

HARVARD CLIMATE JUSTICE COALITION,  
ALICE M. CHERRY,  
BENJAMIN A. FRANTA,  
SIDNI M. FREDERICK,  
JOSEPH E. HAMILTON,  
OLIVIA M. KIVEL,  
TALIA K. ROTHSTEIN,  
KELSEY C. SKAGGS,  
and FUTURE GENERATIONS,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE (“HARVARD CORPORATION”),  
HARVARD MANAGEMENT COMPANY, INC.,  
and MARTHA M. COAKLEY as she is Attorney General of the Commonwealth of  
Massachusetts,

Defendants.

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## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

### THE PARTIES

1. Plaintiff Harvard Climate Justice Coalition is an unincorporated association with its principal place of business in Cambridge, Middlesex, Massachusetts. Its members educate the Harvard community about the facts of climate change and advocate for environmental and climate justice by calling upon institutional investors to withdraw financial support from companies whose primary business activities involve the extraction and sale of prehistoric, or non-renewable, carbon-based fuels (“fossil fuel companies”).
2. Plaintiff Harvard Climate Justice Coalition also brings this suit as next friend of Plaintiffs Future Generations, individuals not yet born or too young to assert their rights but whose future health, safety, and welfare depends on current efforts to slow the pace of climate change.

3. Plaintiff Alice M. Cherry is a student enrolled at Harvard Law School and a resident of Cambridge, Middlesex, Massachusetts. She is a member of Harvard Climate Justice Coalition. She studies environmental law and plans to become an environmental lawyer in order to protect valuable natural resources and human health.
4. Plaintiff Benjamin A. Franta is a graduate student enrolled at the Harvard School of Engineering and Applied Sciences and a resident of Cambridge, Middlesex, Massachusetts. He is a member of Harvard Climate Justice Coalition. He studies applied physics and plans to help develop the next generation of solar cells to move our economy away from fossil fuels.
5. Plaintiff Sidni M. Frederick is a student enrolled at Harvard College and a resident of Cambridge, Middlesex, Massachusetts. She is a member of Harvard Climate Justice Coalition. She studies history and literature and plans to work in the renewable energy industry.
6. Plaintiff Joseph E. Hamilton is a student enrolled at Harvard Law School and a resident of Cambridge, Middlesex, Massachusetts. He is a member of Harvard Climate Justice Coalition. He studies environmental law and plans to become a defense lawyer for environmentalists advocating for action on climate change.
7. Plaintiff Olivia M. Kivel is a student enrolled at Harvard College and a resident of Cambridge, Middlesex, Massachusetts. She is a member of Harvard Climate Justice Coalition. She studies organismic and evolutionary biology and plans to become an organic farmer to move our economy away from fossil fuel-intensive agricultural practices.
8. Plaintiff Talia K. Rothstein is a student enrolled at Harvard College and a resident of Cambridge, Middlesex, Massachusetts. She is a member of Harvard Climate Justice Coalition. She studies history and literature and plans to become a journalist and organizer building public support for action on climate change.
9. Plaintiff Kelsey C. Skaggs is a student enrolled at Harvard Law School and a resident of Cambridge, Middlesex, Massachusetts. She is a member of Harvard Climate Justice Coalition. She studies environmental law and plans to become an environmental lawyer in order to protect valuable natural resources and human health.
10. Defendant Harvard Corporation is a nonprofit corporation and public charity chartered and organized under the laws of the Commonwealth of Massachusetts, M.G.L.A. 180 § 4 and 12 § 8, and overseeing Harvard University's endowment, with its principal place of business at Massachusetts Hall, Cambridge, Middlesex, Massachusetts 02138.
11. Defendant Harvard Management Company, Inc. is a nonprofit corporation and public charity organized under the laws of the Commonwealth of Massachusetts, M.G.L.A. 180 § 4 and 12 § 8, with its principal place of business at 600 Atlantic Avenue, Boston, Suffolk, Massachusetts 02210. Defendant Harvard Management Company provides

financial management services to Defendant Harvard Corporation, including oversight related to the investment of Defendant Harvard Corporation's endowment.

