money is invested in companies that mine, drill and/or produce fossil fuels.

I am a beneficiary of the NYS pension fund since my wife is a former state employee. Payments from the pension fund are an important part of our future retirement income. But it is taxpayers rather than public employees or retirees that bear the financial risks from the imprudent investments in fossil fuels since public pension payments are protected as a contractual obligation under the state constitution. I will also note as an attorney that the constitution does not make the State Comptroller the sole trustee of the pension fund and that it is clear that the state legislature has the right – indeed the obligation - to oversee the management of such fund to protect taxpayers and beneficiaries.

I began working with 350NYC and 350.org six years ago to coordinate efforts to divest the NYC and NYS pension funds from fossil fuels. I helped draft the legislation under consideration here. We are glad that NYC has indicated its intention to divest its pension funds from fossil fuels. The refusal of the NYS Comptroller and his staff to consider divestment prompted me to run in 2018 at the Green Party candidate for State Comptroller.

The recent Decarbonization Panel convened by the Comptroller and Governor supports the state ending its investment in fossil fuels (by 2030) and divesting by 2020 from coal. It provides the necessary foundation for the Comptroller to divest from fossil fuels as outlined in this legislation while meeting his fiduciary responsibility to taxpayers and pension beneficiaries. In fact, there is mounting evidence that the failure to divest is in violation of such a fiduciary responsibility in light of the continuing underperformance of fossil fuel stocks in recent years and the long-term financial risks posed by such investments. See for instance the report by former Deputy Comptroller Tom Sanzillo to the NYC Pension fund.[1]

Bevis Longstreth, the former SEC Commissioner on the panel, noted that "the risk of the Fund of being too early in decarbonizing is far less than the risk of being too late. And the time is fast approaching when holding FF-Dependent Companies will be as imprudent as holding whale industry stocks was after kerosene replaced whale oil for lighting…*We speak of the risk of permanent loss of capital* from this accelerating energy transition and its accompanying disruption….The risks of remaining invested in FF-Dependent Companies, including coal, oil and gas companies and other industry sectors especially impacted by the energy transition, like capital goods, transport and automotive, are today large and growing larger swiftly." (Appendix A)

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[1] Divestment from Fossil Fuels: The Financial Case, Tom Sanzillo and Kathy Hipple , June 2018, https://comptroller.nyc.gov/wp-content/uploads/2018/11/IEEFA-RFI-Response.pdf , Institute for Energy Economics and Financial Analysis

The evidence is clear that for more than 30 years fossil fuel companies like Exxon and Shell knew that the burning of fossil fuels was driving catastrophic climate change and yet ignored their own scientists' advice to stop such a business model. This was a crime against humanity. The state comptroller should not sanction such criminal behavior by continuing to provide these companies with billions of dollars to support their efforts. While the state comptroller has continued to risk our funds in such companies, the New York State Attorney General is suing them for have deceived the public and investors.

As Bill McKibben of 350.org has noted, if it is wrong to wreck the climate, then it is wrong to profit from that wreckage. What level of insanity does it take to justify investing in something that there is a scientific consensus threatens the ability of humans to survive on this planet? Especially when any rationale observer understands that investments in fossil fuels is so risky at this point.

Just like in the struggle for Civil Rights here in America or the fight to end Apartheid in South Africa, the more we can make climate change a deeply moral issue, the more we will push society towards action. Divestment builds political power by forcing our nation's most prominent institutions and individuals to choose which side of the issue they are on. While sale of stock might not have an immediate impact on a fossil fuel company, especially one as gigantic as Exxon, what it does do is start to sow uncertainty about the viability of the fossil fuel industry's business model.

The CRF is one of the largest and most visible institutional investors in the world. By divesting from fossil fuels, the CRF will send a message that it is unacceptable for any institution to profit from activities that threaten the future of our society, and will begin the process of delegitimizing a business model that is socially and morally bankrupt. As a state we cannot commit to the steps necessary to prevent climate change while maintaining a financial interest in companies whose profits depend on the continuation of practices that cause climate change. As Upton Sinclair wrote, "it is difficult to get a man to understand something when his salary depends on his not understanding it."

Global warming is reaching crisis proportions. The IPCC (Intergovernmental Panel on Climate Change) says we have 12 years left for worldwide climate action to avoid climate catastrophe. 12 years is an overly optimistic projection. Prior reports from the IPCC have all underestimated the speed and severity of climate change.

