TRUSTING U.: EXAMINING UNIVERSITY ENDOWMENT MANAGEMENT*

CHRISTOPHER J. RYAN, JR.**

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* This paper was presented in part, as *Whom Do U. Trust?: An Examination of College Endowment Management During the Recession*, on May 2, 2013 at the National Education Finance Conference in Indianapolis, Indiana.

** CJ Ryan is a Ph.D. student at the Vanderbilt University Peabody College of Education and Human Development. He was previously a director of development at the University of Kentucky. He received an A.B. from Dartmouth College, a M.Ed. degree from the University of Notre Dame, and a J.D. degree from the University of Kentucky College of Law, where he served as Notes Editor on Volume 101 of the KENTUCKY LAW JOURNAL and was appointed by Kentucky Governor Steven L. Beshear to a one-year term on the Kentucky Council on Postsecondary Education, the Commonwealth's higher education policy and regulation board. CJ would like to thank the incomparable Professor Stephen Clowney, of the University of Arkansas College of Law, and Professor John Robinson, of the University of Notre Dame Law School, for their contributions to this article.

INTRODUCTION:

A. The State of the Modern American University Endowment

American higher education is the product of a *laissez-faire* system; unlike other global university models, the American higher education model operates with little direct influence or interference from the federal or state government[1]—while fulfilling a vital public function. The historical freedom from regulatory intrusion that American higher education institutions have enjoyed both precipitated an entrepreneurial expansion of higher education and yielded a wide array of higher education models.[2] Today, American higher education is among the most market-oriented systems of higher education in the global context,[3] and it looks and runs more like a business than ever before.[4]

Resultantly, the financial viability and success of a university[5] is reflected in the market value of its endowment assets.[6] In the twenty-first

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1. *See* Martin Trow, *Federalism in American Higher Education*, *in* HIGHER LEARNING IN AMERICA: 1980-2000 39 (Arthur Levine ed., 1993) (touting the nominal direct influence of the federal government on the American higher education system); Christopher J. Ryan, Jr., *Something Corporate: The Case for Treating Proprietary Education Institutions Like Corporations*, 40 J.C. & U.L. 247, 257 (2014). Perhaps this protected status is due, in part, to the historical insulation from market pressures that are pervasive in and germane to the private sector that higher education has enjoyed because it has long been held in public favor. *See* Aaron N. Taylor, *Your Results May Vary: Protecting Students and Taxpayers Through Tighter Regulation of Proprietary School Representations*, 62 ADMIN. L. REV. 729, 743 (2010). *But see* Lawrence E. Gladieux & Jacqueline E. King, *The Federal Government and Higher Education*, *in* AMERICAN HIGHER EDUCATION IN THE TWENTY-FIRST CENTURY: SOCIAL, POLITICAL, AND ECONOMIC CHALLENGES 151 (Philip G. Altbach et al. eds., 2d ed. 2005).

2. CHRISTOPHER J. LUCAS, AMERICAN HIGHER EDUCATION: A HISTORY 116-19 (2006). *See also* Taylor, *supra* note 1, at 743; Ryan, *supra* note 1, at 257.

3. *See* David D. Dill, *Allowing the Market to Rule: The Case of the United States*, 57 HIGHER EDUC. Q. 136, 137 (2003) (discussing the increased "marketization" of higher education and its impact on the public interest).

4. If anything, the recent economic recessions, among other fiscal and social trends, have diminished the protections that higher education historically enjoyed, allowing a capitalistic approach to higher education to predominate. *See* DAVID L. KIRP, SHAKESPEARE, EINSTEIN, AND THE BOTTOM LINE: THE MARKETING OF HIGHER EDUCATION 2 (2003) ("American higher education is being transformed by both the power and the ethic of the marketplace.").

5. This article uses the term "university" to refer to institutions of higher education institutions. Thus, the article's use of "university" should be read as inclusive of colleges as well as universities.

6. The National Conference of Commissioners of Uniform State Laws defines an endowment fund as an institutional fund that is not expendable by the institution on a current basis under the terms of the applicable gift investment. UNIF. PRUDENT MGMT. OF INSTITUTIONAL FUNDS ACT § 2(2) (UNIF. LAW COMM'N 2006) [hereinafter UPMIFA]. This relatively narrow definition, however, encompasses only the *res* or

century, university endowment funds—the sum of a university's endowment asset portfolio—have become robust and position universities as major economic market participants; universities now occupy a deeply integrated role within national and international economic markets as both creators of and reactors to extra- and intra-market forces.[7] Thus, managing a university's endowment is both a big business and an increasingly competitive and complex endeavor.[8]

The volatile economic climate of the last decade has greatly disrupted the long-held principles that guided endowment management for over fifty years.[9] As a result of the Great Recession,[10] the endowments at

principal of the fund and not the broader meaning of the term, which include its assets, restrictions, and even beneficiaries.

7. *See* Sarah E. Waldeck, *The Coming Showdown Over University Endowments: Enlisting the Donors*, 77 FORDHAM L. REV. 1795, 1796-99 (2009) (discussing the volatility of the market and its effect on university endowments immediately after the start of and during the Great Recession).

8. *See, e.g.*, Derek Bok, *The Ambiguous Role of Money in Higher Education*, CHRON. HIGHER EDUC., Aug. 16, 2013, at A28–29 (arguing that competition "intensifies the ambiguous role of money in higher education. The struggle for financial advantage creates a potent incentive to emulate the successful practices of rival institutions. This process improves performance when the practices involved enhance the quality of lower the cost of education. But it can also cause universities to adopt inappropriate methods of their rivals if they appear to be effective."). *See also*, Seth Zweiler, *At Yale an Investment Guru Grooms a New Generation*, CHRON. HIGHER EDUC., Aug. 16, 2013, at A8 (suggesting an arms race at top universities to grow endowments as well as savvy endowment management staff working directly for the university).

9. *See, e.g.*, Bok, *supra* note 8; John C. Bogle, Remarks at The NMS Investment Management Forum, The Lessons of History – Endowment and Foundation Investing Today, 1-15 (Sept. 12, 2011), *available at* http://johncbogle.com/wordpress/wp-content/uploads/2011/09/NMS-9-12-12.pdf (discussing his experience as founder of the Vanguard Group, and managing university endowment funds). "Now fifteen years of history have rolled by—a history replete with waves of greed, fear, and hope in the stock market. What an era it's been! An era that began with a market boom, followed by a 50 percent bust, a solid recovery, yet another 50 percent bust, and another nice recovery, albeit one that seemed to fall apart after the June 30, 2011, fiscal year ended." *Id.* at 1.

10. This article refers to the "Great Recession"—the nation's most severe financial crisis since the Great Depression—and means it to include such adverse economic factors as: "the combined failure of the market for subprime mortgages; the collapse of the collateralized debt obligation . . . market; the failure of large financial institutions such as Bear Stearns, Lehman Brothers, Freddie Mac, Fannie Mae, Washington Mutual, and American International Group (AIG); and the consequent market upheaval" which began precipitously in 2007 and continued to unfold until 2013. Peter Conti-Brown, *Scarcity Amidst Wealth: The Law, Finance, and Culture of Elite University Endowments in the Financial Crisis*, 63 STAN. L. REV. 699, n.7 (2011); FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT XV (Jan. 2011). It should be noted that instability, in the form of historic market rallies in late 2014 and early 2015 and significant losses just prior to the time of publication illustrate market volatilities since the Great Recession, but cannot be said to encompass the Great Recession. *See* Tracy Alloway, *Market Volatility Has Changed Immensely*, BLOOMBERG BUSINESS (Sept. 8, 2015), http://www.bloomberg.com/news/articles/2015-09-

the top American schools, posting seemingly limitless gains from the 1990s to the mid-2000s, faced significant losses across a variety of investments.[11] For example, from June 30, 2008 to June 30, 2009, Yale University, regarded as a pioneer in substantial alternative investments such as real estate and private equity,[12] recorded a twenty-nine percent loss, or $6,582,785,000, to its endowment fund's market value.[13] Not to be outdone by its rival in the same fiscal year, Harvard University's endowment fund lost $10,891,304,000, nearly thirty percent of its market value.[14] To put this loss in perspective, if either of these losses were instead the market value of an endowment fund, they would rank as the sixth and ninth largest university endowment funds in the nation, respectively, for the 2008 fiscal year—the historical height of university endowment market values.[15] At the completion of FY2013, neither Harvard's nor Yale's endowment fund market values had returned to their pre-recession levels; however, while Yale's endowment fund posted gains in FY2014 so that its market value, totaling $22,900,000,000, finally eclipsed its FY2008 market value, Harvard's endowment fund market value of $35,883,691,000 was still $692,593,000 below its FY2008 market value in FY2014.[16] These examples merely illus-

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08/market-volatility-has-changed-immensely (maintaining in pertinent part that "On Aug. 24[, 2015], as global markets fell precipitously, one thing was shooting up. The Chicago Board Options Exchange's Volatility Index, the VIX, briefly jumped to a level not seen since the depths of the [2008] financial crisis.").

11. *See* Jason R. Job, *The Down Market and University Endowments: How the Prudent Investor Standard in the Uniform Management of Institutional Funds Act Does Not Yield Prudent Results*, 66 OHIO ST. L.J. 569 (2005).

12. *Id.* at 576. In the mid-1990s, Yale University invested "roughly sixty percent of its portfolio into less-conventional and generally riskier-investments" while these riskier investments accounted for one-third to one-half of portfolio investments at other top colleges." Karen W. Arenson, *Universities Taking on Risks to Overcome Fiscal Squeeze*, N.Y. TIMES, July 24, 1995.

13. NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics: Table 372. Endowment Funds of the 120 Colleges and Universities with the Largest Endowments, by Rank Order: 2008 and 2009* (2010), http://nces.ed.gov/programs/digest/d10/tables/dt10_372.asp.

14. *Id.* Relatedly, both Harvard and Yale's endowments recently underwent a change in management. *See* Zweiler, *supra* note 8, and Dan Primack, *Harvard Endowment's Private Equity Future*, CNN MONEY (Oct. 22, 2013), http://finance.fortune.cnn.com/2013/10/22/harvard-endowments-private-equity-future/?iid=SF_F_River.

15. *See* NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 13.

16. *See infra*, Tables 1–2. *See also* NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2014 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2013 to FY 2014* (2015), *available at* http://www.nacubo.org/Documents/EndowmentFiles/2014_Endowment_Market_Values_Revised2.27.15.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2013 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2012 to FY 2013* (2014), *available at* http://www.nacubo.org/Documents/EndowmentFiles/2013NCSEEndowmentMarket%20ValuesRevisedFeb142014.pdf; NACUBO, *U.S. and Canadian Institutions Listed by*

trate the modern realities of higher education finance. The lasting impact of the effects of the Great Recession on educational endowments that is still being felt today demands real and practical change in development, investing, and endowment management practices.[17] Now, more than ever, as

Fiscal Year 2012 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2011 to FY 2012 (2013), *available at* http://www.nacubo.org/Documents/research/2012NCSEPublicTablesEndowmentMarketValuesRevisedFebruary42013.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2011 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2010 to FY 2011* (2012), *available at* http://www.nacubo.org/Documents/research/2011NCSEPublicTablesEndowmentMarketValues319.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2010 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2009 to FY 2010* (2011), *available at* http://www.nacubo.org/Documents/research/2010NCSE_Public_Tables_Endowment_Market_Values_Final.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2009 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2008 to FY 2009* (2010), *available at* http://www.nacubo.org/Documents/research/2009_NCSE_Public_Tables_Endowment_Market_Values.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2008 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2007 to FY 2008* (2009), *available at* http://www.nacubo.org/documents/research/NES2008PublicTable-AllInstitutionsByFY08MarketValue.pdf.

17. While the stock market has rallied from its abysmal losses in FY2009, the effects of the Great Recession are still being felt even "[f]ive and a half years after the start of a frightening drop that erased $11 trillion from stock portfolios and made investors despair of ever getting their money back. . ." *See* Bernard Condon, *Dow Hits Record, Erasing Great Recession Losses*, TIME (March 5, 2013), http://business.time.com/2013/03/05/dow-hits-record-erasing-great-recession-losses/. That said, FY2013 marked the first time that gifts to universities returned to pre-Recession levels. *See* Don Troop, *Gifts to Colleges Hit $33.8 Billion, Topping Pre-Recession Levels*, CHRON. HIGHER EDUC. (Feb. 12, 2014), http://chronicle.com/article/Gifts-to-Colleges-Hit/144707/. This trend coincided with positive university endowment performance—for the first time since the onset of the Recession—over the same fiscal year. *See* Don Troop, *Strong US Stock Market Put College Endowments Back in the Black in 2013*, CHRON. HIGHER EDUC. (Jan. 28, 2014), http://chronicle.com/article/Strong-US-Stock-Market-Put/144253/; Ry Rivard, *Endowments Up 12%*, INSIDE HIGHER ED, Jan. 28, 2014, http://www.insidehighered.com/news/2014/01/28/college-endowment-funds-did-well-market-2013#sthash.pWITnjsC.dpbs; Kimberly Hefling, *College Endowments See Strong Growth*, DIVERSE ISSUES HIGHER EDUC. (Jan. 28, 2014), http://diverseeducation.com/article/60434/. In fact, at the time of publication of this article, FY2015 returns were expected to fall sharply from the gains of FY2013 and FY2014. *See* NACUBO, *Educational Endowments' Investment Returns Decline Sharply to 2.4% in FY2015; 10-Year Returns Fall to 6.3% Institutions Increase Endowment Spending Despite Lower Returns* (2015), *available at* http://www.nacubo.org/Documents/2015%20NCSE%20Press%20Release%20%20FINAL.pdf; *But see* Ry Rivard, *Private Distress*, INSIDE HIGHER EDUC. (Dec. 9, 2013), http://www.insidehighered.com/news/2014/01/28/college-endowment-funds-did-well-market-2013#sthash.pWITnjsC.dpbs (detailing the new travails of private colleges just after they managed to "weather the recession"). This improvement stands in sharp contrast to the previous year's average investment return of -0.3%. *See* Don Troop, *College*

university endowments approach recovery, universities and their endowment managers should model investor responsibility, transparency, and accountability.[18] To the extent that a measured model for university endowment growth can realize steady appreciation in market value and remain more stable in the face of adverse economic factors like those pervasive during the Great Recession, at the very least, it should be considered as a viable alternative to the total-return approach.

This article aims to bring to light the endowment management practices that resulted in this unprecedented growth and loss to endowment value on a national scale. Part I of this article examines the history of university endowments in America and provides a primer on the function of university endowments. In Part II, this article introduces the legal requirements of universities and their endowment managers that have sprung up as a result of the historical economic crises that university endowments have weathered. Part III furnishes data on the effect of the recent economic recession on university endowments, examining returns under a hypothetical alternative investment strategy that would have resulted in greater appreciation in market value and increased market stability between FY2004 and 2014 for half of the universities in the study sample, and also discusses the prevailing, though useless, cause of action by means of which donors may challenge a university's endowment spending, establishing a correlation between economic recessions and challenged gifts to universities in the American courts. Finally, Part IV offers recommendations for universities and their endowment managers to navigate uncertain waters in the modern context and articulates a sensible, sustainable university endowment management standard.

Endowments Rebound After a Flat Year, Preliminary Data Show, CHRON. HIGHER EDUC. (Nov. 7, 2013), http://chronicle.com/article/Colleges-Endowments-Rebound/142847/; Ry Rivard, *Endowment Returns Up, for Now*, INSIDE HIGHER EDUC. (Nov. 7, 2013), http://www.insidehighered.com/news/2013/11/07/endowment-returns-negative-2012-return-double-digits#sthash.ccjWGeTv.dpbs. Yet, these signs of progress still leave many skeptical that higher education will "recover" any time soon, in part because, according to these critics, the "economy does not depend on higher education." *See* Simon Zekaria, *Pearson CFO: U.S. Higher-Education Recovery Unlikely This Year*, WALL ST. J. (Jan. 23, 2014), http://blogs.wsj.com/corporate-intelligence/2014/01/23/pearson-cfo-u-s-higher-education-recovery-unlikely-this-year/; Arthur M. Cohen, Carrie B. Kisker, & Florence B. Brawer, *The Economy Does Not Depend on Higher Education*, CHRON. HIGHER EDUC., October 28, 2013, http://chronicle.com/article/The-Economy-Does-Not-Depend-on/142641/.

18. James J. Fishman, *What Went Wrong: Prudent Management of Endowment Funds and Imprudent Endowment Investing Policies*, 40 J.C. & U.L. 199, 201 (2014) (recommending that "endowments invest with more awareness and consider more realistically the possibility of negative returns, and their impact on the university or university, its beneficiaries, and the communities it affects").

PART I

A. A Brief Discussion of the Function of American University Endowments

Endowments—once simple, trust-like instruments—have become sophisticated devisement and investment systems that are central to the financial health of nearly every American university.[19] At their most basic level, endowments embody financial assets that a donor has contributed to a university.[20] These assets are later invested by the university, for the purpose of supporting the university's educational mission. In fact, an endowment is, simply put, "a gift of money or property to [a university] for a specific purpose, [especially] one in which the principal is kept intact indefinitely and only the interest income from that principal is used."[21] The purpose of an endowment is for donors' contributions to be invested, so

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19. This is true even—and perhaps most importantly—at tuition-dependent universities. *See* Lisa Jordan, *Outlook for University Liquidity Management*, BUSINESS OFFICER (March 1, 2011), http://www.nacubo.org/Business_Officer_Magazine/Business_Officer_Plus/Bonus_Material/Volatility_Dominates_Endowment_Forum_Discussion/Outlook_for_University_Liquidity_Management.html (indicating that spending from even the most meager endowment returns allows tuition-dependent universities to offset operating expenses that would otherwise result in higher tuition); Ry Rivard, *Private Distress*, INSIDE HIGHER ED (Dec. 9, 2013), https://www.insidehighered.com/news/2013/12/09/private-colleges-remain-under-weather (discussing that endowments address the functional needs of all universities, tuition-dependency notwithstanding).

20. While the practice of funding university endowments, particularly among alumni or friends of the university, is alive and well in the United States, Canada, and Great Britain, it is less prevalent in continental Europe and abroad. That said, the Russian government appears to be encouraging endowment funding at its universities throughout the country. *See* Eugene Vorotnikov, *State Acts to Encourage Endowment Funds*, UNIVERSITY WORLD NEWS (Jan. 13, 2013), http://www.universityworldnews.com/article.php?story=20130111125957359.