12. Defendants may be sued in tort in the Commonwealth of Massachusetts when the torts committed were in the course of an activity carried out to accomplish the charitable purposes of Defendants Harvard Corporation and Harvard Management Company, Inc. M.G.L.A. 231 § 85K.
13. Plaintiffs name the Attorney General as a party pursuant to M.G.L.A. 12 §§ 8 and 8G, which vest supervisory powers over charitable corporations in the Attorney General and which require that she be named a party to actions involving charitable corporations.

#### JURISDICTION AND VENUE

14. This court has jurisdiction over this matter pursuant to M.G.L.A. 212 § 4 and 214 § 1. All parties currently reside in the Commonwealth of Massachusetts.
15. Venue is proper under M.G.L.A. 223 § 1. Defendants Harvard Management Corporation and Martha M. Coakley have their primary places of business in Suffolk County.

#### STATEMENT OF FACTS

16. The burning of fossil fuels results in the emission of greenhouse gases that become trapped in the atmosphere. As these gases accumulate, they prevent heat from radiating back into outer space and lead to increased average temperatures on the surface of the Earth. *See Exhibit A.*
17. This increase in global average surface temperature and its concomitant effects are colloquially known as "climate change."
18. The effects of climate change include changes in the amount of precipitation, increased frequency and intensity of extreme weather events such as storms, drought, and flooding, and disruption of ecosystems, biological resources useful for humans, and agriculture. *See Exhibit B at 13-16.*
19. Many of the physical changes to the Earth's ecosystems caused by climate change, including the extinction of plant and animal species, the melting of the polar ice caps, ocean acidification, sea level rise, and changing climate zones, are irreversible on a human timescale. *See Exhibit B at 16.*
20. The deleterious geopolitical, economic, and social consequences of climate change are increasingly well documented. Climate change will decrease food security, increase displacement of people, and increase the risk of violent conflict. *See Exhibit B at 14-16.* These impacts are, in fact, already occurring: For instance, it is well documented that climate change helped create the conditions that contributed to political instability and violence linked to the Arab Spring. *See Exhibit C.*

21. Carbon dioxide is the primary greenhouse gas contributing to climate change and persists in the atmosphere for hundreds to thousands of years. *See* Exhibit B at 4 and D at 1.
22. Pre-industrial levels of atmospheric carbon dioxide were approximately 280 parts per million. *See* Exhibit B at 3.
23. Current atmospheric carbon dioxide levels are elevated compared to pre-industrial levels due to human activity, predominantly the burning of fossil fuels. Current atmospheric carbon dioxide levels are approximately 400 parts per million and are associated with observable changes in the earth's climate that harm human welfare. As carbon dioxide concentrations continue to rise, further changes in the earth's climate are expected to occur, along with harms to human welfare, and the risks of encountering tipping points increase. Such tipping points would make climate change more difficult to control with severe consequences for human societies. *See* Exhibits B at 3 and 79 and E at 3.
24. According to the United States Environmental Protection Agency, "[t]he evidence points ineluctably to the conclusion that climate change is upon us as a result of greenhouse gas emissions, that climatic changes are already occurring that harm our health and welfare, and that the effects will only worsen over time in the absence of regulatory action." *See* Exhibit F at 18,904.
25. Therefore, emissions of carbon dioxide and other greenhouse gases endanger the health, safety, and welfare of current and future generations.
26. International negotiators have agreed that the maximum "safe" amount of rise in global average surface temperature resulting from climate change is two degrees Celsius above the pre-industrial average. *See* Exhibit G at 50.
27. Fossil fuel companies' exploration and development activities have already resulted in global fossil fuel reserves greater than the amount that would likely result in an increase of two degrees Celsius. *See* Exhibit B at 66 and 68.
28. Burning of fossil fuels could result in more than four degrees Celsius of warming in this century, with additional warming thereafter, if current trajectories continue unabated. This amount of warming would have catastrophic consequences. *See* Exhibit B at 67.
29. The Charter of the Harvard Corporation ("Charter"), written in 1650 and subsequently amended, vests responsibility in the "President and Fellows" for furthering the goals specified therein, which include, *inter alia*, "the advancement and education of youth" and the maintenance of the University's physical campus. *See* Exhibit H.
30. The Constitution of the Commonwealth of Massachusetts recognizes a unique public interest in the mission and governance of Harvard University by vesting authority in the legislature to "mak[e] such alterations in the government of the said university, as shall be conducive to its advantage and the interest of the republic of letters," Mass. Const. pt. 2, ch. 5, § 1, art. III, and by establishing a duty of "legislatures and magistrates" to ensure the charitable operation of schools, especially Harvard, Mass. Const. pt. 2, ch. 5, § 2. The charitable operation of schools requires acting in the public interest, furthering the

