COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT
2015-P-0905

HARVARD CLIMATE JUSTICE COALITION and others

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE ("HARVARD CORPORATION") and others

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Appeal of the Suffolk County Superior Court's Order Granting Defendants-Respondents' Motion to Dismiss

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BRIEF OF THE ANIMAL LEGAL DEFENSE FUND AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS HARVARD CLIMATE JUSTICE COALITION AND OTHERS

Pursuant to Massachusetts Rules of Appellate Procedure Rule 17, the Animal Legal Defense Fund (ALDF) respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of Plaintiffs-Appellants Harvard Climate Justice Coalition's appeal of the Suffolk County Superior Court's order granting the motion to dismiss. The proposed brief is filed conditionally with this Motion.

ALDF and its undersigned counsel are the sole authors of the attached *amicus curiae* brief. No person or entity other than ALDF, its members, or its counsel made a monetary contribution to fund the preparation or submission of the amicus curiae brief. Neither does ALDF or its undersigned counsel represent the Plaintiffs in this or in any other matter.

ALDF has a significant interest in this matter. The central issue in this appeal is whether the Attorney General is appropriately the sole entity empowered to enforce Harvard's charitable mandate with respect to the imminent and irreparable harm that climate change represents, and whether limiting such

enforcement to the Attorney General does or does not create a viable remedy to the injury that Plaintiffs suffer. This case therefore raises important issues relating to a litigant's access, or lack of access, to the judicial system in the face of a substantial and irreparable injustice, both on the litigant's own behalf and on behalf of parties who cannot raise the issues themselves.

As a legal organization devoted to protecting the lives and advancing the interests of animals, ALDF believes it can assist in the Court's understanding and determination of these issues. Founded in 1979, ALDF is a national non-profit organization of attorneys and supporting members that specializes in the just treatment of animals under the law. ALDF's experience across four decades reveals that animals represent an especially vulnerable group for whom too few legal and regulatory protections exist and who lack both standing and the political power to advocate on their own behalf. ALDF has likewise conducted substantial work at the intersection of environmental and animal concerns, including the ways in which climate change impacts animals and the ways in which animals impact climate change. Based on its unique

perspective and extensive experience with climate change issues and with issues arising from traditionally narrow views of standing that affect the ability of the most vulnerable and least represented groups to obtain a remedy in court, ALDF's input is highly relevant to this appeal.

Finally, ALDF's expertise in the area of climate change impacts as well as the effects of narrow approaches to standing is unique. ALDF will offer a perspective different from the Coalition's that will prove helpful to the Court as it decides whether members of a charitable trust have standing to enforce a charitable mandate on their own behalf and on behalf of those future generations whom climate change will undoubtedly and significantly impact. That ALDF is itself a charity advocating for the private enforcement of charitable mandates distinguishes its contribution from that of the Plaintiffs, who are not themselves a charity but are instead students who enjoy the benefits of an educational charity.

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For all of the foregoing reasons, ALDF respectfully requests leave to file the attached *amicus curiae* brief in support of Plaintiffs' appeal.

DATE: October 5, 2015 Respectfully submitted,

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I. Summary of the Argument

The questions presented in this case are of exceptional national importance and of great interest to this amicus curiae. The lower court held that students lack standing to challenge their university's investment practices that harm them personally and further exacerbate climate change. In addition, that court failed to recognize standing for future generations who are impacted by the fossil fuel investment decisions of institutions today. Such a ruling disregards Harvard's obligation to protect resources for present and future generations, which is especially alarming given the rapid rate of climate change, sea level rise, and proliferation of droughts and flooding events.

As a charity holding a position similar to that of the defendant in this suit, the Animal Legal Defense Fund (ALDF), for obvious reasons, is not interested in opening the floodgates to waves of lawsuits over enforcement of charitable mandates. However, given the exceptional harms of catastrophic and irreversible climate change, ALDF recognizes that this case presents extraordinary circumstances that warrant extending standing to constituents of the

charity who have been harmed by its activities. In the limited circumstances where the harms at issue are extraordinary and irreversible, and where the usual enforcement procedures are inadequate or unavailable to redress the harm, it is proper for the Court to recognize citizen standing to enforce charitable mandates.

Recognizing standing for future generations is consistent with the principles of Article III, and the impending peril of climate change compels it. Burning fossil fuels today directly constrains the resources available tomorrow, greatly affecting the quality of life of future generations. Because future generations lack legislative representation, it is imperative for the Court to intervene to recognize and to permit plaintiffs to assert their interests.