21. BLACK'S LAW DICTIONARY 241 (3d ed. 2006). Originally, endowments were contributions of property bestowed upon a university to provide it with a source of secure income. "Additional gifts constituted the primary source of their growth, and colleges' tax-exempt status allowed donors to give generously while getting generous tax deductions for their gifts. For educational institutions, the role of tax-deductible gift-giving remains an extremely important source of endowment funds, as any college fundraising or development officer can attest; but since the 1970s, finance has superseded fundraising as the main vehicle for the growth of endowments." TELLUS INST. & CTR. FOR SOCIAL PHILANTHROPY, EDUC. ENDOWMENTS AND THE FIN. CRISIS: SOCIAL COSTS AND SYSTEMIC RISKS IN THE SHADOW BANKING SYSTEM, 8 (2010), *available at* http://www.community-wealth.org/_pdfs/news/recent-articles/07-10/report-humphreys-et-al.pdf. Undoubtedly, the tax deduction is beneficial to the donor and the institution, and the very bedrock on which higher education philanthropy rests. However, there are those who would have it otherwise. *See* Josh Freedman, *Are Universities Charities? Why the 'Nonprofit Sector' Needs to Go*, FORBES (Dec. 10, 2013), http://www.forbes.com/sites/joshfreedman/2013/12/10/the-nonprofit-sector-should-not-exist/ (arguing that tax-exemption only makes the elites more, well, elite).

that the endowment's total asset value yields an inflation-adjusted principal amount, along with additional income for further investments and supplementary university expenditures.[22] As a general matter, the university board of trustees is entrusted with overseeing an endowment, which is often professionally managed to achieve the endowment's stated objectives and generate income.[23] In healthy years, excess earnings are reinvested in the *res* of the endowment in order to compensate for inflation and recessions in future years.[24] During historical recessions, investment of endowment funds tends toward frugality, and endowment income, to the extent any can be eked out of a down market, is used to satisfy debt obligations.[25]

That said, variation exists within the framework of the use and management of university endowment funds, particularly with regard to the legal right to invade the endowment principal.[26] For purposes of explaining the variation among endowment types regarding this right, endowments are typically bundled into one of three categories: (1) true endowments; (2) term endowments; and (3) quasi-endowments. A true endowment consists of funds that have been donated on the condition that the principal be invested and preserved in perpetuity.[27] With true endowments, only interest income may be used for expenditures.[28] True endowments typically comprise the majority of a university's endowment fund. A term endowment resembles a true endowment; however, unlike true endowments, the investment and preservation of principal is finite. The principal of a term endowment is preserved for a designated period of years, usually in decade increments.[29] Thus, a term endowment is identical to a true endowment until the term runs, at which time a term endowment becomes a quasi-endowment. Last, quasi-endowments, in which the donor requests the con-

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22. Albert Fung, *How Do University Endowments Work?*, INVESTOPEDIA (Feb. 26, 2009), http://www.investopedia.com/ask/answers/06/universityendowment.asp.

23. *See generally* Peter Williamson & Hazel A.D. Sanger, *Educational Endowment Funds*, *in* INVESTMENT MANAGER'S HANDBOOK 827-41 (Sumner N. Levine ed., 1980).

24. *See id.* at 841. *See also* Joel C. Dobris, *Real Return, Modern Portfolio Theory, and College, University, and Foundation Decisions on Annual Spending from Endowments: A Visit to the World of Spending Rules*, 28 REAL PROP. PROB. & TR. J. 49, 50 (1993) (sketching a picture of the formulaic approach of traditional university endowment management until the mid-1960s).

25. *See* Dobris, *supra* note 24, at 50.

26. *See* Fishman, *supra* note 18, at 201 (noting that "The world of endowments is highly stratified in terms of size, utilization of modern theories of finance, trustee governance procedures, and delegation to and reliance on outside experts.").

27. NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS, *2002 NACUBO Endowment Study: Executive Summary* 62 (2002).

28. COMMONFUND INST., *Commonfund Benchmarks Study: Educational Endowment Report* 13 (2003) (relating that, as of the date of the study, only twelve percent of endowment funds surveyed invaded their corpus).

29. *See* NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS, *supra* note 27, at 62.

tribution not be invested in perpetuity, allow principal funds, usually up to an amount equal to the original gift value, to become available for the current use of the university.[30]

Additionally, endowments may vary with regard to the use of their funds for a general or particular purpose. In most cases, a university's endowment fund functions as a true endowment for the use of financing, in part, the operating expenses of the university. In addition to its general endowment fund, a university may also control restricted endowment funds—contributions earmarked by a donor to fund a specific need or program within the university.[31] When an endowment is restricted, the income from the endowment may only be used for a particular purpose—akin to the quasi-endowment described above. For example, an endowed professorship[32] represents a faculty position paid by revenue from an endowment fund specifically established for that purpose. Endowing professorships helps to reduce university expenditures by attracting top academics, who are not paid entirely out of the university's operating budget, to be members of the uni-

30. In many cases, quasi-endowments may include "the additional income from true endowments when there have been operating surpluses. Since the college . . . is not required to preserve the principal, the governing board . . . will invest [quasi-endowments] more aggressively than true and term endowment funds." Job, *supra* note 11, at n.4. *See also* NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS, *supra* note 27, at 62.

31. In such a case, a donor restricts the use of the endowment's income to provide for a particular institutional program. Most commonly, endowed professorships, scholarships, and endowed fellowships comprise restrictive endowments. *See* Fung, *supra* note 22.

32. The practice of endowing chairs dates back to the Roman Emperor Marcus Aurelius' providing for an endowment of the four major schools of philosophy in Athens in the Second Century A.D. *See generally* JOHN P. LYNCH, ARISTOTLE'S SCHOOL: A STUDY OF A GREEK EDUCATIONAL INSTITUTION, 192-216 (Univ. of Cal. Press 1972). In the early Sixteenth Century, Lady Margaret of Beaufort adapted the Roman practice to the English university system when she established endowed chairs among the divinity faculty at Oxford and Cambridge universities. Half a century later, Lady Margaret Beaufort's grandson, King Henry VIII, established the Regius Professorships at the same universities in divinity, civil law, Hebrew, Greek, and medical sciences. *See Commemorating Benefactors*, CAMBRIDGE UNIV. (Nov. 3, 2006), http://www.cam.ac.uk/news/commemorating-benefactors. Private individuals—and more recently non-royals—soon adopted the practice of endowing professorships. Beginning in 1669, Sir Isaac Newton held the Lucasian Chair of Mathematics position—named for benefactor, English clergyman, and member of the House of Commons, Henry Lucas—at Cambridge, which "father of the computer" mathematician Charles Babbage and theoretical physicist and cosmologist Stephen Hawking have more recently held. *See* Kevin Orman-Rossiter & Morgan Saletta, *From Newton to Hawking and Beyond: A Short History of the Lucasian Chair*, THE CONVERSATION (June 18, 2015, 4:10 PM), http://www.theconversation.com/from-newton-to-hawking-and-beyond-a-short-history-of-the-lucasian-chair-40967. *But see* Vimal Patel, *When Creating an Endowed Chair Poses a Dilemma for a University*, Chron. HIGHER ED (Aug. 27, 2015), http://chronicle.com/article/When-Creating-an-Endowed-Chair/232637/ (stating an argument in the modern context for universities to decline the naming of controversial endowed professorships).

versity community.[33] In this way, with principal to be invested and income to be distributed for a specific use or benefit, endowments are undeniably trust-like instruments and merit treatment under the law as a trust.[34] Though endowment categories may vary, their essential function is the same: to utilize contributions to the university so that they provide for the university's needs in the best of times and shelter the university from financial ruin during the worst of times. The following sections of this article contemplate the historical implications of this fundamental purpose.

B. A Primer on the History and Management of University Endowments

Endowments have a history spanning millennia.[35] For much of this time, endowment managers were limited in their investment choices; the ability to invest endowment funds in a variety of instruments, especially assets associated with high risk, is a recent phenomenon.[36] Until the early Nineteenth Century, American universities primarily invested in real estate;[37] however the "prudent person" rule, described more fully in the next

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33. Not only does this practice free university assets that would otherwise have been spent on faculty salaries or auxiliary university needs, it arguably improves the educational experience of the students by reducing the student to faculty ratio. At the same time, it allows donor intent and values to influence faculty composition. *See, e.g.*, Daniel Aloi, *Cornell College of Arts and Sciences to Recruit Faculty for Three New Endowed Humanities Professorships*, EZRA MAGAZINE (Nov. 2010), http://ezramagazine.cornell.edu/update/Nov10/EU.humanities.profs.html#main. Yet, recently faculty members who benefit from these endowed funds have, somewhat confoundingly, become uneasy about the role of private funds in higher education. *See* Carl Straumsheim, *Profit or Progress?*, INSIDE HIGHER ED (Oct. 10, 2013), http://www.insidehighered.com/news/2013/10/10/faculty-group-criticizes-role-private-money-higher-education#sthash.2PrzXusg.dpbs (voicing a national group of faculty leaders' concern about the influence of private funds on higher education); Jon Marcus, *Foundations are Increasingly Running U.S. Higher Ed, Spending Millions to Influence*, HUFFINGTON POST (Oct. 1, 2013), http://www.huffingtonpost.com/2013/10/01/foundations-higher-ed_n_4023826.html?utm_hp_ref=@education123.

34. In fact, simply defined, a "trust" is "a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*)." BLACK'S LAW DICTIONARY 734 (3d ed. 2006). By this definition, an endowment seems to be a flavor of trust in the way that squares are rectangles, but not all trusts are endowments, given that only equilateral rectangles can be squares. As such, the law should formally recognize endowments as trusts for the sake of consistent treatment.

35. *See supra* note 32.

36. The current freedom to invest endowment funds in nearly any asset has enjoyed only roughly fifty years of popularity. *See* TELLUS INST., *supra* note 21, at 8.

37. During the early American republic most endowment funds used mortgages, promissory notes, and real estate as investments of choice until 1830, when the Supreme Court of Massachusetts established guidelines for managing endowments according to the so-called 'prudent man' rule in a precedent-setting case involving Harvard College." *Id.*

section, slightly widened the options of investment instruments available to endowment managers. The prudent person rule was the pervasive endowment management standard for the remainder of the Nineteenth and early Twentieth Century. In short, this rule allowed endowment managers to invest endowment funds in low-risk assets—as a "prudent person" would conduct his or her own financial affairs.[38] For example, under this view, fixed-income securities[39] were seen as a safer, and therefore as a better, alternative to common stocks as the Nineteenth Century progressed.

During the Reconstruction Era, the United States Department of the Treasury issued a significant number of government and railroad bonds.[40] Given the ubiquity and relative safety of fixed-income securities, many endowment managers transferred the majority of their endowment's investible funds into secured corporate and government bonds but retained up to a third of their portfolio in real estate and mortgages.[41] In the early Twentieth Century, however, the promise of high returns from investment in corporate stock proved too alluring for endowment managers to avoid. Even despite the Stock Market Crash of 1929 and the subsequent Great Depression of the 1930s, the largest university endowments began to accrue corporate stock holdings, once considered speculative under strict applications of the prudent person rule.[42] Over the next two decades, university endowments increased their public equity investments at a torrid pace. By the late 1960s, a majority of university endowments had adopted a model of investing three-fifths of endowment funds in corporate stock and only two-fifths remained in bonds.[43]

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38. Harvard Coll. v. Amory, 9 Pick. 446, 461 (Mass. 1830).

39. Fixed-income securities are investments providing returns as fixed periodic payments, with the eventual return of principal upon the maturity of the security. Two examples of fixed income securities are treasury notes and corporate bonds. *See Fixed-Income Securities*, INVESTOPEDIA, http://www.investopedia.com/terms/f/fixed-incomesecurity.asp.

40. *See* Job, *supra* note 11, at n.14 (citing BEVIS LONGSTRETH, MODERN INVESTMENT MANAGEMENT AND THE PRUDENT MAN RULE (New York: Oxford University Press, 1986)). "In 1884, Harvard University invested 51.9% of their endowment invested in bonds versus 0% of their endowment funds in 1830. . .Similarly, Princeton University had 3.4% invested in bonds in 1830 and 91.4% in 1884." *Id.*

41. TELLUS INST., *supra* note 21, at 8.

42. By the early 1940's, it is estimated that these universities had nearly 45 percent of their portfolios allocated to equities—at the expense of investment in real estate and mortgages. *See* TELLUS INST., *supra* note 21, at 8.

43. This allocation, or the "60/40" endowment allocation, was the prevailing endowment investment model at the turn of the Twenty-First Century. *See id.*; LONGSTRETH, *supra* note 40; Job, *supra* note 11, at 569-613; and WILLIAM L. CARY AND CRAIG B. BRIGHT, THE LAW AND THE LORE OF ENDOWMENT FUNDS (New York: The Ford Found., 1969).

From the wilderness of New Hampshire,[44] at the pinnacle of post-war prosperity, emerged a substantially more aggressive approach to endowment management. Dartmouth College's J. Peter Williamson[45] and John F. Meck, Jr.,[46] with support from the Ford Foundation, visited and collected data from finance officers at more than thirty American university campuses to produce "one of the most comprehensive studies to date on the management of endowment funds"—the "Barker Report."[47] Ushering in the foundation for the application of Modern Portfolio Theory[48] to endow-

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44. The Dartmouth College motto, "*Vox Clamantis in Deserto*," is translated in English to mean "A Voice Crying out in the Wilderness."

45. From 1961 to 1992, J. Peter Williamson was a professor of finance at Dartmouth College's Tuck School of Business, carrying the title of Laurence F. Whittemore Professor of Finance, Emeritus. *See J. Peter Williamson's Obituary*, RAND-WILSON FUNERAL HOME (July 30, 2012), http://rand-wilson.com/obituaries/obit_view.php?id=56.

46. John F. Meck, Jr., a 1933 graduate of Dartmouth College, served the College's administration in various positions such as vice president and chairman of Dartmouth's Investment Committee and ultimately as the College's Chief Financial Officer. *See* Interview by Jane Carroll with David T. McLaughlin, President Emeritus of Dartmouth College, in Hanover, NH and West Lebanon, NH (Nov. 8, 1996; Feb. 4, 1997; Oct. 23, 1997; and Dec. 10, 1997), http://www.dartmouth.edu/~library/rauner/archives/oral_history/oh_interviews_pdf/McLaughlin_David.pdf.

47. TELLUS INST., *supra* note 21, at 8-9. The 1969 report issued by the Advisory Committee on Endowment Management is actually entitled *Managing Educational Endowments: Report to the Ford Foundation* but was colloquially named for Wall Street financier Robert R. Barker, who chaired the Ford Foundation's Advisory Committee on Endowment Management as well as Harvard University's Board of Overseers. *See Robert R. Barker, 87, Endowment Expert*, N.Y. TIMES, (Nov. 16, 2002), http://www.nytimes.com/2002/11/16/nyregion/robert-r-barker-87-endowment-expert.html. *See also* ADVISORY COMM. ON ENDOWMENT MGMT., *Managing Educational Endowments: Report to the Ford Foundation* (New York 1969); J. PETER WILLIAMSON, *Performance Measurement and Investment Objectives for Educational Endowment Funds*, THE COMMON FUND (New York 1972).

48. Harry Markowitz, professor of finance at the University of California, San Diego's Rady School of Management, pioneered Modern Portfolio Theory—an idea that garnered the Nobel Prize in Economic Sciences. The theory, not wholly Markowtiz's work, was developed and has been subsequently applied and elaborated by economists Eugene Fama, Sidney Alexander, William Sharpe, James Tobin, Fischer Black, and Myron Scholes, among others. *See* TELLUS INST., *supra* note 21, at 9–10. A more nuanced discussion of Modern Portfolio Theory is beyond the scope of this article. However, reduced to its most basic elements, the finance theory is based upon the principle that carefully choosing the proportions of various assets for investment through diversification can maximize a portfolio's expected return against some portfolio risks. *See* Harry Markowitz, *Portfolio Selection*, 7 J. OF FIN. 77-91 (1952). "Modern Portfolio Theory is the simple proposition that risk and return are highly correlated, and that with greater risk come higher returns. [The theory also] provides a framework for managing risk at the portfolio level, primarily through diversification. . . . Because of their fundamentally long-term investment horizon, endowments seemed to have a much higher tolerance for risk precisely because they could weather short-term volatility in pursuit of higher long-term returns." TELLUS INST., *supra* note 21, at 10 (citations omitted).

ment management,[49] the report proposed that endowment managers should focus investment to maximize long-term total return in place of investing endowment funds solely to secure income.[50]

The practical strictures of endowment management had to be loosened to allow for the application of Modern Portfolio Theory to take effect. In the first half of the Twentieth Century, many endowment fund managers could only distribute income generated by the university endowment's investments. Thus, an endowment's investment income necessarily fell when it was divested of bonds and income-producing assets in favor of common corporate stock shares.[51] This valuation decrease would occur because "the dividend payout rate on common stocks was lower than the rates of return available on fixed-income securities."[52] Under the old rules, university endowment management, managers who invested for capital appreciation would have been unable to make adequate endowment distributions, straining many university institutional budgets. "In order for endowment fund managers to maximize the benefits of investing in corporate stocks, they had to change their accounting methods . . . from an income-only accounting method to one allowing for [total-return] accounting."[53] Such a paradigm shift also required reshaping commonly held notions of endowment income; the more inclusive definition of endowment income advocated by the report not only encompassed the actual yield generated from interest and dividends but also contemplated unrealized capital gains from any appreciation in the principal value of the endowment's securities.[54]

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49. Because the Barker Report confined itself to marketable securities, its strategic approach remained a far cry from the Endowment Model of Investing that would arise in the later era of David Swensen and Jack Meyer." TELLUS INST., *supra* note 21, at 9. David Swensen, Yale University's Chief Investment Officer since 1985, and Dean Takahashi credited with developing what is arguable the most successful applications of Modern Portfolio Theory to university endowment management (and most contentious, costly, and cumbersome of approaches when tailored to other universities)—the "Yale Model." *See* Rick Ferri, *The Curse of the Yale Model*, FORBES (April 16, 2012), http://www.forbes.com/sites/rickferri/2012/04/16/the-curse-of-the-yale-model/2/.

50. *See generally* ADVISORY COMM. ON ENDOWMENT MGMT., *Managing Educational Endowments: Report to the Ford Foundation* (New York 1969).

51. *See* Job, *supra* note 11, at 574.

52. *Id.*

53. *Id.* at 574-75. "For example, suppose C University has an endowment with 1000 shares of XYZ Corp[.] with a cost basis of $10. Over the past year, XYZ Corp[.] stock paid $3 a share in dividends and has increased in value to $15 a share. Under an income-only accounting method, C University will have $3,000 of income and depending on its spending strategy will be able to distribute up to $3,000. Under a system of total return accounting, 'income' includes some price appreciation in addition to the dividends paid by XYZ Corp[.] Thus, C University will have at most $8,000 of income to distribute ($3,000 in dividend income and $5,000 in unrealized appreciation in XYZ stock). Generally, a portion of the $8,000 would be allocated to income in order to allow for inflation and other expenses of the endowment fund." *Id.* at n. 20.