education and welfare of students, and refraining from actions known to cause harm to the public and students. *See* Exhibit I.

31. Defendant Harvard Corporation has recognized its obligation as an economic and intellectual leader to respond to climate change. Defendant Harvard Corporation has stated that this leadership extends to its investments, acknowledging the causal connection between its investments and the harms caused by climate change. *See* Exhibit J.
32. As of November 14, 2014, the Harvard University endowment contained direct holdings in publicly-traded fossil fuel companies worth at least \$79 million and, upon information and belief, additional indirect holdings worth an unknown amount. *See* Exhibit K.
33. Upon information and belief, Defendants' investments help finance fossil fuel companies' business activities, which include exploration, development, transportation, and the promotion of scientific falsehoods. These activities create greenhouse gas emissions, among other environmental and social harms, and perpetuate worldwide dependence on the burning of fossil fuels for energy.
34. According to research produced at Harvard University, large portions of the Harvard campus in Cambridge and Allston are at risk of severe physical damage as a result of sea level rise and intensified storms caused by climate change. Under optimistic scenarios, much of the area of the campus bordering the Charles River will be flooded every two to three years by 2050. *See* Exhibit L at 231-35.
35. There is still time to avert the most catastrophic effects of climate change. *See* Exhibit B at 18.
36. The divestment of assets from companies whose activities run counter to the mission of nonprofit and educational institutions has long been recognized as an effective tool for changing such companies' behavior. Divestment from companies doing business in apartheid South Africa and from companies selling tobacco products was crucial in building public opposition to such companies' activities. *See* Exhibit M at 9-15.
37. Defendants Harvard Corporation and Harvard Management Company have previously divested from companies whose activities ran counter to the University's educational mission, recognizing the power of divestment and their obligation to conduct their investment practices in accordance with their duties as nonprofit institutions. *See* Exhibit N.
38. An increasing number of prominent political and business leaders, as well as shareholders, argue that investment in fossil fuel companies is financially shortsighted and inconsistent with sustainable development goals. *See* Exhibits O, P, and Q.
39. A broad array of Harvard alumni and faculty, as well as influential political leaders and scientists, have called upon Defendant Harvard Corporation to withdraw its investments in fossil fuel companies, citing Defendant Harvard Corporation's duties as an educational

nonprofit and its ability to mitigate the harms caused by climate change by changing its investments. *See* Exhibits R and S.

40. An increasing number of public and private institutions and funds, including 13 American universities, 27 American cities and towns, religious institutions including the World Council of Churches, and many others have committed to withdrawing or have already withdrawn their investments in fossil fuel companies. *See* Exhibit T.