II. Climate Change Causes Imminent and Irreparable Harm to Society and Future Generations.

The Supreme Court has acknowledged that "[t]he harms associated with climate change are serious and well recognized." Massachusetts v. EPA, 549 U.S. 497, 518, 521 (2007). The Court also noted in that case that objective reports have identified "a number of environmental changes that have already inflicted

significant harms," including glacial retreat, reduction in snow-pack, earlier ice-melt, and more rapid sea-level rise. Id.

Climate change presents a paradoxically subtle yet deadly threat to humanity as a whole, biomes and ecosystems, and wildlife across the globe. While its damaging effects are already beginning to be seen, the largest burden will be borne by future generations. Among the many irreparable harms they will suffer due to climate change are the loss of ecosystems and their valuable functions, the loss of species and biodiversity, and the general economic losses that will inevitably result from climate change, such as the failure of crops and loss of farm land.

These harms are irreparable by their very nature. The species being lost cannot be brought back, and we cannot restore previous climate and environmental conditions within a relevant time frame. See Pachauri et al., Intergovernmental Panel on Climate Change (IPCC), Climate Change 2014: Synthesis Report 16. Furthermore, the long time horizons of various ecological processes ensure that the effects of climate change will continue for hundreds to thousands of years even after the global average surface

temperature stabilizes. Id. What follows is a discussion of the immense value of ecosystem function and species biodiversity, and an enumeration of the ways in which climate change and the activities that cause it pose an actual threat of irreparable harm to future generations.

A. Climate Change Causes Incalculable Financial Harm by Devastating Ecosystems and Biodiversity.

If we continue along our current trajectory, more than one-third of the animal and plant species on Earth may face extinction by 2050, with that number rising to seventy percent by 2100. Center for Biological Diversity, Global Warming and Life on Earth, at http://www.biologicaldiversity.org/programs/climate_law_institute/global_warming_and_life_on_earth/index.html (last visited October 4, 2015). The lost biodiversity and disrupted ecosystems resulting from this would cause humanity severe hardship. Id. The risks associated with species extinction have been well known for years, and were a guiding principle in the creation of the Endangered Species Act (ESA) in the early 1970s. See Tennessee Valley Auth. v. Hill, 437 U.S. 153 (1978). Any given species may have "unknown uses" and an "unforeseeable place . . . in

the chain of life on this planet." Id. at 178-179 (emphasis removed). The ESA's plain language and legislative history "show[] clearly that Congress viewed the value of endangered species as 'incalculable.'" Id. at 187. Congress even gave "endangered species priority over the 'primary missions' of federal agencies." Id. at 185. As Congress recognized over four decades ago, the loss of species and biodiversity constitutes a grave and irreparable harm, the prevention of which is of primary importance.

The value of biodiversity and functioning ecosystems is not to be underestimated. Responding to the need to understand the monetary benefits society receives from functioning ecosystems, some scientists have begun quantifying the value of "ecosystem services," a broad term "represent[ing] the benefits human populations derive, directly or indirectly, from ecosystem functions." Costanza et al., The Value of the World's Ecosystem Services and Natural Capital, 387 Nature 253, 253 (1997).

"Ecosystems provide many goods and services that are crucial to human survival. . . . includ[ing] food, fiber, fuel and energy, fodder, medicines, clean

water, clean air, flood/storm control, pollination, seed dispersal, pest and disease control, soil formation and maintenance, biodiversity, cultural, spiritual, and aesthetic and recreational values." Gitay et al., IPCC, IPCC Technical Paper V: Climate Change and Biodiversity at 3 (Apr. 2002). These services can be particularly essential for "indigenous and rural communities." Id. In 1997, scientists produced a "minimum estimate" of the global value of ecosystems services at 33 trillion dollars, compared to a global gross national product of 18 trillion dollars. Costanza et al., supra at 253. This means that functioning ecosystems are economically worth, conservatively, almost twice as much as the entire global economy. To the extent that our activities inhibit or destroy ecosystem function, we irreparably harm future generations by denying them this value.

Certain vital ecosystem functions have been studied more closely than others, yielding a greater understanding of the value of the benefits they provide. Pollination is one such function. Animal pollination is responsible for the reproduction of a majority of wild plant species, as well as the production of 35% of the world's crops. Klein et al.,

Importance of Pollinators in Changing Landscapes for World Crops, 274 Proc. Royal Soc'y B 303, 303 (2007). In 2010, a study at Cornell found that insect pollinators alone contributed over 29 billion dollars in one year to farm income just in the United States. Calderone, Insect Pollinated Crops, Insect Pollinators and US Agriculture: Trend Analysis of Aggregate Data for the Period 1992-2009, 7 PLOS ONE 1, 1 (2012).