54. *See* ADVISORY COMM. ON ENDOWMENT MGMT., *Managing Educational En-*

In short, the Barker Report, and subsequent studies issued by the Ford Foundation's Advisory Committee on Endowment Management, fundamentally changed the landscape of endowment investment strategy. In the wake of these reports, endowment trustees pursued growth, casting aside their aversion of risk and fears of short-term volatility—even if doing so meant delegating investment authority to external managers "who could seize investment opportunities unavailable to finance officers on campus."[55] These reports, pacing the emerging finance theory of the day, argued that universities were forfeiting capital gain returns because of their mistaken understanding of the definition of prudence.[56] Shifting the focus from secure endowment income to growth and total-return, university finance officers began to pay attention to the message of these reports and increasingly devolved management of their endowments to professional asset managers,[57] who applied true Modern Portfolio Theory techniques to generate higher risk-adjusted investment returns—even turning to non-traditional investment vehicles.[58] For nearly half-a-century, Modern Portfo-

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dowments: Report to the Ford Foundation (New York 1969). *See also* Job, *supra* note 11, at 575.

55. TELLUS INST., *supra* note 21, at 9. Nevertheless, by downplaying the importance of risk and volatility and de-emphasizing liquidity, the Barker Report and the other Ford Foundation reports on educational endowment management helped lay the intellectual foundations for a new paradigm of higher-risk, higher-return investment management strategies for nonprofit endowments. *Id.*

56. *See generally* WILLIAM L. CARY & CRAIG B. BRIGHT, THE LAW AND THE LORE OF ENDOWMENT FUNDS (1969); WILLIAM L. CARY & CRAIG B. BRIGHT, THE DEVELOPING LAW OF ENDOWMENT FUNDS: "THE LAW AND THE LORE" REVISITED (1974). *Compare* RESTATEMENT (THIRD) OF TRUSTS (1992) (revising the prudent investor portions of the Second Restatement) *with* RESTATEMENT (SECOND) OF TRUSTS (1959).

57. Perhaps, the message was amplified by the movement of a few major endowments to a total-return investment strategy, thereby entering the stock market on a greater scale and divesting of fixed-income securities—like bonds with declining value due to "increased interest rates, high inflation, and poor stock market performance . . . ." Job, *supra* note 11, at 575–76. However, perhaps foreshadowing the ultimate concern with the application of Modern Portfolio Theory to university endowments, this shift marked an end to the bull market of the 1960s and caused precipitous losses in the value of many endowment funds. For example, from June 1973 to October 1974, Harvard University lost roughly $300 million dollars from its endowment, while Dartmouth College's endowment fell from over $170 million to between $130 million and $135 million. Michael C. Jensen, *From Ivory Tower to Bottom Line*, N.Y. TIMES, Jan. 15, 1975. Over the span of a decade—from 1967 to 1978—Yale University's endowment reported no growth, even though it received more that $100 million in gifts during the same time period. *Yale Buys Interest in Corning Building*, N.Y. TIMES, Dec. 10, 1978.

58. Among the non-traditional investment vehicles that endowment managers experimented with in the late 1970s were: private equity funds, hedge funds, commodities, including timber, oil and gas partnerships, "venture capital, . . . foreign equities[,] . . . shopping ventures, office buildings,. . . unimproved land." Job, *supra* note 11, at 576. *See also* Lee Smith, *A Small College Scores Big in the Investment Game*, FORTUNE, Dec. 18, 1978, at 68 (detailing the investment of funds from Grinnell College's endowment in venture capital—capitalizing Intel Corporation—and a television

lio Theory-based investment strategies enabled university endowments to grow an unprecedented rates, and as university endowment assets continued to increase, endowment managers experimented more with alternative investments, many of which possess more risk than stocks and bonds and are, thus, more susceptible to extended losses.[59] Manifested in various forms, the application of Modern Portfolio Theory to endowment management prevailed at the onset of the Great Recession and, for better *and* for worse, is still the dominant investment theory at the time of this article's publication.

PART II

A. The Development of American University Endowment Law

Legal regimes are often slow-moving, even glacial, in keeping pace with market needs. Thus, when adverse economic factors, such as a recession, necessitate changing business models, the contributions of forward-thinking minds[60] in the areas of economic policy and theory have profound implications upon shaping a solution to curb negative market trends and ultimately upon the way the law develops to recalibrate a balance of market interests. Occasionally, however, the law sets the pace. For instance, in the Eighteenth and early Nineteenth Centuries, American universities invested endowment funds in only the safest assets available,[61] but with one judicial decision, *Harvard College v. Amory*, the Massachusetts Supreme Court liberalized this investment strategy.[62] Adopting the "prudent person" rule, the court held that a trustee's fiduciary duty in the governance of a trust—the college's endowment—was based on "how men of prudence, discretion

station). Such non-traditional investments, however, did not always pan out. In fact, in the late 1990s, a portion of Brown University's $1 billion endowment was invested with the Bermuda-based hedge fund, Everest Capital Limited, which lost more than $1.3 billion of its $2.7 billion in assets under management in less than eight months. Brown University's endowment was not the lone university endowment that suffered; Yale University, Emory University, and the University of Iowa also had funds invested with Everest Capital during this time. Lynn Arditi, *Brown University Won't Comment on Endowment's Loss in Hedge Funds*, PROVIDENCE J., Oct. 7, 1998, at 1F.

59. *See* Job, *supra* note 11, at 576.

60. This article counts Barker, Meck, and Williamson, among the brain trusts who led the way for the application of Modern Portfolio Theory to endowment management in the early going, along with William L. Cary, once Dwight Professor at Columbia Law School and former chairman of the Securities and Exchange Commission from 1961 to 1964. *See William Carey, Former S.E.C. Chairmen Dies at 72*, N.Y. TIMES (Feb. 9, 1983), http://www.nytimes.com/1983/02/09/obituaries/william-carey-former-sec-chairman-dies-at-72.html.

61. *See* TELLUS INST., *supra* note 21, at 8.

62. Harvard Coll. v. Amory, 9 Pick. 446 (Mass. 1830). This decision articulated the formula for the prudent person rule, which became the national benchmark for endowment management for over a century.

and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, and as well as the probable safety of the capital to be invested."[63]

If not in practice, by today's definition, a prudent person would seemingly satisfy this standard with an investment in common stock; however, the early Nineteenth Century notion of this fiduciary duty—informed by the proliferation of the prudent person rule across the country—seems to require that a trustee avoid speculative investments such as common stocks in order to pursue income and preserve capital.[64] The prudent person rule, as articulated by the court in *Harvard College v. Amory*, dominated the legal theory of endowment management for nearly a century until it gradually became disfavored in the early part of the Twentieth Century and had all but eroded by the time the Barker Report was published. In the last fifty years, Modern Portfolio Theory, advanced by the Barker Report and its successors, gave rise to the development of new institutions and legal norms that centered on the theory of total-return maximization. Among them are the National Association for College and University Business Officers (NACUBO),[65] the Common Fund for Nonprofit Organizations,[66] and the 1972 Uniform Management of Institutional Funds Act (UMIFA).[67]

Universities organized as state instrumentalities or operated exclusively for educational purposes could be subject to the broad jurisdictional hook of the UMIFA "to the extent that [the university] holds funds exclusively for [educational] purposes."[68] Approved by the National Conference

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63. *Id.* at 469 (citing Hall v. Cushing, 9 Pick. 395 (Mass. 1830)). *See also* TELLUS INSTITUTE, *supra* note 21, at 8; LONGSTRETH, *supra* note 40, at 3.

64. TELLUS INST., *supra* note 21, at 8.

65. Originally headquartered at Dartmouth College and founded in 1963, NACUBO is a membership organization representing university business and financial officers through "advocacy efforts, community service, and professional development activities . . . to advance the economic viability and business practices of higher education institutions in fulfillment of their academic missions." *See About NACUBO*, NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS, http://www.nacubo.org/About_NACUBO.html (last visited Feb. 4, 2016).

66. The Common Fund is a not-for-profit organization "launched with Ford Foundation seed funding to provide joint investment management of endowment funds." *See* TELLUS INST., *supra* note 21, at 10.

67. The UMIFA codified many of the recommendations of the Ford Foundation reports into new, more flexible fiduciary duty standards and opened the door to increasingly riskier investment strategies. *See id.* at n.11. "According to the Ford Foundation Annual Report for 1969, the Foundation set aside $800,000 to create the Common Fund following publication of the Barker Report and Cary and Bright's legal analysis. Since 1998 the organization has been known simply as Commonfund. Dartmouth Treasurer Meck became president of the Common Fund, and both he and Bright served on the advisory committee to the National Conference of Commissioners on Uniform State Laws, which prepared the UMIFA." *Id.*

68. UNIF. MGMT. OF INST. FUNDS ACT § 1(1), 7A U.L.A. 484 (1999).

of Commissioners on Uniform State Laws in 1972, UMIFA took hold in many jurisdictions contemporaneously with the proliferation of the application of the Modern Portfolio Theory to endowment management.[69] In many ways, the UMIFA was seen as a direct response to the growing tenet among university financial officers that maximizing endowment growth—even at the expense of stability—was preferable to an investment model that sought to preserve the purchasing power of the endowment.[70]

The UMIFA also established guidelines relating to the delegation of authority to invest endowment funds,[71] the authority of trustees and the responsibility for managing the endowment,[72] and the scope of the application of a total-return approach to investing endowment funds,[73] as well as liberalized standards of care and prudence for trustees in the execution of their duties.[74] At the same time, the UMIFA provided endowment managers with more freedom than previous regimes. For example, in terms of executing annual spending and distribution duties, the UMIFA allowed managers to operate under the traditional income-only standard or a total-return standard,[75] and for investment purposes, allowed fund managers to invest under a liberalized prudent person rule.[76]

Before the UMIFA, endowment managers invested significant percentages of endowment funds in high-yielding, fixed-income vehicles, because endowment managers were able to spend only income produced by the endowment. Though high-yielding investments maximized endowment income returns, these investments had nominal price appreciation and thus were unable to maintain an endowment's purchasing power when the inflation rate exceeded the interest rate of the investment vehicle.[77] Frequently, a university's financial obligations "led [its] managers, contrary to their best long-term judgment, to forgo investments with favorable growth prospects if they had a low current yield." The UMIFA, however, directly addressed this concern by equipping endowment managers with the ability to elect liberal spending strategies:

> The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation . . . in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard es-

69. Job, *supra* note 11, at 572–73.
70. *Id.* at 573.
71. UNIF. MGMT. OF INST. FUNDS ACT § 5.
72. UNIF. MGMT. OF INST. FUNDS ACT §§ 4, 6.
73. UNIF. MGMT. OF INST. FUNDS ACT § 2.
74. UNIF. MGMT. OF INST. FUNDS ACT § 6.
75. UNIF. MGMT. OF INST. FUNDS ACT § 2.
76. UNIF. MGMT. OF INST. FUNDS ACT § 6.
77. Job, *supra* note 11, at 578.

> tablished by Section 6. This Section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.[78]

Not only did the UMIFA provide trustees with more latitude for spending, but it also loosened restrictions on the types of investment vehicles that trustees could select;[79] this officially opened trustees and their endowments to diversification practices, exposing them to new market risks.

The complexity and volatility of the markets required an abdication of the Second Restatement on Trusts' duty for a trustee not to delegate "acts which the trustee can reasonably be required to personally perform."[80] However, for years, the law was unsettled on the position of whether a trustee could delegate endowment management to an officer of the university or an advisor outside of the university. There was no substantial authority that barred a board of trustees from delegating its endowment's investment responsibilities "to other responsible [agents], subject of course to the overall supervision of the board of directors."[81] Finally, Section 5 granted the

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78. UNIF. MGMT. OF INST. FUNDS ACT § 2. Section 2, under which this provision is housed within the UMIFA, permitted the trustees to expend net appreciation funds subject to a relativistic standard of "ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision." UNIF. MGMT. OF INST. FUNDS ACT § 6. The shift from a stringent trustee standard of care to a more relaxed standard was deliberately contemplated in the drafting of the section. *Id.* The duty of care is "cast in terms of the duties and responsibilities of a manager of a nonprofit institution. Directors are obligated to act in the utmost good faith and to exercise ordinary business care and prudence in all matters affecting the management of the corporation. This is a proper standard for the managers of a nonprofit institution, whether or not it is incorporated." *Id.* Just prior to the UMIFA's adoption, courts began rolling back the strictures of the Second Restatement's prudent person rule. *See* Stern v. Lucy Webb Hayes Nat'l Training Sch., 381 F. Supp. 1003 (D.D.C. 1974) (noting also that the District of Columbia's local enactment of the UMIFA occurred in 1977); Denckla v. Independence Found., 193 A.2d 538 (Del. 1963); City of Paterson v. Paterson Gen. Hosp., 235 A.2d 487 (N.J. Super. 1967). Others yet defended the prudent person standard. *See* California v. Larkin, 413 F. Supp. 978 (N.D. Cal. 1976); Holt v. College of Osteopathic Physicians & Surgeons, 61 Cal. 2d 750 (Cal. 1964); Lynch v. John M. Redfield Found., 9 Cal. App. 3d 293 (Ct. App. 1970). The UMIFA's relaxed standard of prudence—although not fully clear—was aimed at settling the uncertainty that had sprung up from the stricter Second Restatement's requirements that trustees were "under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property," and were directed "to make such investments and only such investments as a prudent man would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived." RESTATEMENT (SECOND) OF TRUSTS § 227. *Compare with* UNIF. MGMT. OF INST. FUNDS ACT § 6.

79. UNIF. MGMT. OF INST. FUNDS ACT § 4.

80. RESTATEMENT (SECOND) OF TRUSTS § 171 (1959). For instance, prior to the UMIFA, a trustee was barred from delegating the selection of investments. *Id.*

81. *But see* Boston v. Curley, 177 N.E. 557 (Mass. 1931) (disallowing such a del-

trustees of the universities in UMIFA jurisdictions authority to delegate investment management to proprietary investment advisory and management services, provided that the governing board maintained a "standard of business care and prudence when delegating the responsibility of investment policy and the selection of competent investment agents."[82]

For thirty-five years, the UMIFA governed university endowment management in forty-seven states and the District of Columbia;[83] however, in 2006, the National Conference of Commissioners on Uniform State Laws redrafted the UMIFA.[84] The result of this initiative is the Uniform Prudent Management of Institutional Funds Act (UPMIFA).[85] In many ways, the UPMIFA grants university endowment managers more freedom than the UMIFA. For example, because donor intent is not always readily ascertainable, the UPMIFA supplies a balancing test to permit modification of restrictions on gifts in certain limited circumstances, and thereby allow universities prescribed methods of invading the principal.[86] The UPMIFA's

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egation). It should come as no surprise that a few state courts disagreed with the Massachusetts Supreme Court's decision in *Boston v. Curley*—including the very same court in an earlier decision. *See* Wilstach Estate, 1 Pa. D. & C.2d 197 (Orphans' Ct. Pa. 1954); Mass. Charitable Mechanic Ass'n v. Beede, 70 N.E.2d 285 (Mass. 1947); Graham Bros. Co. v. Galloway Women's Coll., 81 S.W.2d 837 (Ark. 1935); City of Bangor v. Beal, 26 A. 1112 (Me. 1892).

82. *See* Job, *supra* note 11, at 583.

83. As of 2005, forty-seven states and the District of Columbia had in fact adopted UMIFA. While Arizona did not explicitly adopt the UMIFA, its code approximated the UMIFA. *See* ARIZ. REV. STAT. §§ 10-11801—10-11807 (West 2003). Alaska and Pennsylvania, however, never adopted legislation in step with the UMIFA model. *See* Job, *supra* note 11, at n.2. *See also* Susan L. Davis, *There's a New Sheriff in Town: UPMIFA Drives Accounting and Reporting Changes for Endowments*, MCGLADREY, 1 (2012), *available at* http://mcgladrey.com/pdf/newsheriff_upmifa_drivesaccounting_reporting.pdf. The UMIFA was supplanted, only very briefly by the Uniform Prudent Investors Act [hereinafter UPIA]. UNIF. PRUDENT INVESTOR ACT (UNIF. LAW COMM'N 1994).

84. For further reading about the redrafting process, including copies of proposed drafts, see *The National Conference of Commissioners on Uniform State Laws: Drafts on Uniform and Model Acts Official Site*, http://www.law.upenn.edu/bll/ulc/ulc.htm (last visited Mar. 4, 2013). For a copy of the January 2005 proposed draft, see *The National Conference of Commissioners on Uniform State Laws: Draft Uniform Management of Institutional Funds Act Proposed Draft* (Jan. 2005), http://www.law.penn.edu/bll/ulc/umoifa/2005JanDraft.pdf.

85. Adopted by 44 states and counting, the UPMIFA alters the UMIFA in key ways—including introducing a new prudence standard—that this article will discuss. *See* Kieran P. Marion, *Uniform Prudent Management of Institutional Funds Act (UPMIFA)*, UNIF. L. COMM'N, 1, November 2009, http://www.michiganfoundations.org/s_cmf/bin.asp?CID=2523&DID=38644&DOC=FILE.PDF.

86. ASS'N OF GOVERNING BD. OF UNIV. AND COLL., *Spending and Management of Endowments under UPMIFA*, COMMONFUND INST., 11 (2010), *available at* http://agb.org/sites/agb.org/files/UPMIFASurvey_2010_RePrint_lowres.pdf. "UPMIFA includes a provision that allows a charity to modify a restriction on a small (less than $25,000) and mature (over 20 years old) fund without going to court. If a re-

"Rules of Construction" allow university endowment managers to discern donor intent with regard to "spending, the desire to create an endowment of a permanent duration, and the ability to react accordingly with respect to investment strategies and spending policies once that determination has been made."[87] This balancing test further blurs the line between true and quasi-endowments.

In addition, the UPMIFA provides a safe-harbor for endowment spending—seven percent of the endowment's fair market value—for states to consider,[88] in an effort to spur long term prudent spending and investment policies.[89] Also, not explicitly contemplated by the UMIFA, the UPMIFA gives special treatment to the "preservation of the endowment fund."[90] Section 4 of the UPMIFA examines whether, in the course of the university's management of the endowment, a donor intended that his original gift maintain its purchasing power—that is, need to be increased to keep pace with inflation and accumulated market gains—or simple preservation is all that is intended by the donor and required by the state jurisdiction.[91] The UPMIFA still imposes limits on the original value of a donor's gift that a university may spend.[92] Rather than establishing a bright-line rule for this limit, however, the model language provides a loose standard—including "the duration and preservation of the endowment fund" and "general economic conditions"—to be considered in the endowment managers' calculus before invading the principal.[93] Finally, and perhaps most notably, the revised Act also eliminates the concept of the historic dollar value of the fund, for purposes of determining the restricted principal assets of the fund that the university may not spend.[94] This would allow universi-

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striction has become impracticable or wasteful, the charity may notify the state charitable regulator, wait 60 days, and then, unless the regulator objects, modify the restriction in a manner consistent with the charitable purposes expressed in any documents that were part of the original gift. Note that the specifics of the provision may vary from state to state, and many legislatures modified the provision to increase the threshold value below which institutions can modify restrictions that may have become illegal, impracticable, or wasteful." *Id.*

87. Davis, *supra* note 83, at 3 (analyzing UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 4(c) (Supp. 2008)).

88. UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 4(d) (Supp. 2008).

89. *See* Davis, *supra* note 83, at 2–3.

90. UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 4(a)(1) (Supp. 2008).

91. *See* Davis, *supra* note 83, at 2.

92. UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 4(a)(1).

93. UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 4(a)(3); 7A U.L.A. pt. 3, at 17 (Supp. 2008).

94. In short, the historic dollar value of an endowment fund is the aggregate fair value in dollars of the fund at the time of its creation, including each subsequent donation to the fund made pursuant to a direction in the gift instrument at the time it is made. Typically, the university's determination of this value is held to be a conclusive measure of the historic dollar value of the fund.

ties to spend underwater endowments without violating the law.[95]

The UMIFA, which in its course relaxed the prudent person rule, played a key part in the enormous gains and tremendous loss in university endowment value from the late Twentieth Century to the onset of the Great Recession. However, after the significant depreciation in endowment values had taken place, none of the UPMIFA's features, especially its relaxed spending rules, could have put an end to the initial damage wrought by unchecked university endowment spending under the liberalized rules of the UMIFA.[96] The effect of a recessionary economy on university endowments, a topic which the subsequent section explores, illustrates why the UPMIFA, like its predecessor, may prove to be ineffective in the absence of a practicable solution to allowing endowment managers to spend endowment funds—at pre-crisis levels that the post-crisis endowments simply could not sustain—in a virtually unconstrained endowment management environment.[97]

PART III

A. The Effect of the Great Recession on American University Endowments

In addition to investment gains and losses, modern university endowments' market values are affected by additions through contributions, withdrawals for operational expenses, capital expenses, and management fees, and as such cannot be said to represent directly an investment rate of return for the endowments' portfolio; however, investment returns account for the majority of year-to-year market valuation changes.[98] This is, in part,

95. This is, of course, because the safe-harbor provision is explicitly optional and has only been adopted in a few jurisdictions. *See* Conti-Brown, *supra* note 10, at 719–20.

96. *See id.* at 720–21. It has been argued that the UPMIFA legislation is at best ineffective because even in the throes of the Great Recession, university business officers did not clamor for its ratification; in fact, Harvard officials were not even familiar with the UPMIFA legislation before the Massachusetts legislature. *See* Peter F.Zhu, *Bill May Allow Flexibility*, HARVARD CRIMSON (Jan. 28, 2009), http://www.thecrimson.com/article/2009/1/28/bill-mayallow-flexibility-massachusetts-lawmakers.

97. *See* Conti-Brown, *supra* note 11, at 702–03.

98. *See, e.g.*, NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2014 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2013 to FY 2014* (2015) at title page, http://www.nacubo.org/Documents/EndowmentFiles/2014_Endowment_Market_Values_Revised2.27.15.pdf. Although the market value of a university endowment is most nearly related to the performance of its investment portfolio, endowment values do increase when a university has a successful development campaign and conversely, tend to stagnate—but not necessarily decline—when donor contributions and investment returns are limited. For example, in FY2014, the University of Chicago endowment had

because university endowments have among the most diversified portfolios available, including holdings in indexed funds, hedge funds, private equity groups, and venture-capital funds, as well as real estate and commodities.[99] The stocks held by each of these funds are numerous, constantly shifting, and—even for investors—hard to determine.[100] From this perspective, the Great Recession's deleterious effect on university endowments,[101] and the losses in asset values felt throughout the majority of the global financial market,[102] is a foreseeable, if not likely, market risk. The tremendous growth between FY2004 and FY2008 produced historic highs in the market values of endowment funds; however, much of this progress was lost in FY2009. In the early going, experts predicted an average loss of 23 percent of university endowment market values in just five months.[103] While most of the top university endowments have dramatically improved over their FY2009 losses,[104] much of the wealth lost by university endowments since

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a market value totaling $7,545,544,000, up from $6,668,974,000 in FY2013. Its investment returns generated over $839,000,000 to the endowment, yet the difference of the FY2014 and FY2013 market values is $876,570,000—which would include the addition of investment returns and donor contributions, less expenditures and management fees. *See Annual Report: The Endowment Investment Performance*, UNIVERSITY OF CHICAGO, https://annualreport.uchicago.edu/page/endowment (last visited Aug. 1, 2015).

99. *See* Fishman, *supra* note 18, at 203.

100. Brian Rosenberg, *For College Endowments, Ethical Stands Can Be Complicated*, CHRON. HIGHER EDUC., March 22, 2013, at A29.

101. Deborah Brewster, *Yale Fund Loses 25% in Four Months*, FIN. TIMES (London), Dec. 17, 2008; John Hechinger & Craig Karmin, *Harvard Hit by Loss as Crisis Spreads to Colleges*, WALL ST. J., Dec. 4, 2008; Katie Zezima, *Data Show College Endowments Lost 23% in 5 Months, Worst Drop Since '70s*, N.Y. TIMES, Jan. 27, 2009.

102. Of course, even in a recession, not everyone loses his shirt. *See* MICHAEL LEWIS, THE BIG SHORT: INSIDE THE DOOMSDAY MACHINE (2010).

103. Zezima, *supra* note 101, at A17.

104. *See* NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2014 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2013 to FY 2014* (2015), http://www.nacubo.org/Documents/EndowmentFiles/2014_Endowment_Market_Values_Revised2.27.15.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2013 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2012 to FY 2013* (2014), http://www.nacubo.org/Documents/EndowmentFiles/2013NCSEEndowmentMarket%20ValuesRevisedFeb142014.pdf; NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics: Table 376. Endowment Funds of the 120 Colleges and Universities with the Largest Endowments, by Rank Order: 2010 and 2011* (2012), http://nces.ed.gov/programs/digest/d12/tables/dt12_376.asp (noting an average sixteen percent increase nationally in endowment market values); Geraldine Fabrikant, *Harvard Endowment Reports 11% Return for Year*, N.Y. TIMES, (Sept. 10, 2010), (underscoring Harvard's impressive post-crisis return); *MIT Releases 2010 Endowment Figures*, MASS. INST. OF TECH. (Sept. 27, 2010), http://web.mit.edu/newsoffice/2010/endowment-0927.html (noting MIT's ten percent endowment increase); *Princeton Endowment Earns 14.7% Return*, PRINCETON UNIV.,

FY2008 remained unrecovered until FY2013 and FY2014, over six years from the onset of the Great Recession.

Over the FY2004 to FY2014 fiscal decade, the average and annual investment rates of return for university endowments and affiliated foundations that participated in the National Association of College and University Business Officers Commonfund Study of Endowments from FY2004 to FY2014 indicates the strong pattern of growth in the mid 2000s, a precipitous decline during the early years of the Great Recession, then a quick rebound as well as more volatility, which does not result in positive gains until FY2013. Though endowment losses have been tied to economic recession patterns for the last half a century,[105] by contrast, the last time endowment market values reported losses coincides with a brief recession at the turn of the millennium.[106] From June 30, 2000 to June 30, 2003, the top 120 university endowments declined by approximately two percent per year for a total overall decrease in value of six percent over three fiscal years[107]—less than one-third of the loss sustained in FY2009. In FY2005, FY2006, and FY2007, participating universities reported 9.3 percent, 10.8 percent, and 17.2 percent, respectively, average annual returns from their endowment investments.[108] The substantial gains from FY2005 to FY2007

Oct. 15, 2010, http://www.princeton.edu/main/news/archive/S28/71/07M45/index.xml?section=topstories (reporting Princeton's endowment return for 2010); *Stanford Management Company Announces 2010 Results*, STANFORD UNIV., Sept. 28, 2010, http://news.stanford.edu/news/2010/september/merged-pool-return-092810.html (announcing Stanford's 14.4% return for fiscal year 2010); *Yale Endowment Grows by 8.9%, a Gain of $1.4 Billion*, YALE DAILY BULLETIN, Sept. 24, 2010, http://dailybulletin.yale.edu/article.aspx?id=7789 (announcing Yale's endowment return for 2010).

105. Endowments have also reported losses coinciding with recessions during the early 1990s, early 1980s, and early 1970s. *See How Universities Are Suffering in the Recession*, EDUC. INSIDER, http://education-portal.com/articles/How_Universities_Are_Suffering_in_the_Recession_What_That_Means_for_You.html (last visited August 1, 2015).

106. Following what may have been the longest period of economic growth in American history during the 1990s, the dot-com bubble burst on the eve of the September 11, 2001 attacks, bringing nearly a decade of economic growth to an end. Despite these shocking events, this brief recession had run its course by June of 2002. *See* NAT'L BUREAU OF ECON. RESEARCH, *The Business-Cycle Peak of March 2001*, (Nov. 26, 2001), http://www.nber.org/cycles/november2001/.

107. *See* NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics: Table 358. Endowment Funds of the 120 Colleges and Universities with the Largest Endowments, by Rank Order: 2000 and 2001* (2002), http://nces.ed.gov/programs/digest/d02/tables/PDF/table358.pdf; NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics: Table 359. Endowment Funds of the 120 Colleges and Universities with the Largest Endowments, by Rank Order: 2003 and 2004* (2004), http://nces.ed.gov/programs/digest/d04/tables/dt04_359.asp.

108. 2014 NACUBO-Commonfund Study of Endowments, *Average and Median Annual Investment Rates of Return for U.S. College and University Endowments and*

are significant but appear to have been erased entirely by returns losses during the Great Recession: in FY2008 and FY2009, participating universities report 3.0 percent and 18.7 percent losses.[109] After these significant losses for two fiscal years, FY2010 promised a marked initial improvement, at an average gain of 11.9 percent.[110] However, the next two fiscal years were characterized by volatility: in FY2011, participating universities reported a 19.2 percent gain, followed by an average loss of 0.3 percent in FY2012.[111] Finally, FY2013 and FY2014 saw a return to steady growth, as participating universities reported an 11.7 and 15.5 percent average annual return, respectively.[112]

While many university endowment market values had finally returned to pre-recession levels by FY2014, when one considers how university endowment investment and stocks were tied up with one another since the Modern Portfolio Theory was first applied to university endowment investment strategy, it is troubling that it took an historic bull market of FY2013 and FY2014[113] to pull university endowment returns back to their pre-Recession levels. In just one fiscal year, FY2009, the 120 largest university endowments by value lost an average of 22 percent of their market value, totaling a staggering $68,572,004,000 in losses.[114] In the following fiscal year, from June 30, 2009 to June 30, 2010, exactly 60 percent of these universities reported losses or single-digit gains in endowment market value, while the majority of the other 40 percent fortunate enough to report double-digit gains accrued nominally above ten percent increases in endowment market value.[115] Although these gains took place in the final

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Affiliated Foundations Fiscal Years Ending June 30, 2014-2005 (2015) http://www.nacubo.org/Documents/EndowmentFiles/2014_NCSE_Public_Tables_Annual_Rates_of_Return.pdf.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. On July 3, 2014, four days after the close of FY2013, the Dow Jones Industrial Average reached its highest close in history at 17,000 points. This high close was eclipsed on December 23, 2014 at 18,000 points. For the most part, the DJIA closing values remained exceptionally high until August 2015, when it fell below 16,000 points. *Dow Jones Industrial Average Historical Prices*, YAHOO FINANCE, https://finance.yahoo.com/q/hp?s=%5EDJI+Historical+Prices (last accessed August 15, 2015). But see James K. Galbraith, *Why We Won't Get to Normal*, POLITICO, (July 31, 2014), http://www.politico.com/magazine/story/2014/07/the-new-normal-109616.html?ml=m_u6_1#.Vd8eUbSm3BK (presaging that the boom of late 2014 and early 2015 would be something of a flash in the pan, and that the return to a pre-2008 economy is likely unattainable).

114. *See supra* note 19.

115. NAT'L CTR. FOR EDUC. STATISTICS, *Digest of Education Statistics: Table 376. Endowment Funds of the 120 Colleges and Universities with the Largest Endowments, by Rank Order: 2009 and 2010* (2011), http://nces.ed.gov/programs/digest/d11/tables/dt11_376.asp.

months of the Great Recession, this rate of growth roughly illustrates the annual endowment growth in good years since the Modern Portfolio Theory took hold; however even these gains come at a cost.

Considering the long term impact of the ten boom-and-bust fiscal years between FY2004 and FY2014 on the 835 universities participating in NACUBO-Commonfund's ten-year survey of university endowments: (1) trailing three-year annual returns from FY2014 averaged 9.0 percent; (2) trailing five-year returns from FY2014 averaged 11.7 percent; and (3) trailing ten-year annual returns from FY2014 averaged 7.1 percent.[116] The ten-year annual return figures were substantially buoyed by the 132 universities with endowments with assets of $501,000,000 and greater; this university endowment group, comprising just 15.8% percent of the total sample, was the only sector to exceed the average ten-year annual return result.[117] Despite the promise of returning to robust growth that the gains between FY2010 and FY2014, many endowment values have yet to erase the losses realized in FY2009 during the height of the Great Recession. This effect was referenced earlier in the article as it applied to Harvard and Yale, the top two endowment funds by market value between FY2008 and FY2013; however, this effect persists beyond the elite endowment funds.[118] While a 7.1 percent average annual return over a ten-year period is nothing to sneeze at, as was the case between FY2004 and FY2014, it is worth investigating whether a more prudent investment strategy over this same period might have yielded less volatile results. To this end, in addition to Harvard and Yale, one institution's endowment from each band of ten of the top 100 endowments by market value in FY2004 was selected at random and tracked to FY2014 both to ascertain the effect of the recession as well as measure an alternative investment strategy—i.e. investing the market value of the endowment in FY2004 purely in ten-year treasury bonds—over ten years would yield different results.[119]

A top-10 endowment in FY2004, Emory University had an endowment market value of $4,535,587,000 five years before FY2009, when it would fall to $4,328,436,000, but grow again to $6,681,479,000 by FY2014; however, at average annual return rates for ten-year treasury bonds, if the market value of the endowment were invested solely in ten-year treasury bonds—an investment vehicle carrying among the least

116. 2013 NACUBO-Commonfund Study of Endowments, *Average and Median Annual Investment Rates of Return for U.S. College and University Endowments and Affiliated Foundations Fiscal Years Ending June 30, 2014-2004* (2015), http://www.nacubo.org/Documents/EndowmentFiles/2014_NCSE_One_Three_Five_and_Ten_Year_Returns.pdf.

117. These same universities reported the highest returns for the trailing three- and ten-year periods, and lagged the highest five-year return, indicating their disproportionate impact on the national picture of university endowment health.

118. *See supra*, at note 16.

119. *See infra*, Tables 1–12.

risk—its would have grown at a fixed total rate of 60.98 percent between FY2004 and FY2014 to $7,301,561,966.[120] On the other hand, the market values of Cornell University, Johns Hopkins University, University of Washington, and Indiana University, which represent the top-20, top-30, top-40 and top-50 endowment market values, respectively, all outpaced a fixed 60.98 percent earning rate from their FY2004 totals, accumulating 81.88 percent, 67.93 percent, 115.27 percent, and 96.34 percent over their FY2004 market values by FY2014.[121] Importantly, however, each of these institutions had only modestly, if at all, surpassed their FY2008 levels by FY2013.[122]

Outside of the top-50 endowments by market value in FY2004, the results are the opposite. Among University of Cincinnati, Wake Forest University, Tulane University, Oberlin College, and Northeastern University, which represented the top-60, top-70, top-80, top-90, and top-100 endowments, respectively, only Tulane University reported an increase over the fixed rate of its FY2004 endowment market value by FY2014—totaling a 70.92 percent gain.[123] Each other university's endowment in the top-50 to top-100 band, managed through conventional means between FY2004 and FY2014, was valued lower than it would have been if it were instead converted to ten-year treasury bonds in FY2004, earning a 60.98 fixed rate increase over the fiscal decade.[124] As of FY2013 none of these universities, including Tulane University, had returned to their FY2008 market value levels; however, all but one narrowly surpassed its FY2008 market value levels by FY2014.[125] Wake Forest University's endowment, topping $1,253,673,000 on June 30, 2008, lost nearly 29.27 percent of its market value, falling to $886,761,000 by June 30, 2009.[126] The following year, Wake Forest's endowment grew by 5.74 percent, totaling $937,639,000 in market value, and by FY2011, its endowment market value gained 12.86 percent, ending the fiscal year at a $1,058,250,000 market value.[127] FY2012

120. *See infra*, Table 3.
121. *See infra*, Tables 4–7.
122. *See infra*, Tables 4–7.
123. *See infra*, Table 10.
124. *See infra*, Table 8–12.
125. *Id.*
126. *See infra*, Table 9. *See also* NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2009 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2008 to FY 2009* (2010), http://www.nacubo.org/Documents/research/2009_NCSE_Public_Tables_Endowment_Market_Values.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2008 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2007 to FY 2008* (2009), http://www.nacubo.org/documents/research/NES2008PublicTable-AllInstitutionsByFY08MarketValue.pdf.
127. NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2011 En-*

brought a 5.49 percent loss to Wake Forest's endowment fund market value, which totaled $1,000,133,000 USD, and FY2013 returns increased its endowment fund market value to $1,061,639,000, a 6.15 percent annual gain.[128] Finally, by FY2014, Wake Forest's endowment fund market value reached $1,148,026,000, reflecting an 8.14 percent annual gain from the previous fiscal year but an 8.43 percent—or $105,747,000—net loss in market value since FY2008.[129] This illustrative example serves to underscore the raw dollar endowment fund value loss resulting from the Great Recession that still has not been recouped in over six fiscal years.

Despite many of the gains in FY2014 that finally returned many endowment market values to their pre-Recession levels, the foregoing descriptive quantitative evidence suggests that the endowment value decline during the Great Recession is different from, and far deeper than, any experienced in decades. Its effect, however, goes beyond the significant endowment market value losses suffered by even the most financially sound universities—which experienced, in some cases, tangible impacts on campus, resulting in significant budget shortfalls and even workforce reductions to university faculties.[130] State universities, which experienced declines in state support in addition to endowment values, saw endowments fall an average of 24 percent between FY2008 and FY2009 and by and

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dowment Market Value and Percentage Change in Endowment Market Value from FY 2010 to FY 2011 (2012), http://www.nacubo.org/Documents/research/2011NCSEPublicTablesEndowmentMarketValues319.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2010 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2009 to FY 2010* (2011), http://www.nacubo.org/Documents/research/2010NCSE_Public_Tables_Endowment_Market_Values_Final.pdf.

128. NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2013 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2012 to FY 2013* (2014), http://www.nacubo.org/Documents/EndowmentFiles/2013NCSEEndowmentMarket%20ValuesRevisedFeb142014.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2012 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2011 to FY 2012* (2013), http://www.nacubo.org/Documents/research/2012NCSEPublicTablesEndowmentMarketValuesRevisedFebruary42013.pdf.

129. NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2014 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2013 to FY 2014* (2015), http://www.nacubo.org/Documents/EndowmentFiles/2014_Endowment_Market_Values_Revised2.27.15.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2008 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2007 to FY 2008* (2009), http://www.nacubo.org/documents/research/NES2008PublicTable-AllInstitutionsByFY08MarketValue.pdf.

130. *See supra* note 17.

large have not returned to pre-Recession levels.[131] The declines in endowment market value precipitated by the total-growth investment practices during the Great Recession were of the same magnitude as those suffered in the early 1970s, at the onset of the installment of total-growth based endowment investment strategy.[132] These examples signal the real, lasting cost of the application of the Modern Portfolio Theory to university endowment investment and management since FY2009.

B. The Donor's Cause of Action and the Correlation Between Economic Recession and Challenged Gifts to American Universities

During the Great Recession, university endowments suffered for two principal reasons: (1) universities continued to spend endowment funds at pre-crisis levels that the post-crisis endowment could not sustain; and (2) the law allowed universities to spend their endowments without serious threat of restriction or regulation.[133] However, uncovering the liberalized spending practices of university endowment managers during periods of recession is somewhat of a perilous proposition for universities. This is because universities can be sued for spending endowment funds in ways not contemplated by the terms of endowment instruments, even though this

131. *Id.* In fact, at the end of FY2014, state appropriations were still below pre-Recession allocations. *See* Kellie Woodhouse, *Coping with Cuts*, INSIDE HIGHER ED, (Aug. 27, 2015), https://www.insidehighered.com/news/2015/08/27/educational-spending-public-universities-increases-despite-state-disinvestment (citing a report from a 2015 survey by the Association of Public & Land Grant Universities that "public universities and universities have increased their education-related spending even as overall funding has declined. The revenue declines are due to lowering state contributions. And while public universities have raised tuition rates to make up for large state funding losses, they have not fully offset the difference with tuition hikes."); William Selway, *State College Funding Hasn't Passed Pre-Recession Levels*, BLOOMBERG, (May 1, 2014), http://www.bloomberg.com/news/2014-05-01/state-college-funding-hasn-t-passed-pre-recession-levels.html. At Historically Black Colleges and Universities, many of which are also state-funded institutions, the dearth of funding is still substantial-even seven years removed from the onset of the Recession. *See* Ronald Roach, *Funding, Institutional Support Lacking for Historically Black Public Colleges*, DIVERSE ISSUES HIGHER EDUC., (May 7, 2014), http://diverseeducation.com/article/63952/. Declines in appropriations to higher education, and in fact, some of the economic volatility experienced in the last three decades, is perhaps the result of state tax policy. *See* Liz Farmer, *States Try to Prepare for the Economy's Wild Ride*, GOVERNING (August 2014), http://www.governing.com/finance101/gov-volatile-economy-prep.html. "In the 1980s and early 1990s, state tax rates generally increased when the economy soured, in order to stabilize revenue. When the economy expanded, rates generally fell. But since the mid-1990s, tax rates have been less responsive to economic conditions, a function of reluctance among legislators to vote for tax increases at any time, regardless of the economic situation." *Id.*

132. *See supra*, notes 105 −106.

133. *See* Conti-Brown, *supra* note 10, at 703.

threat of litigation rarely results in a lawsuit or prevents universities from spending endowment funds as they please.[134]

Though donor restrictions also limit the use of some endowment funds, even the mere presence of donor restrictions on endowment funds does not necessarily bar the university's expenditures.[135] An average of 80 percent of endowment funds at public universities and 55 percent of endowment funds at private universities are restricted.[136] Unquestionably, donor restrictions limit a university's discretion in endowment management and spending. That said, some universities overstate the weight of donor restrictions on endowments, because universities themselves create these restrictions, as well as their precise terms.[137] Universities also frequently bend the terms of endowment instruments in ways that liberate the ends to which they may spend the funds in question, particularly during a financial crisis when resources are scarce.[138]

The Great Recession brought a short but sudden wave of litigation—against universities for endowment spending practices—which is still being felt today.[139] However, the few cases resulting in judicial decisions

134. *Id.* at 725. "[T]here is always a risk that donors (or, in most cases, state attorneys general) will sue the [university] to enforce the original terms of the donation, or even rescind the gift entirely." *Id.* Additionally, UPMIFA creates a "rebuttable presumption of imprudence" when a university spends more than seven percent of the market value of its endowment principal; however, because this section essentially exempts spending over the statutory threshold when universities are met with economic adversity, it poses no meaningful risk of liability for excessive spending during times of financial crisis. *See* UNIF. PRUDENT MGMT. OF INST. FUNDS ACT (UPMIFA) § 4(d), 7A U.L.A. pt. 3, at 17 (Supp. 2008). At the time of the publication of this article, no suit, utilizing this section as its cause of action, had been brought against a university.

135. *See* Waldeck, *supra* note 7, at 1809.

136. NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS, 2006 NACUBO Endowment Study 78 (2007).

137. *See* Waldeck, *supra* note 7, at 1809. "[I]nstitutions expend significant resources cultivating donors and helping to shape their giving preferences. These cultivated gifts often pay for expenditures the [institution] would have made even without a gift, thereby allowing the institution to redirect funds to current expenses or to the endowment. Furthermore, corporations, foundations, and alumni each tend to favor different sorts of projects, with corporations and foundations more likely to give to current operating expenses." *Id.*

138. *See* Conti-Brown, *supra* note 10, at 725.

139. For an unusual, and somewhat eyebrow-raising, case where the donor and donee institutions are co-parties, *see* Ry Rivard, *Foundation and Donor Sue over Failed Deal*, INSIDE HIGHER ED. (Oct. 4, 2013), http://www.insidehighered.com/news/2013/10/04/u-arizonas-foundation-had-stake-offshore-tax-shelter-suing-donors-financial-advisers#sthash.lEZEWSNI.dpbs. "The University of Arizona Foundation and one of its major donors had a stake in a 'sham' offshore tax shelter that the U.S. government later cracked down on, they say in a recent court filing. Now, they are both in federal court accusing a bank that helped set up the deal, [a more than $23 million gift to name Arizona's business school the Eller College of Management,] of defrauding them. The lawsuit . . . pits the foundation and the donor . . . against global financial services giant UBS." *Id.* For a more traditional case

appear to have resulted, in keeping with tradition, in a resounding victory for the university upon a donor's challenge of the university's endowment spending practices. In one such case, donors of approximately $3,000,000 in charitable contributions for the creation of an academic program in gerontology and the construction of a library at St. Bonaventure University, sued St. Bonaventure in 2009 for a declaration that their donations were subject to certain conditions and restrictions, as well as the fiduciary duty of accounting.[140] St. Bonaventure counterclaimed for outstanding pledges, and the New York Supreme Court, Appellate Division, affirming a lower court's decision, held that: (1) the donations were not subject to the restrictions cited by the donors; (2) the donors were not entitled to an accounting on the endowment created by their donation; and (3) St. Bonaventure was entitled to recover outstanding donations from the donors.[141] The donors' argument, which relied on parol evidence to supply conditions not expressed or implied in the written and executed gift commitment and endowment agreements, that the gifts were subject to conditions was admittedly flimsy and unconvincing to the court.[142] Importantly, however, the New York court found that, despite the written and executed gift commitment and endowment agreements between the donors and the university, the pledged gifts did not "create a fiduciary relationship between the parties" that, if present, may have given rise to a cause of action for an accounting.[143] This decision runs contrary to the principal elements of Section 3 of the UPMIFA, which establish a fiduciary relationship between the parties, specifically a duty, on the part of the university and its endowment managers: of care; of loyalty; to minimize costs; and to investigate.[144] While a duty of accounting is not among the duties enumerated in the UPMIFA, which was adopted in New York in 2010,[145] Section 3 of the

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where the donor and the donee institution are adverse parties, *see* Christine Haughney, *Journalism Professor Sues Columbia Claiming Misuse of Funds*, N.Y. TIMES, March 19, 2013, http://www.nytimes.com/2013/03/20/business/media/professor-sues-columbia-alleging-misuse-of-funds.html?_r=0. "Sylvia Nasar, who is the John S. and James L. Knight professor of business journalism at Columbia and the author of the book 'A Beautiful Mind,' which inspired the movie of the same name, charges in the suit that the university mishandled funds from a $1.5 million endowment provided by the Knight Foundation to improve the school's teaching of business journalism." *Id.*

140. *See* Paul & Irene Bogoni Found. v. St. Bonaventure Univ., 2009 WL 6318140 (N.Y. Sup. Ct. 2009).

141. Paul and Irene Bogoni Found. v. St. Bonaventure Univ., 78 A.D.3d 616, 616-17 (N.Y. App. Div. 2010).

142. *Id.* at 616.

143. *Id.*

144. *See* UNIF. PRUDENT MGMT. OF INST. FUNDS ACT § 3 Comments (Supp. 2008), http://www.uniformlaws.org/shared/docs/prudent%20mgt%20of%20institutional%20funds/upmifa_final_06.pdf.

145. *See A Practical Guide to the New York Prudent Management of Institutional Funds Act*, OFFICE OF THE NEW YORK ATTORNEY GENERAL CHARITIES BUREAU, March

UPMIFA unequivocally regards the relationship between the parties as a fiduciary relationship.[146] As such, the court's decision finding an absence of a fiduciary relationship can be viewed as damaging to the principles of university-donor relations, but also as a necessary antecedent rationale to its deference to the university and its endowment management practices during a recessionary period.

In a similar action against St. Olaf College, the senior regent and other donors to a fund created for the use of a college radio station sought to enjoin the college from selling the radio station to a private purchaser.[147] The donors unsuccessfully challenged the college's petition requesting the court: (1) to declare that there were no longer restrictions on the gifts; and (2) to approve the college to use the charitable gifts remaining in the endowment for other purposes.[148] Crucially, the Minnesota Court of Appeals held, pursuant to a lower court's finding of summary judgment for the college, that the fund that had been created for the use of the radio station was not a charitable trust but rather an asset of the college.[149] The facts of this case and finding of the court may be distinguishable from other cases in that, here, the college successfully represented in district court that it had petitioned living donors to the fund and received their consent to remove restrictions from the fund as well as withdraw a portion of the fund's assets for incorporation into the college's general endowment fund.[150] However, here too, the court's rationale rests on the troubling determination—that the fund created for the use of the radio station was not a charitable trust but rather an asset of the college—granting deference to the college in its endowment management and a favorable outcome in the case.

Both the St. Bonaventure and St. Olaf cases illustrate the manner in

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2011, http://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf (last visited Aug. 1, 2015).

146. In fact, some universities even codify this fiduciary relationship in their endowment policies. *See, e.g.*, *Endowment Policy*, SAN FRANCISCO STATE UNIVERSITY, (June 19, 2014), http://sfsufdn.sfsu.edu/content/endowment-policy (last visited Aug. 1, 2015); *Principles of Endowment Administration*, UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT, \http://www.ucop.edu/institutional-advancement/_files/principles.pdf (last visited Aug. 1, 2015); *Best Practices Regarding University Affiliated Foundation Relationships*, UNIVERSITY OF TEXAS SYSTEM ADVISORY TASK FORCE REPORT, Aug. 19, 2013, http://www.utsystem.edu/sites/utsfiles/documents/board-regents/best-practices-regarding-university-affiliated-foundation-relationships/foundationsreportfinal100313.pdf (last visited Aug. 1, 2015).

147. In re WCAL Charitable Trust, 2009 WL 5092650 (Minn. Ct. App. 2009).

148. *Id.* at *3-*4.

149. *Id.* at *12–*13. This is a particularly puzzling finding given that, in the court's own decision, it recognizes that: "St. Olaf solicited donations and grants to provide for the operating costs, the capital assets, and the WCAL endowment. . . Over the years, St. Olaf had established an endowment for WCAL with some of the charitable contributions from WCAL donors." *Id.* at *4–*8.

150. *Id.* at *9–*10.

which university needs appear to trump donor intent during financial crises.[151] Either out of sympathy for the financial needs of the university during the recession, application of the deferential *cy-près* doctrine allowing universities to seek modification of impracticable endowment fund restrictions, or both, the courts deciding these cases, as well as the handful of other courts that issued judicial opinions for decisions in similar cases, provided universities with considerable freedom in determining endowment spending decisions.[152] This judicial abstention from deciding for a university how it should spend income from its endowment funds is sound and undoubtedly offers a university important protections to meet its financial obligations during hard times; however, the reported donor lawsuits, which are admittedly few in number but have considerably multiplied during recessionary periods in the last 15 years, reveal that the donor's cause of action is extremely flimsy.[153] Moreover, when a donor's argument is strong enough and a university's endowment is large enough, the university will merely settle with the donor to be free of a donor's ability to exercise control over the university's ability to spend endowment funds—even if this result is quite expensive.[154]

Most university donors understand that the university and its endowment managers make the investment and management decisions affect-

151. These cases, and the cases referenced *infra* at n.152, are among the only five cases resolved by a court during recessionary periods: 2001–2002 and 2008–2010. As such, they color the complexion of court dispositions during these periods.

152. *Compare* Paul and Irene Bogoni Found., 78 A.D.3d 616, *and* In re Trs. of Columbia Univ., 910 N.Y.S.2d 409 (N.Y. Sur. Ct. 2010) (granting Columbia University's petition to modify restrictions on an endowment fund created for the benefit of its College of Medicine), *and* In re WCAL Charitable Trust, 2009 WL 5092650, *and* In re Polytechnic Inst. of New York Univ., 901 N.Y.S.2d 902 (N.Y. Sur. Ct. 2009) (granting New York University's petition to modify restrictions on an endowment fund created for the benefit of its Polytechnic Institute and applying the *cy-près* doctrine to grant relief from New York University's unforeseen financial problems), *and* Hartford Art School, Inc. v. Univ. of Hartford, 31 Conn. L. Rptr. 244 (Conn. Super. Ct. 2002) (holding that the University of Hartford did not misapply endowment funds), *with* Tennessee Div. of the United Daughters of the Confederacy v. Vanderbilt Univ., 174 S.W.3d 98 (Tenn. Ct. App. 2005) (estopping Vanderbilt University from denying the validity of a written contract setting forth naming conditions on a gift and disallowing the university from unilaterally abandoning the condition).

153. As mentioned *supra* at n.151 and n.152, the first five cases in the previous series were lodged during recessionary periods: 2001-2002 and 2008-2010. For better or for worse, these appear to be the only donor-university disputes about endowment spending that received published judicial opinions in the last fifteen years.

154. *See, e.g.*, Robertson v. Princeton Univ., No. C-99-02 (N.J. Super. Ct. Ch. Div. dismissed Dec. 12, 2008). For a detailed description of this high profile case, *see* Conti-Brown, *supra* note 10, at 726-27. "The terms of the settlement required Princeton to pay the Robertson Foundation's substantial legal fees, and an additional $50 million to allow the Robertsons to launch a new foundation dedicated to improving the caliber of public servants. Princeton then gained control of the rest of the Robertson gift, and can use the fund at its own discretion, providing that the original terms of the donation are honored." *Id.* at 727.

ing the use of university gifts. As a result, the expectation of many donors is that these decisions will be made in order to maximize returns from the gift while limiting risk, so that the gift can achieve the beneficial effect for which it was intended.[155] The pursuit of a total-growth model of endowment investment jeopardized this important goal, however, illustrating that exposure to adverse market factors for greater control over endowment expenditures may not be worth the risk to the future health and stability of the university endowment.[156] It is critical, then, to rein in off-course endowment spending by providing clear expectations of the university and its endowment managers, preventing unnecessary litigation against universities while recognizing the important interests of donors. Should this policy not be practicable, ideally, a donor should have at his or her disposal a cause of action that casts more than a mere specter of the inconveniences of litigation to keep university endowment spending more closely aligned with the donor's original intent in creating the endowment fund. In practice, however, these cases all favor universities, sending a clear warning to donors who would bring suit against a university for its failure to adhere to the terms of an endowment instrument.[157]

PART IV

A. A Recommendation for University Endowment Management in the Modern Context

Most benefactors make charitable gifts to a university because they want to ensure the financial stability of the university so that the university can fulfill its educational mission.[158] Giving, then, is a matter of philanthropy and trust—entrusting money to a university to provide for its financial needs. Meeting present needs and planning for future needs, however, should not mandate pursuing limitless endowment growth.[159] The Great

155. *See* Rosenberg, *supra* note 100, at A29.

156. In fact, unexpected market events in the 1980s triggered empirical research on the successes and failures of Modern Portfolio Theory, suggesting its core assumptions—for example, that markets were as efficient as to reflect their fundamental value, or that risk and return, and the covariances between them, could be accurately calculated—were flawed. *See* William W. Bratton, CORPORATE FINANCE 25-28, 192-93, (7th ed. 2012); Richard A. Brealey, Stewart C. Myers & Franklin Allen, PRINCIPLES OF CORPORATE FINANCE 189-91 (10th ed. 2011).

157. Conti-Brown, *supra* note 10, at 727.

158. *See* Rosenberg, *supra* note 100, at A29.

159. The findings of Cary and Bright that "there was little developed law restricting the power of trustees to invest endowment funds to achieve growth, and the impediments to such freedom of action were more legendary than real" still has purchase today. *See* Fishman, *supra* note 18 (citing William E. Cary & Craig Bright, THE LAW AND LORE OF ENDOWMENT FUNDS 60 (1969).

Recession proved that the unbridled application of the Modern Portfolio Theory to university endowment management can produce extremely negative short-term—and even long-term—results, taking several years of recovery to regain pre-Recession wealth. By assuming more risk, endowment managers intensified their endowment's exposure to the volatility of capital markets, potentially losing out on secure income streams and liquidity and jeopardizing the future of their endowments.[160] That said, it is incontrovertible that the 50-year investing experiment produced significant long-term gains in endowment value. However, these gains, to the extent that the Great Recession has not irreparably reduced endowment market values, must be balanced against costs to universities, communities, and the economic markets in which endowment investments participate. It is possible that, with a measured model for growth, university endowments can realize steady appreciation in value and better-weather adverse economic factors like those present during the Great Recession.

Given that, for universities with a large endowment, endowment returns often account for over one-third of the university's operating budget,[161] the workforce reductions, cuts to academic and extracurricular programs, and other undesirable events that coincided with the low returns on endowment investment might have been reduced or altogether removed with a more prudent investment strategy. For example, as illustrated in Tables 1-12 and in Section III's discussion of actual market values over time for ten top-100 university endowments, university endowment investments yielded a 7.1 percent average annual return over ten years from FY2004 to FY2014, owing mostly to pre-Recession gains and very positive returns in FY2013 and FY2014, while subtracting losses in FY2007, FY2008 and FY2012.[162] Over this same ten-year period, as a gross hypothetical exer-

160. *See* TELLUS INST., *supra* note 21, at 63. Although economics assumptions often rest on the idea that economic market participants are rational actors or act to maximize utility; yet, investors often do not—and in the years leading up to the Great Recession, many of the top university endowment managers did not—validate this assumption through their investment behaviors, choosing instead to maximize return while increasing exposure to risk. Donald C. Langevoort, *Chasing the Greased Pig Down Wall Street: A Gatekeeper's Guide to the Psychology, Culture, and Ethics of Financial Risk Taking*, 96 CORNELL L. REV. 1209, 1215 (2011). *See also* Bratton, *supra* note 156, at 29; PETER L. BERENSTEIN, AGAINST THE GODS: THE REMARKABLE STORY OF RISK 257 (1996); Andrei Shleifer & Lawrence H. Summers, *The Noise Trader Approach to Finance*, 4 J. ECON. PERSP. 19, 20–23 (1990).