## STATEMENT OF CLAIMS

### COUNT I

#### Mismanagement of Charitable Funds

41. Plaintiffs reassert and reallege paragraphs 1-40 of this Complaint and incorporate them herein by reference.
42. Defendant Harvard Corporation, as a nonprofit corporation organized for educational purposes under M.G.L.A. 180 § 4 and as a public charity bound by the purposes enumerated in its Charter, has a duty to promote “the advancement and education of youth” and to maintain its physical campus for the wellbeing of its students. *See* Exhibit H.
43. Defendant Harvard Corporation, as a nonprofit corporation organized for educational purposes under M.G.L.A. 180 § 4, as a public charity bound by the purposes enumerated in its Charter, and as affirmed by President Drew Faust, has “a special obligation and accountability to the future, to the long view needed to anticipate and alter the trajectory and impact of climate change.” *See* Exhibits H and J.
44. Defendant Harvard Corporation is bound to the due application of funds given in trust to further its charitable purposes, M.G.L.A. 12 § 8, including its “special obligation and accountability to the future, to the long view needed to anticipate and alter the trajectory and impact of climate change.” *See* Exhibit J.
45. Defendant Harvard Corporation’s investments are an integral part of the due application of its charitable funds, and Defendant Harvard Corporation is bound to consider each of its “asset’s special relationship or special value, if any, to the charitable purposes of the institution,” M.G.L.A. 180A § 2 (e)(2)(viii).
46. Defendant Harvard Corporation’s investment in fossil fuel companies is a breach of its fiduciary and charitable duties as a public charity and nonprofit corporation to uphold the purposes as described in paragraphs 29-31 above, including its “special obligation and accountability to the future, to the long view needed to anticipate and alter the trajectory and impact of climate change,” because such investments contribute to climate change, the degradation of biological resources, damage to public enjoyment of nature, harm to

the public's prospects for a secure and healthy future, and the efforts of industry to impede any attempts to alter the trajectory and impact of climate change.

47. Defendant Harvard Corporation's investment in fossil fuel companies is a breach of its fiduciary and charitable duties as a public charity and nonprofit corporation to uphold the purposes as described in paragraphs 29-31 above, including its "special obligation and accountability to the future, to the long view needed to anticipate and alter the trajectory and impact of climate change," because such investments contribute to current and future damage to the University's reputation and to that of its students and graduates, to the ability of students to study and thrive free from the threat of catastrophic climate change, and to future damage to the university's physical campus as a result of sea level rise and increased storm activity.
48. Massachusetts permits individuals with a special interest in a charitable organization to bring claims to enforce the lawful management of charitable funds when such an interest is "personal, specific, and exist[s] apart from any broader community interest." *See* Exhibit U at \*245.
49. Plaintiff Harvard Climate Justice Coalition and Individual Plaintiffs have a special interest in the management of Defendant Harvard Corporation's charitable funds, to the extent that the investment of such funds directly affects "the advancement and education of youth" and the maintenance of the university's physical campus.
50. A. As to Plaintiff Harvard Climate Justice Coalition, this interest is personal because such investment may support or impede Plaintiff Harvard Climate Justice Coalition's mission to educate the Harvard community on the facts of climate change. This mission is protected by Defendant Harvard Corporation's duty to promote "the advancement of all good literature, arts, and sciences in Harvard College," as articulated in its Charter. *See* Exhibit H.  
 B. This interest is specific because it exists only when such investment demonstrably supports or impedes Plaintiff Harvard Climate Justice Coalition's mission to educate the Harvard community on the facts of climate change and to promote a safe transition to a healthy and secure energy future.  
 C. This interest exists apart from any broader community interest because Plaintiff Harvard Climate Justice Coalition's membership is composed exclusively of Harvard University students and its mission is restricted to the discussion of climate change within Harvard University.
51. A. As to Plaintiffs Alice M. Cherry, Benjamin A. Franta, Sidni M. Frederick, Joseph E. Hamilton, Olivia M. Kivel, Talia K. Rothstein, and Kelsey C. Skaggs, this interest is personal because these Plaintiffs, as members of the "youth" named in the Charter of Harvard College, as students of Harvard University, and as future Harvard graduates, are and will be especially affected by the University's current and long-term reputational and physical health.

B. This interest is specific because the interest exists only when such investment demonstrably affects these Plaintiffs' work, enjoyment, and opportunities as students and graduates of Harvard University.