Wetlands, in addition to their easily recognized cultural and recreational value, have much larger but less visible benefits such as disturbance regulation (e.g., storm protection and flood control) and waste treatment. The estimated value of ecosystem services provided by the globe's wetlands is just shy of 5 trillion dollars per year. Constanza et al., supra at 256. Coastal marine ecosystems are estimated to provide over double that value. Id. Estuaries and seagrass/algae beds provide extremely valuable nutrient cycling services, and coral reefs provide tremendous disturbance regulation and recreational services. Id. In total, these coastal marine ecosystems provide an estimated 12.5 trillion dollars per year in ecosystem services. Id.

One of the most direct contributions of ecosystem services to economic productivity, the global value of ecotourism, as measured using data on the number of visits to protected areas and expenditures during these visits, is, conservatively, "$600 billion/y[ear] in direct in-country expenditure and [] $250 billion/y[ear] in consumer surplus." Balmford, Walk on the Wild Side: Estimating the Global Magnitude of Visits to Protected Areas, 13 PLOS Biology 1, 1 (2015). Visits to North America's protected areas alone have an estimated economic impact of 350-550 billion dollars per year. Id. at 4. Given our meager expenditure of less than 10 billion dollars per year to safeguard and manage these protected areas, this represents an enormous profit. Id.

Natural ecosystems and biodiversity have various other values, the details and specific values of which are left largely unexplored here. The D.C. Circuit Court recognized in 1997 that every species has an unmeasured "option value – the value of the possibility that a future discovery will make useful a species that is currently thought of as useless." Nat'l Ass'n of Home Bldrs. v. Babbitt, 130 F.3d 1041, 1053 (D.C. Cir. 1997) (internal quotation marks

omitted). Additionally, in 2000 the 4th Circuit Court of Appeals recognized that some species have economic value related to their status as the subject of scientific research, which both "generates jobs" and "deepens our knowledge of the world in which we live." Gibbs v. Babbitt, 214 F.3d 483, 494 (4th Cir. 2000). Certain industries rely particularly heavily on ecosystem services and functions, and the harm that will befall these industries and the people who rely on and profit from them, will be particularly substantial.

Recent research has revealed that exposure to and interaction with natural settings also provides mental health benefits. This discovery has given rise to the field of environmental psychology. Various studies have shown that "[p]roximity to greenspace [is] associated with lower levels of stress . . . and reduced symptomology for depression and anxiety . . ., while interacting with nature can improve cognition for children with attention deficits . . . and individuals with depression." Pearson & Craig, The Great Outdoors? Exploring the Mental Health Benefits of Natural Environments, 5 Frontiers in Psychol. 1, 1 (2014) (internal citations omitted). One recent study

even showed that "people who move to greener urban areas benefit from sustained improvements in their mental health." Id. (internal citation omitted). Additionally, "[i]n recent years, numerous experimental psychology studies have linked exposure to nature with increased energy and heightened sense of well-being." University of Rochester, Spending Time In Nature Makes People Feel More Alive, http://www.rochester.edu/news/show.php?id=3639 (last visited October 4, 2015). Mental health is clearly of great value, although that value is exceptionally hard to quantify or assign monetary value to.

Normative values and ethical theories likewise enumerate the reasons we are morally obligated to preserve natural ecosystems and biodiversity. As Aldo Leopold eloquently put it, "[e]xamine each question in terms of what is ethically and aesthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." Leopold, A Sand County Almanac, and Sketches Here and There, 224 (1949). As we begin to understand the long-lasting impacts of our options today, it would seem incumbent

upon us to learn to think of long-term consequences lest we find ourselves plagued by "dustbowls, and rivers washing the future into the sea." Id. at 132.