161. *See, e.g.*, Jane L. Mendillio, *Harvard Management Company Endowment Report*, HARVARD UNIVERSITY, (2012), http://www.hmc.harvard.edu/docs/FinalAnnualReport2012.pdf; HARVARD UNIVERSITY FINANCIAL REPORT FISCAL YEAR 2013 6 (2013), http://vpfweb.harvard.edu/annualfinancial /pdfs/2013fullreport.pdf. (totaling 35% of the operating budget); THE YALE ENDOWMENT 2010 19 (2010), http://www.yale.edu/investments/YaleEndowment_10.pdf.

162. *See* NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2013 Endowment Market Value and Percentage Change in Endowment Market Value from*

cise, a pure investment in ten-year treasury bonds would have yielded 5.31 percent average annual return, while only posting two fiscal years of losses in FY2009 and FY2013.[163]

Unequivocally, the economically dominant investment strategy, which in this case is in fact the Modern Portfolio Theory approach, is the strategy that yields the greatest returns over the decade. However, although this article does not endorse an undiversified investment strategy, especial-

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FY 2012 to FY 2013 (2014), http://www.nacubo.org/Documents/EndowmentFiles/2013NCSEEndowmentMarket%20ValuesRevisedFeb142014.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2012 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2011 to FY 2012* (2013), http://www.nacubo.org/Documents/research/2012NCSEPublicTablesEndowmentMarketValuesRevisedFebruary42013.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2011 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2010 to FY 2011* (2012), http://www.nacubo.org/Documents/research/2011NCSEPublicTablesEndowmentMarketValues319.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2010 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2009 to FY 2010* (2011), http://www.nacubo.org/Documents/research/2010NCSE_Public_Tables_Endowment_Market_Values_Final.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2009 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2008 to FY 2009* (2010), http://www.nacubo.org/Documents/research/2009_NCSE_Public_Tables_Endowment_Market_Values.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2008 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2007 to FY 2008* (2009), http://www.nacubo.org/documents/research/NES2008PublicTable-AllInstitutionsByFY08MarketValue.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2007 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2006 to FY 2007* (2008), http://www.nacubo.org/Images/All%20Institutions%20Listed%20by%20FY%202007%20Market%20Value%20of%20Endowment%20Assets_2007%20NES.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2006 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2005 to FY 2006* (2007), http://www.nacubo.org/documents/research/2006NES_Listing.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2005 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2004 to FY 2005* (2006), http://www.nacubo.org/documents/about/FY05NESInstitutionsbyTotalAssets.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2006 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2005 to FY 2006* (2007), http://www.nacubo.org/documents/research/2006NES_Listing.pdf; NACUBO, *U.S. and Canadian Institutions Listed by Fiscal Year 2004 Endowment Market Value and Percentage Change in Endowment Market Value from FY 2003 to FY 2004* (2005), http://www.nacubo.org/documents/research/FY04NESInstitutionsbyTotalAssetsforPress.pdf.

163. *Annual Returns on Stock, T.Bonds and T.Bills: 1928 - Current Investment*, NEW YORK UNIVERSITY (2014), http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

ly one relying solely on the bond market, it should be noted that pure investment in a bond vehicle could plausibly have avoided systemic market losses of the Great Recession while still posting consistently strong long-term, ten-year average annual returns. At the very least, this hypothetical investment strategy proves the existence of viable, steadily-appreciating, lower-risk investment strategies. Furthermore, this is not to say that each university, much less each university endowment, is the same or should invest in the same way, but every university has a most basic duty, owed to both direct and indirect stakeholders, to make sound investment and distribution decisions. In place of contributing to systemic market risks, externalizing social costs, and financing opaque investment systems, universities and their endowment managers are in the unique position to model investor responsibility, transparency, and accountability for the rest of the investment world.

Moreover, the true cost of endowment declines during the Great Recession cannot be measured only by reduced spending rates and endowment value losses, brought on in part by the very serious problem of excessively optimistic projections prior to the Recession; the systemic risks of the investment model wrought social costs as well, impacting not only those directly affiliated with the university but the local community of which the university forms an integral part.[164] Universities, as institutional investors and enduring fixtures of communities, are among the most important stakeholders in the sustainability of the financial system and the economies in which they participate.[165] In a culture increasingly concerned with conservation and sustainability, a university must reprise its role as a responsible steward.

For the last two centuries, the law has gradually retreated from specificity regarding the fiduciary duties of universities and their endowment managers. The significant losses suffered by endowment funds during the Great Recession highlight the immediacy of the need for change in endowment investment and management strategy as well as the need for change in law governing these vital university services. Instead of returning to restrictive models such as the prudent person rule, a measured approach to endowment investment and management provides a more sustainable alternative to the current theory. This "sensible investor" approach must rely upon integrity, observation, experience, and institutional policy to achieve sound university endowment investing and management goals and must

164. *See* TELLUS INST., *supra* note 21, at 67. Cutbacks in programs and reductions in force and benefits demoralize college staff, faculty and students and extend throughout the regional economies in which schools play such important roles as sources of innovation and resilience. Taxpayers, politicians and policymakers are rightly upset when such reservoirs of tax-privileged wealth can have such spillover effects into their communities." *Id.*

165. *Id.* at 63–64.

center on four[166] interrelated principles:

1. **Resiliency.** In practice, no endowment can be fully insulated from all negative market risks. As such, university endowments invested in vehicles with greater liquidity and lower volatility afford the university with the appropriate flexibility to weather financial storms. A crucial facet of resiliency requires apportioning some excess returns earned during profitable times to be reserved for shortfall in down markets.[167] The most important fiduciary obligation of a university and its endowment managers is to worry about the future and not merely the present.[168] Because concern for the future and present are not mutually exclusive, a university and its endowment managers must be responsible for ensuring that the university will have the resources it requires in 50 years as well as addressing its many legitimate and urgent financial demands today. Resiliency does not require foresight or clairvoyance, but a conscious plan for the future draws rewards.

2. **Sensibility.** Sections 2 and 6 of the UMIFA granted endowment managers the power to invest endowment funds in new investment vehicles deemed prudent under an ordinary prudence standard.[169] However, as the ordinary prudence standard evolved in the last half-century, endowment managers acting under a sliding prudence standard could and did shift into riskier investment strategies in pursuit of total-return and total-growth.[170] The interrelatedness of the market dictates that even

166. Coincidentally, Justice Felix Frankfurter is attributed with articulating a university's four academic freedoms to determine: who may teach; what may be taught, how it should be taught; and who may be admitted to study. Sweezy v. New Hampshire, 354 U.S. 234, 262–63 (1957). *See also* J. Peter Byrne, *Academic Freedom: A "Special Concern of the First Amendment"*, 99 YALE L.J. 241 (1989).

167. *See* TELLUS INST., *supra* note 21, at 63. *See also* Burton A. Weisbrod and Evelyn D. Asch, *Endowment for a Rainy Day*, STANFORD SOC. INNOVATION REV., 42–47 (2010).

168. ASS'N OF GOVERNING BD. OF UNIV. AND COLL., *Fiduciary Behavior: What's the Responsible Trustee to Do (and Not to Do)?*, TRUSTEESHIP, March/April 2013, at 10.

169. UNIF. MGMT. OF INST. FUNDS ACT § 2, 7A U.L.A. 491 (1999). *See* Job, *supra* note 11, at 608.

170. *See* Job *supra* note 11, at 609. *See also* Jeffrey R. Brown, *How Endowment Hoarding Hurts Universities*, CHRON. HIGHER EDUC., (March 17, 2014), http://chronicle.com/article/How-Endowment-Hoarding-Hurts/145343/. "During the recent recession . . . the average endowment [lost] a quarter of its value. . . [Following] years of heady growth that led endowments to grow at a far faster clip than university spending did. As a result, the losses suffered in the market meltdown represented a much larger loss relative to universities' annual operating budgets than did any previous market correction. . . In response, some universities ignored their own spending

the investment decisions of one group of investors has consequences for the whole. With endowments' futures and economic market health hanging in the balance, a new investment standard should be clear, moderate, and nearly all-encompassing. This standard must be situated at the mid-point between the prudent person rule of the common law and the UMIFA's liberalized ordinary prudent investor rule in order to ensure for the future of higher education while generating measured, sustainable growth in the present. The title this article proffers for this rule is the "sensible investor" standard, and as its name suggests, the relatively flexible standard would require universities and their endowment managers to demonstrate the following: (1) fidelity to the university's founding mission and core values; (2) commitment to the direct and indirect stakeholders in the university; (3) dedication to safeguarding the university's integrity in all university operations and expenditures; (4) sensitivity and responsiveness to market factors; and (5) reason and sound judgment in making investment and management decisions to effectuate endowment resiliency, growth, and sustainability.

3. **Sustainability.** The near complete delegation of investment decisions to third-party university managers and the pursuit of endowment growth for its own sake drove the decline of university endowments in the last recession. Realistically, the complexity of modern economic markets dictates that universities cannot fully emancipate themselves from third party endowment managers. Even eliminating an endowment portfolio from one industry (for example, under growing pressure from environmentalists, partaking of institutional activism to divest university endowments of holdings in fossil-fuel and tobacco companies) risks lowering returns and increasing market volatility, both of which may hurt an endowment-dependent university's ability to manage its finances and succeed in carrying out its mission.[171] That said, universities can and must reduce

guidelines. . .and instead chose to actively cut endowment payouts by even more than indicated. In short, they acted to preserve the value of the endowment instead of using the endowment to preserve the value of the university." *Id.* In the above article, and in his paper published in the American Economic Review, Prof. Brown argues that when institutions cut spending during bad times, the effect is most damaging, and "cannot be explained by regulatory or donor constraints against spending the principal." *Id.*

171. For an oil and gas industry-funded empirical study purporting that fossil-fuel divestment results in diminished returns to university endowments, *see* Daniel R. Fischel, *Fossil Fuel Divestment: A Costly and Ineffective Divestment Strategy*, DIVESTMENT FACTS, http://divestmentfacts.com/pdf/Fischel_Report.pdf (2015). However,

systemic reliance on third-party endowment managers and more fully involve themselves in endowment investment strategy in order to reclaim stewardship and ensure compliance with the university's educational mission.[172] By prioritizing consistent, predictable growth, outpacing inflation and other inevitable negative economic externalities, while maintaining an appropriate level of risk, universities can proceed with measured growth without sacrificing the future.[173] By integrat-

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others have reported on similar findings. John Schwartz, *Study Claims Oil Divestiture May Hurt College Endowments*, N.Y. TIMES (Feb. 9, 2015), http://www.nytimes.com/2015/02/10/business/energy-environment/study-claims-oil-divestiture-may-hurt-college-endowments.html?ref=education&_r=3; Rosenberg, *supra* note 102, at A28; Cory Weinberg, *Divestment from 'Moral Evil?'*, INSIDE HIGHER ED. (May 16, 2014), http://www.insidehighered.com/news/2014/05/16/penn-debates-selling-holdings-tobacco-companies#sthash.BKNUCyox.fIxCxdEH.dpbs (discussing University of Pennsylvania's pending decision whether or not to divest its $7.7 billion endowment portfolio of stock in tobacco companies such as Phillip Morris and R.J. Reynolds). *Compare* Michael Wines, *Stanford to Purge $18 Billion Endowment of Coal Stock*, N.Y. TIMES (May 6, 2014), http://www.nytimes.com/2014/05/07/education/stanford-to-purge-18-billion-endowment-of-coal-stock.html?ref=education&_r=2 *and* Zach Schonfeld, *Stanford Pulls Its Coal Investments, But Why Haven't Other Divestment Movements Succeeded?*, NEWSWEEK (May 9, 2014), http://www.newsweek.com/many-ways-college-administrations-have-resisted-fossil-fuel-divestment-movement-250409 *with* Yuki Noguchi, *When Colleges Ditch Coal Investments, It's Barley a Drop in the Bucket*, NPR (May 7, 2014), http://www.npr.org/2014/05/07/310449120/when-colleges-divest-in-coal-its-barely-a-drop-in-the-bucket *and* Stu Johnson, UK Finance Officer Says Coal Divestment Not Likely to Cause Ripples, WEKU (May 11, 2014), http://weku.fm/post/uk-finance-officer-says-stanford-coal-divestment-not-likely-cause-kentucky-ripples; Tyler Kingkade, *Columbia University Will Divest from Private Prison Companies*, HUFFINGTON POST (June 22, 2015), http://www.huffingtonpost.com/2015/06/22/columbia-divest-prison_n_7640888.html.

172. This article is not the only piece of scholarship that sees third party endowment managers as somewhat indispensible in the modern economic context: "with the rise of the Endowment Model of Investing, its diversification into new asset classes beyond domestic public equities, and the increasing use of external investment managers, committees of investor responsibility designed for an earlier era have watched their relevance erode. Given the social costs of the Endowment Model of Investing, which this report only begins to explore, it is high time for colleges and universities not only to reassess risk but also to reclaim this legacy of responsible institutional investment." TELLUS INST., *supra* note 21, at 64. *See also* Rosenberg, *supra* note 100, at A29; Ry Rivard, *Endowment Decisions*, INSIDE HIGHER ED. (March 18, 2014), http://www.insidehighered.com/news/2014/03/18/sewanee-tries-make-its-endowment-spending-more-predictable#sthash.xg4JcLV1.vhT6SJBw.dpbs (discussing the University of the South's decision to use an inflation adjustment to determine a fixed rate for drawing the annual spending distribution of its $350 million endowment).

173. *See* Ry Rivard, *Sustainability, Divestment and Debt: A Survey of Business Officers*, INSIDE HIGHER ED. (July 18, 2014), https://www.insidehighered.com/news/survey/sustainability-divestment-and-debt-survey-business-officers (citing a survey by Gallup and Inside Higher Ed, based on the responses of chief financial officers at 438 universities and universities, finding that just 24 percent of business officers "strongly agree they are confident in the sustainabil-

ing sustainability practices into investment decisions and reclaiming partial ownership of their endowment assets, universities can recover their mantle of enduring, responsible stewardship.

4. **Purpose.** Perhaps better than any other kind of institution in this country, universities effect public change and public benefit on scales small and large. Universities exist for an inherently public purpose; their core values revolve around educating, learning and research. Compliance with the university's mission, then, is determinative of whether students receive a quality education, whether faculty possess the freedom to teach and research, and whether the community is enhanced as a result. Capitalizing on the nonprofit, tax-exempt status, universities must direct that their endowment pursue responsible stewardship above all other investment strategies.[174] The management of a university endowment is not merely an act of ownership; it is an act of trust with past donors as well as present and future generations of students, faculty, staff, and community stakeholders.[175] Universities must not stray from the explicit purpose for which its endowment was created and for which it is expended.[176]

Students, faculty, staff, donors, and community members are all engaged in a common effort to fulfill and benefit from a university's mission. The success of this endeavor depends on its resources not being gambled away. If a focus on the future of university endowments can be pursued with the same fervor with which endowment managers sought total-growth for the last 50 years, universities and their stakeholders can share in the labor and bounty of a fruitful union of mutual interest and reward—whatever the economic climate.[177]

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ity of their business model for the next five years, and only 13 percent strongly agree they are confident in their model over the next 10 years."). While many campus chief financial officers "lack confidence in the sustainability of their universities' business model over the next decade[,] . . . they also seem loath to take cost-saving measures that could ignite campus controversy". *Id.*

174. *See* THE RESPONSIBLE ENDOWMENT PROJECT, *Responsible Returns: A Modern Approach to Ethical Investing for the Yale Endowment*, YALE UNIV., July 22, 2009. *See also* Marc Parry, Kelly Field & Beckie Supiano, *The Gates Effect*, CHRON. HIGHER EDUC., July 19, 2013, at A18-23 (suggesting private foundations can exact this same responsible influence from without academia).

175. *See* Rosenberg, *supra* note 100, at A29.

176. *Id. See also* Henry Doss, *Innovate: Become a Learning Society*, FORBES (Oct. 10, 2013), http://www.forbes.com/sites/henrydoss/2013/10/10/the-economic-value-of-a-learning-society/.