C. This interest exists apart from any broader community interest because, as Harvard University students, these Plaintiffs do and will reap particular academic, economic, and quality-of-life benefits when such investment is conducted in accordance with Defendant Harvard Corporation's fiduciary and charitable duties.

52. Defendant Harvard Corporation's investment in fossil fuel companies causes direct and particularized harms to Plaintiff Harvard Climate Justice Coalition and Individual Plaintiffs that are distinct from those suffered by the public.
53. Plaintiff Harvard Climate Justice Coalition and Individual Plaintiffs are harmed by the management of Defendant Harvard Corporation's charitable funds, to the extent that the investment of such funds directly affects "the advancement and education of youth" and the maintenance of the university's physical campus.
54. Plaintiff Harvard Climate Justice Coalition is harmed because investment in fossil fuel companies directly supports climate change denial, which interferes with Plaintiff Harvard Climate Justice Coalition's mission to educate students on the facts of climate change and to promote a safe transition to a healthy and secure energy future. *See* Exhibits V and W.
55. Plaintiffs Alice M. Cherry, Benjamin A. Franta, Sidni M. Frederick, Joseph E. Hamilton, Olivia M. Kivel, Talia K. Rothstein, and Kelsey C. Skaggs' enjoyment of Harvard University's academic resources and scholarly environment is damaged by Defendant Harvard Corporation's support of fossil fuel companies, which has a chilling effect on academic freedom and the willingness of faculty, students, and administrators to publicly confront climate change. These Plaintiffs are unable to enjoy the full benefits of their study of environmental law because Defendant Harvard Corporation's support of fossil fuel companies impedes their ability to associate with like-minded colleagues and to avail themselves of the open scholarly environment that Defendant Harvard Corporation has a duty to maintain.
56. Plaintiffs Alice M. Cherry, Benjamin A. Franta, Sidni M. Frederick, Joseph E. Hamilton, Olivia M. Kivel, Talia K. Rothstein, and Kelsey C. Skaggs' future enjoyment of the University's physical campus will be greatly lessened by damage to that campus caused by sea level rise and increased storm activity resulting from climate change.
57. Plaintiffs Alice M. Cherry and Kelsey C. Skaggs' study of environmental law and their preparation for careers as environmental lawyers are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into legal remedies for climate change and stymies efforts to use the law to address climate change. Defendant Harvard Corporation's financial support of this



influence contributes to the diminishment of Plaintiffs Alice M. Cherry and Kelsey C. Skaggs' education.

58. Plaintiff Benjamin A. Franta's study of renewable energy technology and his preparation for a career as a renewable energy scientist are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into scientific remedies for climate change and stymies efforts to make a transition to a clean energy economy. Defendant Harvard Corporation's financial support of this influence contributes to the diminishment of Plaintiff Benjamin A. Franta's education.
59. Plaintiff Sidni M. Frederick's study of history and literature and her preparation for a career in renewable energy are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into scientific remedies for climate change and stymies efforts to make a transition to a clean energy economy. Defendant Harvard Corporation's financial support of this influence contributes to the diminishment of Plaintiff Sidni M. Frederick's education.
60. Plaintiff Joseph E. Hamilton's study of environmental law and his preparation for a career as a defense lawyer for environmental activists are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into legal remedies for climate change and stymies efforts to use the law to address climate change. Defendant Harvard Corporation's financial support of this influence contributes to the diminishment of Plaintiff Joseph E. Hamilton's education.
61. Plaintiff Olivia M. Kivel's study of organismic and evolutionary biology and her preparation for a career as an organic farmer are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into low-carbon farming and stymies efforts to make a transition to energy-safe agriculture. Defendant Harvard Corporation's financial support of this influence contributes to the diminishment of Plaintiff Olivia M. Kivel's education.
62. Plaintiff Talia K. Rothstein's study of history and literature and her preparation for a career as a journalist and organizer building support for action on climate change are impeded by fossil fuel companies' promotion of scientific falsehoods, which Defendant Harvard Corporation funds and enables. Fossil fuel companies' undue and deleterious influence distorts academic research into solutions to climate change and stymies efforts to build popular support to address climate change. Defendant Harvard Corporation's financial support of this influence contributes to the diminishment of Plaintiff Talia K. Rothstein's education.