B. Climate Change Harms the Environment, Flora, and Fauna.

1. Harms to Non-Human Contributors to Our Economy.

Regardless of their details and the magnitude of their value, all of these valuable ecosystem services and associated benefits have one thing in common: they are all threatened by climate change. The more greenhouse gases we continue to emit into the atmosphere, the greater the harm that will occur. Gordon, Risky Business: The Economic Risks of Climate Change in the United States 3, 4 (2014). "A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors." Pachauri et al., supra, at 13. Such "other stressors" include harms like habitat loss and habitat fragmentation, which both contribute directly to population loss and loss of genetic diversity, and also make it more difficult for populations to shift their range in response to the changing climate. See Thomas et al., Range

Retractions and Extinction in the Face of Climate Warming, 21 Trends in Ecology & Evolution 415 (2006). See also Brooker et al., Modeling Species' Range Shifts in a Changing Climate: The Impacts of Biotic Interactions, Dispersal Distance and the Rate of Climate Change, 245 J. Theoretical Biology 59 (2007); Gaston, Geographic Range Limits of Species, 276 Proc. Royal Soc'y B 1391 (2009). Even under fairly conservative models, climate change is projected to occur faster than most plants, small mammals, and freshwater mollusks can "shift their geographical ranges." Pachauri et al., supra, at 13. Even the slower rate of natural climate change in the past has caused significant ecosystem shifts and species extinction over the last few million years. Id.

Rapid ocean acidification and decreasing oxygen levels will threaten marine life. Id. Rising ocean temperature extremes are predicted to exacerbate these effects. Id. "Coral reefs and polar ecosystems are highly vulnerable," id and damage to coral reefs has already been observed. Gitay et. al., supra, at 13. Varying with the magnitude and duration of the increase in temperature, coral reefs have undergone damage from major "bleaching episodes" to "extensive

mortality." Id. at 13, 14. "Coral bleaching is likely to become widespread by the year 2100[,]" and short term sea surface temperature increases of over 3°C would cause "extensive mortality of corals." Id. at 20. Furthermore, ocean acidification resulting from elevated CO_2 concentrations will reduce reef calcification (the ability of marine wildlife to form limestone skeletons), limiting the corals' ability "to grow vertically and keep pace with [the] rising sea level." Id. The combined impact of increasing temperatures and ocean acidification could negatively impact the productivity of reef ecosystems, the effects of which "on birds and marine mammals are expected to be substantial." Id.

Sea level rise "will continue for centuries even if the global mean temperature is stabilized," threatening "coastal systems and low-lying areas." Pachauri et al., supra, at 13. Sea level rise could claim as much as 20% of global wetlands by the year 2080. Gitay et al., supra, at 1, 20. Sea level rise, and climate change in general, is predicted to undermine humans' food security. Pachauri et al., supra, at 13. "[B]y the mid-21st century and beyond, global marine species redistribution and marine

biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services." Id. A global average temperature increase of 2°C or more is predicted to have negative impacts on wheat, rice and maize grown in tropical and temperate regions. Id. A more extreme temperature increase of 4°C or more "would pose large risks to food security globally." Id. Additionally, "[c]limate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions." Id.

2. Harms to Humans Directly.

Beyond these ecological harms to biodiversity and ecosystem function, climate change will also cause more direct harms to human society. Urban areas will face "risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges." Pachauri et al., supra, at 13. Predicted damages are severe. "If we continue on our current path, by 2050 between $66 billion and $106 billion worth of existing coastal property will likely be below sea level nationwide, with $238 billion to $507 billion worth of property

below sea level by 2100." Gordon, supra, at 4. "Labor productivity of outdoor workers, such as those working in construction, utility maintenance, landscaping, and agriculture, could be reduced by as much as 3% . . . . For context, labor productivity across the entire U.S. labor force declined about 1.5% during the famous 'productivity slowdown' in the 1970s." Id.

Extreme heat events could begin to surpass the Humid Heat Stroke Index (HHSI), exposing outdoor workers and those without access to air conditioning to "severe health risks and potential death." Id. at 4, 5. This threshold has never before been surpassed in the U.S. Id. at 13. Farmers in some areas of the country will be forced to take adaptive measures or risk facing "a 50% to 70% loss in average annual crop yields." Id. at 5. Rising temperatures will also strain our energy system, "simultaneously decreasing system efficiency and performance as system operators struggle to cool down facilities, and increasing electricity consumption and costs due to a surge in demand for air conditioning." Id. at 17.

