NMERB Divestment Campaign: Busting the Myths

Below are some misleading arguments against divestment from private prison corporations expressed by the executive director of NM Educational Retirement Board. The facts follow each myth.

MYTH #1: “To divest might put teachers’ retirement funds at risk.”

FACT: As of June 2019, these two stocks represented less than $1 million of the ERB’s $13.3 billion portfolio, only 0.0075%. If those funds were reallocated into different stocks, none of the 33,000-plus teachers served by the ERB would be impacted in any significant way. In fact, had the ERB sold these two stocks and held the proceeds in cash, their performance would have slightly improved.

MYTH #2: “Making these changes would, practically speaking, be very difficult.”

FACT: Most modern portfolio management software systems make this sort of exclusion very easy to manage -- literally, to just point-and-click for the correct information and calculations.

MYTH #3: “To divest could significantly alter how the Board invests its assets” or “…would make the portfolio deviate substantially from its index.”

FACT: The ERB holds GEO Group and CoreCivic shares in one small portion of their portfolio, with almost 400 other stocks. To sell these two stocks would make only a tiny (almost undetectable) change to the management of that portfolio. These two tiny allocations could be simply held in cash, or re-allocated among the other stocks in the portfolio, and the difference to the portfolio’s overall asset allocation and performance would be invisible.

MYTH #4: “If you divest, you don’t have a place at the table.”

Shareholder advocacy and engagement is certainly a powerful tool used to change the way that American corporations are managed. However, it is impossible for a “private, for-profit prison corporation” to do business ethically, when their entire business model depends on a constant supply of human bodies. We do not believe that these companies could adjust their practices and come in line with basic concepts of human dignity; therefore, we recommend removing them from the portfolio.

MYTH #5: “The NMERB must defer to the legislature because of their divestment policy.”

This “policy” is merely a suggestion that the NMERB passed by a motion in December 2019 in response to the requests for divestment. The board has the fiduciary responsibility over the investments of the NMERB pension fund, and owes the duty of loyalty to act only for the interests of the teachers, educators and other beneficiaries of the NMERB pension fund. The Legislature and/or the Governor are forbidden from applying political pressure on the financial decisions of the NMERB.

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**Background**

For the past year, public school and university/college employees have been requesting that the NM Educational Retirement Board (NMERB) divest its holdings from two private prison stocks – CoreCivic and GEO Group, which together equal less than $1 million out of a $13+ billion portfolio. Educators and public school/university employees have shared well-researched studies revealing the immorality of private prisons and detention centers that impact thousands of New Mexico’s students and children, in addition to the financial risks of these poorly performing stocks and the numerous successful lawsuits against them based on inhumane treatment and shoddy conditions amounting to cruelty and torture. Now, with Covid-19 increasingly burning through all private facilities in NM and elsewhere, it is more urgent than ever to divest our support, which can be viewed at this point, as blood money.

The Campaign to Divest NMERB from the Private, For-Profit Prisons submitted more than 1,100 petition signatures; letters from Santa Fe Public Schools and Española Public Schools boards of education; resolutions and motions from Albuquerque Teachers Federation and National Education Association-NM; letters from Teachers Against Child Detention, retired professors and from current and retired law faculty at UNM as well as legal research from a pro bono lawyer and retired judge. We have spoken for 30 minutes at the June 19th NMERB Trustees meeting and tried, often unsuccessfully, to discuss the matter with individual trustees. Yet, there has been no public discussion of this issue during trustee meetings and many erroneous statements made by the NMERB executive director and trustees, used as roadblocks to even place a divestment vote on the agenda.

Below is “page two” of the continuing myth busting that we must do to ensure that the correct, researched and factual information is available to empower us - - the beneficiaries of the trustees – to demand divestment immediately.

**MYTH:** ERB investment staff does not, and cannot, exercise discretion over these holdings [the private prison stocks] as their representation within the S&P 400 index is determined by the index provider, Standard & Poor’s Corporation, not by ERB.

**TRUTH:** The ERB staff certainly can "exercise discretion," if they want to. The S&P 400 index is determined by S&P, but that doesn't mean that every user of the index must stick precisely to the index.
**MYTH:** If ERB chooses to exclude one or more companies from their index, we would incur “tracking costs” as well as a tracking error since our holdings would no longer be identical to the S&P 400. A one basis point (0.01%) degradation in tracking error in our S&P 400 index fund would be app. $30,000. It is also likely there would be additional costs imposed by S&P on us for excluding these companies.

**TRUTH:** “Tracking costs” is not usually a term used in the industry, although “tracking error” is real. More importantly, these two prison companies have underperformed the index for the last decade or more, so if there is any significant tracking error due to excluding these companies it would have a positive impact on the portfolio. If the Board doesn't agree that this tracking error effect will persist, the best they can reasonably claim is that over the long time horizon of this portfolio the tracking error will sometimes be positive and sometimes negative — in which case there's no lingering “costs.”

Moreover: Our financial expert contacted Standard & Poor directly, and was told that NMERB would not be charged any fees or costs for divesting from the two stocks. The NMERB may be confusing investment in S & P 400 stocks through a “fund” vs. buying the stocks directly. Since the NMERB is directly invested in the stocks, we have total freedom to divest from GEO Group and CoreCivic without any penalties or without having to divest from the whole 400 Index. This was confirmed with the contact at Standard and Poor.

**MYTH:** [Our] pledge[is] to focus solely on being a good Fiduciary as your pension fund Trustee. Is subtracting these substantial costs from the ERB retirement fund consistent with, and a part of, my fiduciary duty to the fund that will pay your pension for the remainder of your life?

**TRUTH:** A fiduciary's duty to the beneficiaries of a pension fund is not to maximize profits, but to engage in a prudent process. Managing risks, and costs to the plan is certainly an important part of that; excluding two companies from a list of 400 can't possibly introduce enough risk or create enough cost to be worth the Board's attention. Far more important is this: the Board's own Investment Policy Statement shows that this part of the portfolio is supposed to be managed to the Russell 2500 Index as its benchmark, but they've chosen instead to use the S&P 400 to guide investment (per the IPS dated August 23, 2019). The under-performance the Board has inflicted on the portfolio by investing to the wrong index has cost the teachers of New Mexico far more than any tracking error due to two tiny exclusions ever could have.