COUNT II

Intentional Investment in Abnormally Dangerous Activities

63. Plaintiffs reassert and reallege paragraphs 1-62 of this Complaint and incorporate them herein by reference.
64. Defendant Harvard Corporation currently invests at least \$79 million in fossil fuel companies, as alleged in Paragraph 32.
65. Defendant Harvard Management Company provides services to facilitate those investments, as alleged in Paragraph 11.
66. Fossil fuel companies' business activities are abnormally dangerous because they inevitably contribute to climate change, causing serious harm to Plaintiffs Future Generations' persons and property, as alleged in paragraphs 16-28 above; because this harm outweighs the value of fossil fuel companies' business activities by threatening the future habitability of the planet, as alleged in paragraphs 16-28 above; and because this harm is appreciably more serious and more irreparable than that created by comparable industries, making fossil fuel companies' business activities not a matter of common usage.
67. No amount of reasonable care by fossil fuel companies can substantially reduce the risk of such harm because doing so would require either curtailment of fossil fuel companies' own business activities or mitigation efforts by other parties that would likely lower demand for fossil fuel companies' products.
68. Defendants know with substantial certainty, or should know with substantial certainty, that Defendant Harvard Corporation's investments fund fossil fuel companies' business activities and that those activities harm Plaintiffs Future Generations by contributing to climate change. Past action and statements by Defendant Harvard Corporation demonstrate its knowledge that its investments have environmental and social consequences, including climate impacts; that fossil fuel companies' business activities are significant contributors to climate change; and that climate change "poses a serious threat to our future." See Exhibits J, X, and Y. Additionally, the role of fossil fuel companies' business activities in perpetuating climate change and its attendant harms is widely understood, particularly among institutions of higher education.
69. Upon information and belief, Defendants' investments influence the decisions of other institutional investors because Defendants are leaders among institutions of higher education. Any withdrawal of Defendant Harvard Corporation's investments therefore would likely inspire action elsewhere.
70. By contributing directly and indirectly to Plaintiff Future Generations' harm, Defendants' investments make an appreciable difference to the magnitude of that harm, and any withdrawal of such investments would likely mitigate it.

71. Plaintiffs Harvard Climate Justice Coalition and Individual Plaintiffs assert Plaintiffs Future Generations’ rights on their behalf because Plaintiffs Future Generations are unable to appear before the court.
72. Plaintiffs Harvard Climate Justice Coalition and Individual Plaintiffs also assert Plaintiffs Future Generations’ rights in recognition of the values enshrined in the Preamble of the Massachusetts Constitution, which aspires to create a “solemn compact with each other . . . for ourselves and posterity.”
73. Plaintiffs Harvard Climate Justice Coalition and Individual Plaintiffs also assert Plaintiffs Future Generations’ rights in recognition of the values enshrined in the Preamble of the United States Constitution, which declares a shared interest in “promot[ing] the general welfare . . .and secur[ing] the Blessings of Liberty to ourselves and our Posterity.”

#### PRAYER FOR RELIEF

74. WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:
- A. An injunction ordering Defendants to immediately withdraw Defendant Harvard Corporation’s direct holdings in fossil fuel companies;
  - B. An injunction ordering Defendants to take immediate steps to begin withdrawing indirect holdings and to complete withdrawal within a reasonable period of time to be determined by the court;
  - C. A declaration that Defendant Harvard Corporation is in breach of the obligations contained in its Charter; and
  - D. Such other relief as this court deems just.

Dated this 19th day of November, 2014.

Alice M. Cherry
Benjamin A. Franta
Sidni M. Frederick
Joseph E. Hamilton
Olivia M. Kivel
Talia K. Rothstein
Kelsey C. Skaggs

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