As the Supreme Court acknowledged in Massachusetts v. EPA, climate change will result in a

variety of concrete harms ranging from "severe and irreversible changes to natural ecosystems" to "an increase in the spread of disease." 549 U.S. 497, 521 (internal citations and quotation marks omitted). The harm will be spread across the future global population, but "where a harm is concrete, though widely shared, the Court has found 'injury in fact.'" Fed. Election Comm'n v. Akins, 524 U.S. 11, 24 (1998). Harvard's divestment from fossil fuel companies would be only a small step in the effort to combat climate change, but the fact "[t]hat a first step might be tentative does not by itself negate federal-court jurisdiction." Massachusetts, 549 U.S. 497, 499. Neither should it negate state-court jurisdiction. For large-scale problems, it is acceptable for entities to "whittle away [at the problem] over time, refining their approach as circumstances change and they develop a more nuanced understanding of how best to proceed[.]" Id. at 524.

i. The Best Approach to Climate Change is Collective Preventative Action.

Climate change mitigation will require collective action. "Effective mitigation will not be achieved if individual agents advance their own interests

independently." Pachauri et al., supra, at 17. Knowing what we do about the harms and risks we are encumbering future generations with by continuing to emit large quantities of greenhouse gases, it is incumbent upon us to work together to reduce these emissions in an effort to prevent at least some irreparable harm. Many experts agree that "if we act now, the U.S. can still avoid most of the worst impacts and significantly reduce the odds of costly climate outcomes." Gordon, supra, at 7.

Failing to act immediately will cause substantial irreparable damage. If we decline to mitigate until 2030, the challenges, costs, and long-term economic impacts of preventing average global temperatures from rising more than 2°C will substantially increase. Pachauri et al., supra, at 24. Many models even suggest that delaying mitigation will make it impossible for us to limit likely warming to 2°C. Id. Most mitigation scenarios require reducing revenues associated with coal and oil. Id. at 25. But changes and sacrifices will be required in many sectors, as "[w]ell designed systemic and cross-sectoral mitigation strategies are more cost-effective in

cutting emissions than a focus on individual technologies and sectors." Id. at 28.

III. The Court Erred by Denying Standing for Plaintiffs' Charitable Trust Challenge.

Traditional limitations on charitable enforcement fail to answer the imminent and irreparable harm, as enumerated above, that climate change represents. Citizens can be granted standing to challenge the execution of charitable trust duties, within appropriate boundaries. Given the extraordinary harms involved in this case and the lack of other remedies for plaintiffs, the Court may grant standing here without effecting a slippery slope of lawsuits. This case presents a legal challenge—the management of investments with ramifications for the future—for which ALDF, as a charity itself, already presumes charities to be liable. Instead of expanding the law, this would instead recognize an underused part of the law. Plaintiffs are entitled to standing for this purpose in part because the Attorney General can bring this kind of claim only on behalf of the public as a whole. It cannot represent the special interests of Plaintiffs and future generations.

A. Enforcing the Charitable Mandate through the Attorney General's Office Is Not a Viable Avenue of Redress.

In its motion to dismiss, defendant Attorney General takes the position that it is the sole authority empowered to enforce a charitable mandate on behalf of the public, and that it is in a better position to take such an enforcement action than is the public. Mot. to Dismiss at 5. The Massachusetts Attorney General derives its authority to bring suits against charitable trusts for mismanagement from its position as the legal representative of the Commonwealth as a whole. Because the beneficiary of charitable trusts is generalizable as the public at large, it makes sense to confer standing to represent the accompanying legal interests on the chief legal officer of the people of Massachusetts. However, this power is limited to circumstances in which the general public is harmed by the mismanagement of a charitable trust; the Attorney General does not have the power to bring suit against a charitable trust for actions that cause personal harm to individual beneficiaries of the trust, as is the case with plaintiffs here.

i. The Attorney General Has Standing to Sue Only on Behalf of the Public.

"[T]he Attorney General is charged with representing the interest of the public in the administration of charitable trusts." In re Wilson, 372 Mass. 325, 328 (1977). This power, codified in statute, has roots going back to at least 1890, with origins in English law. See M.G.L.A. 12, § 8 ("The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof."); *see also*, Burbank v. Burbank, 152 Mass. 254, 256 (1890) ("This duty of maintaining the rights of the public is vested in the commonwealth, and it is exercised here, as in England, by the attorney general."). However, the Attorney General's power to pursue legal action against charitable trusts for mismanagement is limited to those actions that can be said to be on behalf of the public.

ii. The Attorney General Does Not Have the Power to Sue on Behalf of Private Individuals.

When a charitable trust acts in a way that negatively affects the personal legal interest of a private individual, the Attorney General lacks standing to sue on behalf of that person. *See* 3 Op.