177. *See* Bok, *supra* note 8, at A29. "Presidents and trustees would thus be well

advised to examine their existing policies and try to eliminate practices that seek immediate financial benefit at the cost of compromising important academic values." *Id. See also* Emma Green, *What Makes a University 'Useful'?*, ATLANTIC (Dec. 23, 2013), http://www.theatlantic.com/events/archive/2013/12/what-makes-a-university-useful/281965/ (discussing the University of Washington's creation of the "W Fund to invest $20 million over four years in companies that grow out of the university's research"). "A University can be *both* commercially product *and* a hub for pursuing basic knowledge." *Id.*

APPENDIX

Table 1: Harvard University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$22,143,649,000.00	$25,473,721,000.00	15.04%	$3,330,072,000.00
	Treasury Bond Annual Returns	$22,143,649,000.00	$22,779,171,726.30	2.87%	$635,522,726.30
FY2005-2006	Actual Market Value	$25,473,721,000.00	$28,915,706,000.00	13.51%	$3,441,985,000.00
	Treasury Bond Annual Returns	$22,779,171,726.30	$23,225,643,492.14	1.96%	$446,471,765.84
FY2006-2007	Actual Market Value	$28,915,706,000.00	$34,634,906,000.00	19.78%	$5,719,200,000.00
	Treasury Bond Annual Returns	$23,225,643,492.14	$25,596,981,692.69	10.21%	$2,371,338,200.55
FY2007-2008	Actual Market Value	$34,634,906,000.00	$36,556,284,000.00	5.55%	$1,921,378,000.00
	Treasury Bond Annual Returns	$25,596,981,692.69	$30,741,975,012.92	20.10%	$5,144,993,320.23
FY2008-2009	Actual Market Value	$36,556,284,000.00	$25,662,055,000.00	-29.80%	-$10,894,229,000.00
	Treasury Bond Annual Returns	$30,741,975,012.92	$27,323,467,391.48	-11.12%	-$3,418,507,621.44
FY2009-2010	Actual Market Value	$25,662,055,000.00	$27,557,404,000.00	7.39%	$1,895,349,000.00
	Treasury Bond Annual Returns	$27,323,467,391.48	$29,635,032,732.80	8.46%	$2,311,565,341.32
FY2010-2011	Actual Market Value	$27,557,404,000.00	$31,728,080,000.00	15.13%	$4,170,676,000.00
	Treasury Bond Annual Returns	$29,635,032,732.80	$34,388,491,983.14	16.04%	$4,753,459,250.34
FY2011-2012	Actual Market Value	$31,728,080,000.00	$30,435,375,000.00	-4.07%	-$1,292,705,000.00
	Treasury Bond Annual Returns	$34,388,491,983.14	$35,409,830,195.04	2.97%	$1,021,338,211.90
FY2012-2013	Actual Market Value	$30,435,375,000.00	$32,334,293,000.00	6.24%	$1,898,918,000.00
	Treasury Bond Annual Returns	$35,409,830,195.04	$32,187,535,647.29	-9.10%	-$3,222,294,547.75
FY2013-2014	Actual Market Value	$32,334,293,000.00	$35,883,691,000.00	10.98%	$3,549,398,000.00
	Treasury Bond Annual Returns	$32,187,535,647.29	$35,647,695,729.37	10.75%	$3,460,160,082.08
FY2008-2013 Differential	Actual Market Value	$36,556,284,000.00	$32,334,293,000.00	-11.55%	-$4,221,991,000.00
	Treasury Bond Annual Returns	$30,741,975,012.92	$32,187,535,647.29	4.70%	$1,445,560,634.37
FY2008-2014 Differential	Actual Market Value	$36,556,284,000.00	$35,883,691,000.00	-1.84%	-$672,593,000.00
	Treasury Bond Annual Returns	$30,741,975,012.92	$35,647,695,729.37	15.96%	$4,905,720,716.45
FY2004-2014 Differential	Actual Market Value	$22,143,649,000.00	$35,883,691,000.00	62.05%	$13,740,042,000.00
	Treasury Bond Annual Returns	$22,143,649,000.00	$35,647,695,729.37	60.98%	$13,504,046,729.37

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 2: Yale University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$12,747,150,000.00	$15,224,900,000.00	19.44%	$2,477,750,000.00
	Treasury Bond Annual Returns	$12,747,150,000.00	$13,112,993,205.00	2.87%	$365,843,205.00
FY2005-2006	Actual Market Value	$15,224,900,000.00	$18,030,600,000.00	18.43%	$2,805,700,000.00
	Treasury Bond Annual Returns	$13,112,993,205.00	$13,370,007,871.82	1.96%	$257,014,666.82
FY2006-2007	Actual Market Value	$18,030,600,000.00	$22,530,200,000.00	24.96%	$4,499,600,000.00
	Treasury Bond Annual Returns	$13,370,007,871.82	$14,735,085,675.53	10.21%	$1,365,077,803.71
FY2007-2008	Actual Market Value	$22,530,200,000.00	$22,870,000,000.00	1.51%	$339,800,000.00
	Treasury Bond Annual Returns	$14,735,085,675.53	$17,696,837,896.31	20.10%	$2,961,752,220.78
FY2008-2009	Actual Market Value	$22,870,000,000.00	$16,327,000,000.00	-28.61%	-$6,543,000,000.00
	Treasury Bond Annual Returns	$17,696,837,896.31	$15,728,949,522.24	-11.12%	-$1,967,888,374.07
FY2009-2010	Actual Market Value	$16,327,000,000.00	$16,652,000,000.00	1.99%	$325,000,000.00
	Treasury Bond Annual Returns	$15,728,949,522.24	$17,059,618,651.82	8.46%	$1,330,669,129.58
FY2010-2011	Actual Market Value	$16,652,000,000.00	$19,374,000,000.00	16.35%	$2,722,000,000.00
	Treasury Bond Annual Returns	$17,059,618,651.82	$19,795,981,483.57	16.04%	$2,736,362,831.75
FY2011-2012	Actual Market Value	$19,374,000,000.00	$19,345,000,000.00	-0.15%	-$29,000,000.00
	Treasury Bond Annual Returns	$19,795,981,483.57	$20,383,922,133.63	2.97%	$587,940,650.06
FY2012-2013	Actual Market Value	$19,345,000,000.00	$20,780,000,000.00	7.42%	$1,435,000,000.00
	Treasury Bond Annual Returns	$20,383,922,133.63	$18,528,985,219.47	-9.10%	-$1,854,936,914.16
FY2013-2014	Actual Market Value	$20,780,000,000.00	$23,900,000,000.00	15.01%	$3,120,000,000.00
	Treasury Bond Annual Returns	$18,528,985,219.47	$20,520,851,130.56	10.75%	$1,991,865,911.09
FY2008-2013 Differential	Actual Market Value	$22,870,000,000.00	$20,780,000,000.00	-9.14%	-$2,090,000,000.00
	Treasury Bond Annual Returns	$17,696,837,896.31	$18,258,985,219.47	3.18%	$562,147,323.16
FY2008-2014 Differential	Actual Market Value	$22,870,000,000.00	$23,900,000,000.00	4.50%	$1,030,000,000.00
	Treasury Bond Annual Returns	$17,696,837,896.31	$20,520,851,130.56	15.96%	$2,824,013,234.25
FY2004-2014 Differential	Actual Market Value	$12,747,150,000.00	$23,900,000,000.00	87.49%	$11,152,850,000.00
	Treasury Bond Annual Returns	$12,747,150,000.00	$20,520,851,130.56	60.98%	$7,773,701,130.56

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 3: Emory University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$4,535,587,000.00	$ 4,376,272,000.00	-3.51%	-$159,315,000.00
	Treasury Bond Annual Returns	$4,535,587,000.00	$4,665,758,346.90	2.87%	$130,171,346.90
FY2005-2006	Actual Market Value	$4,376,272,000.00	$4,870,019,000.00	11.28%	$493,747,000.00
	Treasury Bond Annual Returns	$4,665,758,346.90	$4,757,207,210.50	1.96%	$91,448,863.60
FY2006-2007	Actual Market Value	$4,870,019,000.00	$5,561,743,000.00	14.20%	$691,724,000.00
	Treasury Bond Annual Returns	$4,757,207,210.50	$5,242,918,066.69	10.21%	$485,710,856.19
FY2007-2008	Actual Market Value	$5,561,743,000.00	$5,472,528,000.00	-1.60%	-$89,215,000.00
	Treasury Bond Annual Returns	$5,242,918,066.69	$6,296,744,598.09	20.10%	$1,053,826,531.40
FY2008-2009	Actual Market Value	$5,472,528,000.00	$4,328,436,000.00	-20.91%	-$1,144,092,000.00
	Treasury Bond Annual Returns	$6,296,744,598.09	$5,596,546,598.78	-11.12%	-$700,197,999.31
FY2009-2010	Actual Market Value	$4,328,436,000.00	$4,694,260,000.00	8.45%	$365,824,000.00
	Treasury Bond Annual Returns	$5,596,546,598.78	$6,070,014,441.04	8.46%	$473,467,842.26
FY2010-2011	Actual Market Value	$4,694,260,000.00	$5,400,367,000.00	15.04%	$706,107,000.00
	Treasury Bond Annual Returns	$6,070,014,441.04	$7,043,644,757.38	16.04%	$973,630,316.34
FY2011-2012	Actual Market Value	$5,400,367,000.00	$5,461,158,000.00	1.13%	$60,791,000.00
	Treasury Bond Annual Returns	$7,043,644,757.38	$7,252,841,006.67	2.97%	$209,196,249.29
FY2012-2013	Actual Market Value	$5,461,158,000.00	$5,816,046,000.00	6.50%	$354,888,000.00
	Treasury Bond Annual Returns	$7,252,841,006.67	$6,592,832,475.06	-9.10%	-$660,008,531.61
FY2013-2014	Actual Market Value	$5,816,046,000.00	$6,681,479,000.00	14.88%	$865,433,000.00
	Treasury Bond Annual Returns	$6,592,832,475.06	$7,301,561,966.13	10.75%	$708,729,491.07
FY2008-2013 Differential	Actual Market Value	$5,472,528,000.00	$5,816,046,000.00	6.28%	$343,518,000.00
	Treasury Bond Annual Returns	$6,296,744,598.09	$6,592,832,475.06	4.70%	$296,087,876.97
FY2008-2014 Differential	Actual Market Value	$5,472,528,000.00	$6,681,479,000.00	22.09%	$1,208,951,000.00
	Treasury Bond Annual Returns	$6,296,744,598.09	$7,301,561,966.13	15.96%	$1,004,817,368.04
FY2004-2014 Differential	Actual Market Value	$4,535,587,000.00	$6,681,479,000.00	47.31%	$2,145,892,000.00
	Treasury Bond Annual Returns	$4,535,587,000.00	$7,301,561,966.13	60.98%	$2,765,974,966.13

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).
** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 4: Cornell University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$3,238,350,000.00	$3,777,092,000.00	16.64%	$538,742,000.00
	Treasury Bond Annual Returns	$3,238,350,000.00	$3,331,290,645.00	2.87%	$92,940,645.00
FY2005-2006	Actual Market Value	$3,777,092,000.00	$4,321,199,000.00	14.41%	$544,107,000.00
	Treasury Bond Annual Returns	$3,331,290,645.00	$3,396,583,941.64	1.96%	$65,293,296.64
FY2006-2007	Actual Market Value	$4,321,199,000.00	$5,424,733,000.00	25.54%	$1,103,534,000.00
	Treasury Bond Annual Returns	$3,396,583,941.64	$3,743,375,162.08	10.21%	$346,791,220.44
FY2007-2008	Actual Market Value	$5,424,733,000.00	$5,385,482,000.00	-0.72%	-$39,251,000.00
	Treasury Bond Annual Returns	$3,743,375,162.08	$4,495,793,569.66	20.10%	$752,418,407.58
FY2008-2009	Actual Market Value	$5,385,482,000.00	$3,966,041,000.00	-26.36%	-$1,419,441,000.00
	Treasury Bond Annual Returns	$4,495,793,569.66	$3,995,861,324.71	-11.12%	-$499,932,244.95
FY2009-2010	Actual Market Value	$3,966,041,000.00	$4,378,587,000.00	10.40%	$412,546,000.00
	Treasury Bond Annual Returns	$3,995,861,324.71	$4,333,911,192.78	8.46%	$338,049,868.07
FY2010-2011	Actual Market Value	$4,378,587,000.00	$5,059,406,000.00	15.55%	$680,819,000.00
	Treasury Bond Annual Returns	$4,333,911,192.78	$5,029,070,548.10	16.04%	$695,159,355.32
FY2011-2012	Actual Market Value	$5,059,406,000.00	$4,946,954,000.00	-2.22%	-$112,452,000.00
	Treasury Bond Annual Returns	$5,029,070,548.10	$5,178,433,943.38	2.97%	$149,363,395.28
FY2012-2013	Actual Market Value	$4,946,954,000.00	$5,272,228,000.00	6.58%	$325,274,000.00
	Treasury Bond Annual Returns	$5,178,433,943.38	$4,707,196,454.53	-9.10%	-$471,237,488.85
FY2013-2014	Actual Market Value	$5,272,228,000.00	$5,889,948,000.00	11.72%	$617,720,000.00
	Treasury Bond Annual Returns	$4,707,196,454.53	$5,213,220,073.39	10.75%	$506,023,618.86
FY2008-2013 Differential	Actual Market Value	$5,385,482,000.00	$5,272,228,000.00	-2.10%	-$113,254,000.00
	Treasury Bond Annual Returns	$4,495,793,569.66	$4,707,196,454.53	4.70%	$211,402,884.87
FY2008-2014 Differential	Actual Market Value	$5,385,482,000.00	$5,889,948,000.00	9.37%	$504,466,000.00
	Treasury Bond Annual Returns	$4,495,793,569.66	$5,213,220,073.39	15.96%	$717,426,503.73
FY2004-2014 Differential	Actual Market Value	$3,238,350,000.00	$5,889,948,000.00	81.88%	$2,651,598,000.00
	Treasury Bond Annual Returns	$3,238,350,000.00	$5,213,220,073.39	60.98%	$1,974,870,073.39

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 5: Johns Hopkins University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$2,055,542,000.00	$2,176,909,000.00	5.90%	$121,367,000.00
	Treasury Bond Annual Returns	$2,055,542,000.00	$2,114,536,055.40	2.87%	$58,994,055.40
FY2005-2006	Actual Market Value	$2,176,909,000.00	$2,350,749,000.00	7.99%	$173,840,000.00
	Treasury Bond Annual Returns	$2,114,536,055.40	$2,155,980,962.09	1.96%	$41,444,906.69
FY2006-2007	Actual Market Value	$2,350,749,000.00	$2,800,377,000.00	19.13%	$449,628,000.00
	Treasury Bond Annual Returns	$2,155,980,962.09	$2,376,106,618.32	10.21%	$220,125,656.23
FY2007-2008	Actual Market Value	$2,800,377,000.00	$2,524,575,000.00	-9.85%	-$275,802,000.00
	Treasury Bond Annual Returns	$2,376,106,618.32	$2,853,704,048.60	20.10%	$477,597,430.28
FY2008-2009	Actual Market Value	$2,524,575,000.00	$1,976,899,000.00	-21.69%	-$547,676,000.00
	Treasury Bond Annual Returns	$2,853,704,048.60	$2,536,372,158.40	-11.12%	-$317,331,890.20
FY2009-2010	Actual Market Value	$1,976,899,000.00	$2,219,925,000.00	12.29%	$243,026,000.00
	Treasury Bond Annual Returns	$2,536,372,158.40	$2,750,949,243.00	8.46%	$214,577,084.60
FY2010-2011	Actual Market Value	$2,219,925,000.00	$2,598,467,000.00	17.05%	$378,542,000.00
	Treasury Bond Annual Returns	$2,750,949,243.00	$3,192,201,501.58	16.04%	$441,252,258.58
FY2011-2012	Actual Market Value	$2,598,467,000.00	$2,593,316,000.00	-0.20%	-$5,151,000.00
	Treasury Bond Annual Returns	$3,192,201,501.58	$3,287,009,886.18	2.97%	$94,808,384.60
FY2012-2013	Actual Market Value	$2,593,316,000.00	$2,987,298,000.00	15.19%	$393,982,000.00
	Treasury Bond Annual Returns	$3,287,009,886.18	$2,987,891,986.54	-9.10%	-$299,117,899.64
FY2013-2014	Actual Market Value	$2,987,298,000.00	$3,451,947,000.00	15.55%	$464,649,000.00
	Treasury Bond Annual Returns	$2,987,891,986.54	$3,309,090,375.09	10.75%	$321,198,388.55
FY2008-2013 Differential	Actual Market Value	$2,524,575,000.00	$2,987,298,000.00	18.33%	$462,723,000.00
	Treasury Bond Annual Returns	$2,853,704,048.60	$2,987,891,986.54	4.70%	$134,187,937.94
FY2008-2014 Differential	Actual Market Value	$2,524,575,000.00	$3,451,947,000.00	36.73%	$927,372,000.00
	Treasury Bond Annual Returns	$2,853,704,048.60	$3,309,090,375.09	15.96%	$455,386,326.49
FY2004-2014 Differential	Actual Market Value	$2,055,542,000.00	$3,451,947,000.00	67.93%	$1,396,405,000.00
	Treasury Bond Annual Returns	$2,055,542,000.00	$3,309,090,375.09	60.98%	$1,253,548,375.09

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 6: University of Washington Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$1,315,894,000.00	$1,489,924,000.00	13.23%	$174,030,000.00
	Treasury Bond Annual Returns	$1,315,894,000.00	$1,353,660,157.80	2.87%	$37,766,157.80
FY2005-2006	Actual Market Value	$1,489,924,000.00	$1,794,370,000.00	20.43%	$304,446,000.00
	Treasury Bond Annual Returns	$1,353,660,157.80	$1,380,191,896.89	1.96%	$26,531,739.09
FY2006-2007	Actual Market Value	$1,794,370,000.00	$2,184,374,000.00	21.73%	$390,004,000.00
	Treasury Bond Annual Returns	$1,380,191,896.89	$1,521,109,489.56	10.21%	$140,917,592.67
FY2007-2008	Actual Market Value	$2,184,374,000.00	$2,161,438,000.00	-1.05%	-$22,936,000.00
	Treasury Bond Annual Returns	$1,521,109,489.56	$1,826,852,496.96	20.10%	$305,743,007.40
FY2008-2009	Actual Market Value	$2,161,438,000.00	$1,649,159,000.00	-23.70%	-$512,279,000.00
	Treasury Bond Annual Returns	$1,826,852,496.96	$1,623,706,499.30	-11.12%	-$203,145,997.66
FY2009-2010	Actual Market Value	$1,649,159,000.00	$1,904,970,000.00	15.51%	$255,811,000.00
	Treasury Bond Annual Returns	$1,623,706,499.30	$1,761,072,069.14	8.46%	$137,365,569.84
FY2010-2011	Actual Market Value	$1,904,970,000.00	$2,154,494,000.00	13.10%	$249,524,000.00
	Treasury Bond Annual Returns	$1,761,072,069.14	$2,043,548,029.03	16.04%	$282,475,959.89
FY2011-2012	Actual Market Value	$2,154,494,000.00	$2,111,332,000.00	-2.00%	-$43,162,000.00
	Treasury Bond Annual Returns	$2,043,548,029.03	$2,104,241,405.49	2.97%	$60,693,376.46
FY2012-2013	Actual Market Value	$2,111,332,000.00	$2,346,693,000.00	11.15%	$235,361,000.00
	Treasury Bond Annual Returns	$2,104,241,405.49	$1,912,755,437.59	-9.10%	-$191,485,967.90
FY2013-2014	Actual Market Value	$2,346,693,000.00	$2,832,753,000.00	20.71%	$486,060,000.00
	Treasury Bond Annual Returns	$1,912,755,437.59	$2,118,376,647.13	10.75%	$205,621,209.54
FY2008-2013 Differential	Actual Market Value	$2,161,438,000.00	$2,346,693,000.00	8.57%	$185,255,000.00
	Treasury Bond Annual Returns	$1,826,852,496.96	$1,912,755,437.59	4.70%	$85,902,940.63
FY2008-2014 Differential	Actual Market Value	$2,161,438,000.00	$2,832,753,000.00	31.06%	$671,315,000.00
	Treasury Bond Annual Returns	$1,826,852,496.96	$2,118,376,647.13	15.96%	$291,524,150.17
FY2004-2014 Differential	Actual Market Value	$1,315,894,000.00	$2,832,753,000.00	115.27%	$1,516,859,000.00
	Treasury Bond Annual Returns	$1,315,894,000.00	$2,118,376,647.13	60.98%	$802,482,647.13

