INSTITUTE FOR
Pension Fund
Integrity

The Honorable Liz Krueger
Senator for the 28th District of New York
Legislative Office Building
Room 808
Albany, NY 12247

March 28, 2019

The Honorable Felix W. Ortiz
Assembly Assistant Speaker
Assembly Member for the 51st District of New York
Legislative Office Building
Room 731
Albany, NY 12248

Dear Senator Krueger and Assistant Speaker Ortiz:

I am writing you today as President of the Institute for Pension Fund Integrity (IPFI) to oppose Senate Bill 2126 (S. 2126), the Fossil Fuel Divestment Act. IPFI is a nonprofit, nonpartisan organization that I founded last year to advocate for a strict adherence to fiduciary responsibility by public pension fund leaders. In the past 40 years I have served the State of Connecticut as sole fiduciary of its pension system as State Treasurer, as Assistant Minority Leader in the Connecticut House of Representatives, in Washington for two Presidents, at the United Nations as sole fiduciary, again, and at the most senior levels of Wall Street. I believe that there is no higher responsibility for financial or political leaders than adhering to their fiduciary duty to manage the assets of our hard working teachers, and state and local employees and retirees, for their exclusive benefit, and without regard to any political agenda.

Comptroller Thomas DiNapoli has proven his leadership by upholding this key mission of the Office of State Comptroller. I hope you too, will prioritize the fiscal health of the New York state pension system with more than one million participants, who are relying on your commitment to fiduciary duty.

Public pension fiduciaries are more and more frequently urged by outside groups, fringe political movements on the right and left, to act in ways that clearly violate strict fiduciary standard. I experienced this kind of pressure when I was Treasurer of Connecticut in the early 90's. At the time, the Connecticut pension system was broken and severely underperforming. Yet activists still wanted me to divest the state from tobacco stocks. California's pension was forced to do this, and over a decade, it cost the pension system over $8 billion in lost out performance.

I launched IPFI last year with the sole purpose of fighting to keep politics and personal political agendas out of the management of our public pension funds. IPFI provides research on such issues as divestment, pension performance, proxy voting advisory firms, and more. We stand ready to support organizations and pension funds who keep politics out of public pensions, and we provide research and insight into why the politics should never degrade our public servant commitment to fiduciary duty.

The Fossil Fuel Divestment Act will inject politics into the management of the New York State Common Retirement Fund and would prohibit Comptroller DiNapoli from managing the fund for the sole benefit of its beneficiaries and the taxpayer. We at IPFI are 100% opposed to this legislation for these reasons:

1. As Comptroller DiNapoli noted and other robust research shows, divestment from fossil fuels has not shown to have any impact on climate change itself, a stated goal of S. 2126. This inherently makes this legislation more of a political statement than a financial decision, going against fiduciary responsibility.

    a. The fiduciary duty to faithfully manage property and money in the best interest of the beneficiary is a practice more than 800 years old and has been enshrined in U.S. law since 1830. Political opinions are not included in the Prudent Man Rule which governs fiduciaries.
    b. The IRS has clearly defined rules for fiduciaries in the private sector, which include acting solely in the interest of the participants and their beneficiaries, and diversifying plan investments. While not directly applicable in the public sector, divesting from fossil fuels clearly is against the IRS' standard of care guideline.

2. There are real costs associated with the divestment of fossil fuels—just like tobacco. Not only are there transactional costs, but as DiNapoli notes, the New York Common Retirement Fund has earned more than $4 billion over the last ten years from investments in energy companies.

    a. When similar legislation was considered in 2018, the president of the Suffolk County Association of Municipal Employees authored an op-ed in opposition to divestment legislation, in part because it could cost the NYCRF between $188 million to $302 million over five years to divest from fossil fuels.
    b. Others have pointed to California and their estimated 70 basis point loss of performance that CalPERS has incurred since 2001 based on all divestments, including from tobacco or thermal coal companies

The New York state retirees and current employees deserve to know that their fund will continue to provide them a secure retirement. Bills like S. 2126 would limit the Comptroller's ability to guarantee that and force action that would be against the sole interest of the beneficiaries of the fund. Injecting personal opinions upon the management of public pension funds inserts politics into its management, and that is a violation of our fiduciary duty and we must not start down this slippery slope.

I urge you and your colleagues to reconsider S. 2126 and to keep politics out of pensions.

Christopher B. Burnham

President, Institute for Pension Fund Integrity
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CC: Comptroller Thomas DiNapoli
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