The climate crisis is caused by greenhouse gas emissions from the burning of fossil fuels. Superstorms, floods and drought have hurt countless New Yorkers from storms such as Sandy and Hurricane Irene. It is estimated that at least 3,000 New Yorkers die annually from health problems associated with air pollution. Two years ago, half of the residents of Puerto Rico were without electricity or drinking water for six months. Floods and wildfires devastated other parts of the country last year. NYC is still recovering from Hurricane Sandy. New York will face massive population dislocation due to rising sea levels, food shortages from dying oceans, agricultural disruption, and economic devastation to communities throughout our state

The central goal of the December 2015 Paris Climate Agreement was to keep the global temperature rise to 1.5 degrees Celsius. In order to accomplish this, 80% of all known fossil fuel reserves must be kept in the ground. The fossil fuel industry knows that its days are numbered, as the world economy moves rapidly toward a renewable energy future. Current fossil fuel development will lead to stranded assets, and the significant devaluation of fossil fuel stocks. The fossil fuel industry has been the worst performing sector of the stock market in recent years – a trend likely to continue.

New York and other states must take the lead in fighting global warming and divestment is a winning strategy. Already, over 1000 institutions throughout the world -- including governments, schools, religious institutions and individuals -- have pledged to divest more than $8 trillion from the fossil fuel industry. In January 2018 New York City announced that it would divest and in December 2018, Governor Cuomo called for New York State to divest. If the current Comptroller had divested from fossil fuels when he was first appointed to his position, the state pension fund would have an extra $22 billion according to a report from Corporate Knights, an investment research company which testified earlier today.

Financial analysts and experts are increasingly worried about the risk of a carbon bubble that will arise if coal, oil and gas reserves become stranded assets if governments pass regulations that force fossil fuel companies to keep 80% of their fossil fuel reserves underground. The accessibility of those reserves is a major factor in determining these companies' share price. Once the reserves are marked as unburnable, the value of the fossil fuel industry could plummet, to the tune of trillions of dollars.

The future prospects for fossil fuel companies are suffering, and in coming years, increasingly, will suffer from at least four rapidly evolving developments triggered by growing global awareness of the existential threat that climate change poses for the planet:

(a) Governmental restrictions on carbon release, leading to the stranding of carbon bearing fossil fuel assets carried on the balance sheets of fossil fuel companies.
(b) Advances in alternative sources of energy for power, electricity and transportation, resulting in a lessening demand for coal, gas and oil.
(c) A rising tide of public action at the grass-roots level, including actions by stockholder groups, against fossil fuel companies, demanding such obvious steps as cessation of CAPEX on exploration and development of more fossil fuel.
(d) Growing reputational effects from the foregoing, turning fossil fuel companies into pariahs, with adverse consequences for hiring, employee morale and motivation, stockholder satisfaction and equity valuations.

The Comptroller has sought to rationalize his continued investments of the public funds in these life-killing companies as necessary to enable his shareholder advocacy efforts. Yet the efforts by the Comptroller to engage in shareholder advocacy have failed to move the fossil fuel companies to action.

Many of the members on the Decarbonization Panel appeared to have been selected based on their support for the shareholder advocacy efforts favored by the Comptroller rather than divestment. Yet even they cannot sanction continuing to expose the pension fund to the risk posed by investing in companies that are driving climate change.

Longstreth was critical of the idea that shareholder advocacy would alter the negative climate actions of fossil fuel companies. "This kind of shareholder advocacy has a poor record where the policy changes sought materially affect management's compensation or power, or the core of the corporation's business....In the case of the oil majors, where exploration and sale of fossil fuel is central to their business model, engagement is hard to justify. The long record of efforts by the oil majors to mislead the public, while seeking to defeat governmental action against climate change makes justification even harder."

Certainly, it is helpful to use the voting rights of pension to move companies to adopt more environmentally responsible practices. The comptroller should continue to lead shareholder advocacy campaigns – as unsuccessful as they have been to date - to set greenhouse gas emission goals, improve energy efficiency across operations and source more renewable energy. However, it is extremely unlikely that a board of a fossil fuel company is going to agree to stop the production of fossil fuels given that it is their core business. Shareholder advocacy is not an effective tool for changing the overall orientation of industries whose business models depend on producing fossil fuels.

Fossil fuel companies can and have argued to the SEC for a dismissal for any number of reasons, one of them being the resolution deals with the company's ordinary business of extracting fossil fuels. There have been no significant direct reductions in the production of fossil fuels achieved through shareholder advocacy over the last two decades.

More than 60 legislators are now co-sponsoring the divestment bill. As a former Assemblymember himself when appointed Comptroller, I had hoped that this would be sufficient to convince Mr. DiNapoli to take action by himself to divest. I hope that the findings of the decarbonization panel will finally convince the Comptroller to act both to protect our financial investments and to provide real leadership on the climate change issue. But we cannot afford any more delay in taking strong action to make it clear that the era of fossil fuels is over with. If Mr. DiNapoli does not quickly state his intention to divest, please do not end this legislation session in June without having passed this divestment bill.