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 7: Indiana University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$1,012,707,000.00	$1,107,498,000.00	9.36%	$94,791,000.00
	Treasury Bond Annual Returns	$1,012,707,000.00	$1,041,771,690.90	2.87%	$29,064,690.90
FY2005-2006	Actual Market Value	$1,107,498,000.00	$1,276,160,000.00	15.23%	$168,662,000.00
	Treasury Bond Annual Returns	$1,041,771,690.90	$1,062,190,416.04	1.96%	$20,418,725.14
FY2006-2007	Actual Market Value	$1,276,160,000.00	$1,556,853,000.00	22.00%	$280,693,000.00
	Treasury Bond Annual Returns	$1,062,190,416.04	$1,170,640,057.52	10.21%	$108,449,641.48
FY2007-2008	Actual Market Value	$1,556,853,000.00	$1,546,469,000.00	-0.67%	-$10,384,000.00
	Treasury Bond Annual Returns	$1,170,640,057.52	$1,405,938,709.08	20.10%	$235,298,651.56
FY2008-2009	Actual Market Value	$1,546,469,000.00	$1,226,505,000.00	-20.69%	-$319,964,000.00
	Treasury Bond Annual Returns	$1,405,938,709.08	$1,249,598,324.63	-11.12%	-$156,340,384.45
FY2009-2010	Actual Market Value	$1,226,505,000.00	$1,371,025,000.00	11.78%	$144,520,000.00
	Treasury Bond Annual Returns	$1,249,598,324.63	$1,355,314,342.89	8.46%	$105,716,018.26
FY2010-2011	Actual Market Value	$1,371,025,000.00	$1,574,815,000.00	14.86%	$203,790,000.00
	Treasury Bond Annual Returns	$1,355,314,342.89	$1,572,706,763.49	16.04%	$217,392,420.60
FY2011-2012	Actual Market Value	$1,574,815,000.00	$1,576,615,000.00	0.11%	$1,800,000.00
	Treasury Bond Annual Returns	$1,572,706,763.49	$1,619,416,154.37	2.97%	$46,709,390.88
FY2012-2013	Actual Market Value	$1,576,615,000.00	$1,735,086,000.00	10.05%	$158,471,000.00
	Treasury Bond Annual Returns	$1,619,416,154.37	$1,472,049,284.32	-9.10%	-$147,366,870.05
FY2013-2014	Actual Market Value	$1,735,086,000.00	$1,988,336,000.00	14.60%	$253,250,000.00
	Treasury Bond Annual Returns	$1,472,049,284.32	$1,630,294,582.38	10.75%	$158,245,298.06
FY2008-2013 Differential	Actual Market Value	$1,546,469,000.00	$1,735,086,000.00	12.20%	$188,617,000.00
	Treasury Bond Annual Returns	$1,405,938,709.08	$1,472,049,284.32	4.70%	$66,110,575.24
FY2008-2014 Differential	Actual Market Value	$1,546,469,000.00	$1,988,336,000.00	28.57%	$441,867,000.00
	Treasury Bond Annual Returns	$1,405,938,709.08	$1,630,294,582.38	15.96%	$224,355,873.30
FY2004-2014 Differential	Actual Market Value	$1,012,707,000.00	$1,988,336,000.00	96.34%	$975,629,000.00
	Treasury Bond Annual Returns	$1,012,707,000.00	$1,630,294,582.38	60.98%	$617,587,582.38

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 8: University of Cincinnati Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$987,785,000.00	$1,032,124,000.00	4.49%	$44,339,000.00
	Treasury Bond Annual Returns	$987,785,000.00	$1,016,134,429.50	2.87%	$28,349,429.50
FY2005-2006	Actual Market Value	$1,032,124,000.00	$1,101,100,000.00	6.68%	$68,976,000.00
	Treasury Bond Annual Returns	$1,016,134,429.50	$1,036,050,664.32	1.96%	$19,916,234.82
FY2006-2007	Actual Market Value	$1,101,100,000.00	$1,185,400,000.00	7.66%	$84,300,000.00
	Treasury Bond Annual Returns	$1,036,050,664.32	$1,141,831,437.15	10.21%	$105,780,772.83
FY2007-2008	Actual Market Value	$1,185,400,000.00	$1,099,127,000.00	-7.28%	-$86,273,000.00
	Treasury Bond Annual Returns	$1,141,831,437.15	$1,371,339,556.02	20.10%	$229,508,118.87
FY2008-2009	Actual Market Value	$1,099,127,000.00	$832,924,000.00	-24.22%	-$266,203,000.00
	Treasury Bond Annual Returns	$1,371,339,556.02	$1,218,846,597.39	-11.12%	-$152,492,958.63
FY2009-2010	Actual Market Value	$832,924,000.00	$886,262,000.00	6.40%	$53,338,000.00
	Treasury Bond Annual Returns	$1,218,846,597.39	$1,321,961,019.53	8.46%	$103,114,422.14
FY2010-2011	Actual Market Value	$886,262,000.00	$1,004,368,000.00	13.33%	$118,106,000.00
	Treasury Bond Annual Returns	$1,321,961,019.53	$1,534,003,567.06	16.04%	$212,042,547.53
FY2011-2012	Actual Market Value	$1,004,368,000.00	$976,814,000.00	-2.74%	-$27,554,000.00
	Treasury Bond Annual Returns	$1,534,003,567.06	$1,579,563,473.00	2.97%	$45,559,905.94
FY2012-2013	Actual Market Value	$976,814,000.00	$1,045,606,000.00	7.04%	$68,792,000.00
	Treasury Bond Annual Returns	$1,579,563,473.00	$1,435,823,196.96	-9.10%	-$143,740,276.04
FY2013-2014	Actual Market Value	$1,045,606,000.00	$1,183,922,000.00	13.23%	$138,316,000.00
	Treasury Bond Annual Returns	$1,435,823,196.96	$1,590,174,190.63	10.75%	$154,350,993.67
FY2008-2013 Differential	Actual Market Value	$1,099,127,000.00	$1,045,606,000.00	-4.87%	-$53,521,000.00
	Treasury Bond Annual Returns	$1,371,339,556.02	$1,435,823,196.96	4.70%	$64,483,640.94
FY2008-2014 Differential	Actual Market Value	$1,099,127,000.00	$1,183,922,000.00	7.71%	$84,795,000.00
	Treasury Bond Annual Returns	$1,371,339,556.02	$1,590,174,190.63	15.96%	$218,834,634.61
FY2004-2014 Differential	Actual Market Value	$987,785,000.00	$1,183,922,000.00	19.86%	$196,137,000.00
	Treasury Bond Annual Returns	$987,785,000.00	$1,590,174,190.63	60.98%	$602,389,190.63

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 9: Wake Forest University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$812,698,000.00	$906,803,000.00	11.58%	$94,105,000.00
	Treasury Bond Annual Returns	$812,698,000.00	$836,022,432.60	2.87%	$23,324,432.60
FY2005-2006	Actual Market Value	$906,803,000.00	$1,042,558,000.00	14.97%	$135,755,000.00
	Treasury Bond Annual Returns	$836,022,432.60	$852,408,472.28	1.96%	$16,386,039.68
FY2006-2007	Actual Market Value	$1,042,558,000.00	$1,248,695,000.00	19.77%	$206,137,000.00
	Treasury Bond Annual Returns	$852,408,472.28	$939,439,377.30	10.21%	$87,030,905.02
FY2007-2008	Actual Market Value	$1,248,695,000.00	$1,253,673,000.00	0.40%	$4,978,000.00
	Treasury Bond Annual Returns	$939,439,377.30	$1,128,266,692.14	20.10%	$188,827,314.84
FY2008-2009	Actual Market Value	$1,253,673,000.00	$886,761,000.00	-29.27%	-$366,912,000.00
	Treasury Bond Annual Returns	$1,128,266,692.14	$1,002,803,435.97	-11.12%	-$125,463,256.17
FY2009-2010	Actual Market Value	$886,761,000.00	$937,639,000.00	5.74%	$50,878,000.00
	Treasury Bond Annual Returns	$1,002,803,435.97	$1,087,640,606.65	8.46%	$84,837,170.68
FY2010-2011	Actual Market Value	$937,639,000.00	$1,058,250,000.00	12.86%	$120,611,000.00
	Treasury Bond Annual Returns	$1,087,640,606.65	$1,262,098,159.96	16.04%	$174,457,553.31
FY2011-2012	Actual Market Value	$1,058,250,000.00	$1,000,133,000.00	-5.49%	-$58,117,000.00
	Treasury Bond Annual Returns	$1,262,098,158.96	$1,299,582,474.28	2.97%	$37,484,315.32
FY2012-2013	Actual Market Value	$1,000,133,000.00	$1,061,639,000.00	6.15%	$61,506,000.00
	Treasury Bond Annual Returns	$1,299,582,474.28	$1,181,320,469.12	-9.10%	-$118,262,005.16
FY2013-2014	Actual Market Value	$1,061,639,000.00	$1,148,026,000.00	8.14%	$86,387,000.00
	Treasury Bond Annual Returns	$1,181,320,469.12	$1,308,312,419.55	10.75%	$126,991,950.43
FY2008-2013 Differential	Actual Market Value	$1,253,673,000.00	$1,061,639,000.00	-15.32%	-$192,034,000.00
	Treasury Bond Annual Returns	$1,128,266,692.14	$1,181,320,469.12	4.70%	$53,053,776.98
FY2008-2014 Differential	Actual Market Value	$1,253,673,000.00	$1,148,026,000.00	-8.43%	-$105,647,000.00
	Treasury Bond Annual Returns	$1,128,266,692.14	$1,308,312,419.55	15.96%	$180,045,727.41
FY2004-2014 Differential	Actual Market Value	$812,698,000.00	$1,148,026,000.00	41.26%	$335,328,000.00
	Treasury Bond Annual Returns	$812,698,000.00	$1,308,312,419.55	60.98%	$495,614,419.55

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 10: Tulane University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$692,665,000.00	$780,200,000.00	12.64%	$87,535,000.00
	Treasury Bond Annual Returns	$692,665,000.00	$712,544,485.50	2.87%	$19,879,485.50
FY2005-2006	Actual Market Value	$780,200,000.00	$858,323,000.00	10.01%	$78,123,000.00
	Treasury Bond Annual Returns	$712,544,485.50	$726,510,357.42	1.96%	$13,965,871.92
FY2006-2007	Actual Market Value	$858,323,000.00	$1,009,129,000.00	17.57%	$150,806,000.00
	Treasury Bond Annual Returns	$726,510,357.42	$800,687,064.91	10.21%	$74,176,707.49
FY2007-2008	Actual Market Value	$1,009,129,000.00	$1,052,881,000.00	4.34%	$43,752,000.00
	Treasury Bond Annual Returns	$800,687,064.91	$961,625,164.96	20.10%	$160,938,100.05
FY2008-2009	Actual Market Value	$1,052,881,000.00	$807,859,000.00	-23.27%	-$245,022,000.00
	Treasury Bond Annual Returns	$961,625,164.96	$854,692,446.62	-11.12%	-$106,932,718.34
FY2009-2010	Actual Market Value	$807,859,000.00	$888,667,000.00	10.00%	$80,808,000.00
	Treasury Bond Annual Returns	$854,692,446.62	$926,999,427.60	8.46%	$72,306,980.98
FY2010-2011	Actual Market Value	$888,667,000.00	$1,014,985,000.00	14.21%	$126,318,000.00
	Treasury Bond Annual Returns	$926,999,427.60	$1,075,690,135.79	16.04%	$148,690,708.19
FY2011-2012	Actual Market Value	$1,014,985,000.00	$960,972,000.00	-5.32%	-$54,013,000.00
	Treasury Bond Annual Returns	$1,075,690,135.79	$1,107,638,132.82	2.97%	$31,947,997.03
FY2012-2013	Actual Market Value	$960,972,000.00	$1,047,813,000.00	9.04%	$86,841,000.00
	Treasury Bond Annual Returns	$1,107,683,132.82	$1,006,883,967.73	-9.10%	-$100,799,165.09
FY2013-2014	Actual Market Value	$1,047,813,000.00	$1,183,924,000.00	12.99%	$136,111,000.00
	Treasury Bond Annual Returns	$1,006,883,967.73	$1,115,123,994.26	10.75%	$108,240,026.53
FY2008-2013 Differential	Actual Market Value	$1,052,881,000.00	$1,047,813,000.00	-0.48%	-$5,068,000.00
	Treasury Bond Annual Returns	$961,625,164.96	$1,006,883,967.73	4.71%	$45,258,802.77
FY2008-2014 Differential	Actual Market Value	$1,052,881,000.00	$1,183,924,000.00	12.45%	$131,043,000.00
	Treasury Bond Annual Returns	$961,625,164.96	$1,115,123,994.26	15.96%	$153,498,829.30
FY2004-2014 Differential	Actual Market Value	$692,665,000.00	$1,183,924,000.00	70.92%	$491,259,000.00
	Treasury Bond Annual Returns	$692,665,000.00	$1,115,123,994.26	60.99%	$422,458,994.26

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 11: Oberlin College Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$593,742,000.00	$704,329,000.00	18.63%	$110,587,000.00
	Treasury Bond Annual Returns	$593,742,000.00	$610,782,395.40	2.87%	$17,040,395.40
FY2005-2006	Actual Market Value	$704,329,000.00	$697,851,000.00	-0.92%	-$6,478,000.00
	Treasury Bond Annual Returns	$610,782,395.40	$622,753,730.35	1.96%	$11,971,334.95
FY2006-2007	Actual Market Value	$697,851,000.00	$816,135,000.00	16.95%	$118,284,000.00
	Treasury Bond Annual Returns	$622,753,730.35	$686,336,886.22	10.21%	$63,583,155.87
FY2007-2008	Actual Market Value	$816,135,000.00	$760,736,000.00	-6.79%	-$55,399,000.00
	Treasury Bond Annual Returns	$686,336,886.22	$824,290,600.35	20.10%	$137,953,714.13
FY2008-2009	Actual Market Value	$760,736,000.00	$550,263,000.00	-27.67%	-$210,473,000.00
	Treasury Bond Annual Returns	$824,290,600.35	$732,629,485.59	-11.12%	-$91,661,114.76
FY2009-2010	Actual Market Value	$550,263,000.00	$618,104,000.00	12.33%	$67,841,000.00
	Treasury Bond Annual Returns	$732,629,485.59	$794,609,940.07	8.46%	$61,980,454.48
FY2010-2011	Actual Market Value	$618,104,000.00	$699,895,000.00	13.23%	$81,791,000.00
	Treasury Bond Annual Returns	$794,609,940.07	$922,065,374.46	16.04%	$127,455,434.39
FY2011-2012	Actual Market Value	$699,895,000.00	$674,587,000.00	-3.62%	-$25,308,000.00
	Treasury Bond Annual Returns	$922,065,374.46	$949,450,716.08	2.97%	$27,385,341.62
FY2012-2013	Actual Market Value	$674,587,000.00	$727,683,000.00	7.87%	$53,096,000.00
	Treasury Bond Annual Returns	$949,450,716.08	$863,050,700.92	-9.10%	-$86,400,015.16
FY2013-2014	Actual Market Value	$727,683,000.00	$816,107,000.00	12.15%	$88,424,000.00
	Treasury Bond Annual Returns	$863,050,700.92	$955,828,651.27	10.75%	$92,777,950.35
FY2008-2013 Differential	Actual Market Value	$760,736,000.00	$727,683,000.00	-4.34%	-$33,053,000.00
	Treasury Bond Annual Returns	$824,290,600.35	$863,050,700.92	4.70%	$38,760,100.57
FY2008-2014 Differential	Actual Market Value	$760,736,000.00	$816,107,000.00	7.28%	$55,371,000.00
	Treasury Bond Annual Returns	$824,290,600.35	$955,828,651.27	15.96%	$131,538,050.92
FY2004-2014 Differential	Actual Market Value	$593,742,000.00	$816,107,000.00	37.45%	$222,365,000.00
	Treasury Bond Annual Returns	$593,742,000.00	$955,828,651.27	60.98%	$362,086,651.27

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.

Table 12: Northeastern University Endowment Fund Actual Market Value* vs. Ten-Year Treasury Bond Annual Returns**

Fiscal Year	Annual Returns	Beginning Value	Ending Value	% Differential	Raw Dollar Differential
FY2004-2005	Actual Market Value	$498,481,000.00	$543,174,000.00	8.97%	$44,693,000.00
	Treasury Bond Annual Returns	$498,481,000.00	$512,787,404.70	2.87%	$14,306,404.70
FY2005-2006	Actual Market Value	$543,174,000.00	$595,859,000.00	9.70%	$52,685,000.00
	Treasury Bond Annual Returns	$512,787,404.70	$522,838,037.83	1.96%	$10,050,633.13
FY2006-2007	Actual Market Value	$595,859,000.00	$679,926,000.00	14.11%	$84,067,000.00
	Treasury Bond Annual Returns	$522,838,037.83	$576,219,801.49	10.21%	$53,381,763.66
FY2007-2008	Actual Market Value	$679,926,000.00	$657,866,000.00	-3.24%	-$22,060,000.00
	Treasury Bond Annual Returns	$576,219,801.49	$692,039,981.59	20.10%	$115,820,180.10
FY2008-2009	Actual Market Value	$657,866,000.00	$486,870,000.00	-25.99%	-$170,996,000.00
	Treasury Bond Annual Returns	$692,039,981.59	$615,085,135.64	-11.12%	-$76,954,845.95
FY2009-2010	Actual Market Value	$486,870,000.00	$508,689,000.00	4.48%	$21,819,000.00
	Treasury Bond Annual Returns	$615,085,135.64	$667,121,338.12	8.46%	$52,036,202.48
FY2010-2011	Actual Market Value	$508,689,000.00	$588,400,000.00	15.67%	$79,711,000.00
	Treasury Bond Annual Returns	$667,121,338.12	$774,127,600.75	16.04%	$107,006,262.63
FY2011-2012	Actual Market Value	$588,400,000.00	$566,767,000.00	-3.68%	-$21,633,000.00
	Treasury Bond Annual Returns	$774,127,600.75	$797,119,190.49	2.97%	$22,991,589.74
FY2012-2013	Actual Market Value	$566,767,000.00	$616,618,000.00	8.80%	$49,851,000.00
	Treasury Bond Annual Returns	$797,119,190.49	$724,581,344.16	-9.10%	-$72,537,846.33
FY2013-2014	Actual Market Value	$616,618,000.00	$713,200,000.00	15.66%	$96,582,000.00
	Treasury Bond Annual Returns	$724,581,344.16	$802,473,838.66	10.75%	$77,892,494.50
FY2008-2013 Differential	Actual Market Value	$657,866,000.00	$616,618,000.00	-6.27%	-$41,248,000.00
	Treasury Bond Annual Returns	$692,039,981.59	$724,581,344.16	4.70%	$32,541,362.57
FY2008-2014 Differential	Actual Market Value	$657,866,000.00	$713,200,000.00	8.41%	$55,334,000.00
	Treasury Bond Annual Returns	$692,039,981.59	$802,473,838.66	15.96%	$110,433,857.07
FY2004-2014 Differential	Actual Market Value	$498,481,000.00	$713,200,000.00	43.07%	$214,719,000.00
	Treasury Bond Annual Returns	$498,481,000.00	$802,473,838.66	60.98%	$303,992,838.66

*Data from the NACUBO-Commonfund Study of Endowments (2004-2014).

** Data from New York University Stern School of Business, *Historical Returns on Stocks, Bonds and Bills*, available at http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histretSP.html.