Atty General 1908 598 ("[T]he Attorney General has no authority to prosecute claims for the benefit of private individuals, except in the single instance of the unascertained individuals who may benefit by a public charitable trust; and there his power and duty in the premises rest upon the benefit which accrues to the public generally by the proper administration of a charitable trust, rather than upon any benefit which may accrue to the individuals whom, because they are unascertainable, he represents"). Even in cases in which the Attorney General represents unascertained individuals, the power to do so stems not from the representation of these people as individuals, but from the general public benefit that such charitable trusts provide.

Here, plaintiffs suffer personal harm from the manner in which the Harvard University trust is being administered. Because the plaintiffs are suffering personal harm, the Attorney General does not have the power to bring this suit on their behalf. Therefore, their only avenue for redress for their injuries in court is to sue on their own behalf.

B. The Extraordinary and Irreversible Harms of Climate Change, Combined with Students'

Personal Interests, Support Granting Standing to Enforce the Charitable Mandate.

As previously discussed, and as the Supreme Court has acknowledged, the "harms associated with climate change are serious and well recognized." Massachusetts v. EPA, 549 U.S. 497, 521. The "number of environmental changes that have already inflicted significant harms…only hint[] at the environmental damage yet to come." Id. Because these kinds of harms are irreversible and cannot be changed by the Executive Branch alone, they create a special circumstance necessitating access to the courts for Plaintiffs so they can seek a remedy.

In Massachusetts v. EPA, it was "of considerable relevance" that the plaintiff was "a sovereign State" and not an individual. 549 U.S. at 518. The Court noted that states surrendered certain prerogatives by entering the Union. Id. at 519. Because Massachusetts had relinquished its ability to regulate greenhouse gas emissions to the federal government, it had standing to ask the federal government to regulate emissions. Id. at 526. Similarly, by enrolling in the university and paying tuition, the students relinquished their ability to invest their tuition

money in responsible businesses and practices, not fossil fuels. Therefore, the students have standing to ask Harvard to invest and manage its trust responsibly.

Even if the Court would not accept standing for Plaintiffs based on any of the above principles in isolation, in the aggregate these principles warrant a finding of standing. When the specific harms laid out above are added to their special interests as students, the case for granting them standing becomes quite strong. The unique nature of the harms of climate change serves as a limiting principle on granting standing to private individuals seeking claims against charitable organizations, precluding the potential for a slippery slope towards granting standing to private citizens against charitable organizations for other alleged harms.

IV. It Is Appropriate to Recognize Third-Party Standing When Victims Are Particularly Vulnerable and Lack Legislative Remedies.

The lack of legislative and executive remedies for future generations in this case makes it the proper role of the court to fashion a remedy. Elected officials do not represent future generations because the unborn cannot vote in political elections. Since

the legislative and executive branch are focused on solving short-term issues facing current voters, it is the judiciary's responsibility to ensure that long-term issues that will affect future generations do not go completely ignored. Otherwise this inherent bias will prevent solutions for long-term environmental problems.

It is inappropriate to deny third-party standing to hear claims by vulnerable victims, such as future generations, because it blocks relief at the threshold for harms that are unrecognized by social and political powers. If courts will not even hear the merits of the case, they cannot determine whether the harms are in fact violating plaintiffs' rights. Additionally, legislative solutions are unavailable. Hence important questions will continually be precluded from entering public discourse and continuing cycles of violations of plaintiffs' rights will proceed without recognition of new rights. The only way to prevent this cycle is to hear the case on the merits to determine if a remedy is appropriate. Therefore the Court should find that it is appropriate to expand standing to allow for third parties to represent future generations.

The fact that Plaintiffs raise a global problem with a local court does not pose any obstacle to this case. There is no single institution or world court that has the authority to regulate the atmosphere, but local courts are well-positioned in three ways to address it. Kassman, How Local Courts Address Global Problems: The Case of Climate Change, 24 Duke J. Comp. & Int'l L. 201, 242-243 (2013). First, local courts are established systems with existing common law and developed doctrine. Id. Second, local courts can ensure compliance with their decisions more effectively than international courts can. Id. Third, local courts are accessible to many plaintiffs, id., often representing the only way people with minimal political power can seek redress. While it may seem like one local court ruling on one local case will have only a minimal impact on greenhouse gas emissions, cumulatively, the judicial branch has the opportunity to make a real and significant difference.

A. The Political Process Doctrine Supports Granting Standing When Injured Parties Lack Political Representation.

The Court has often acted to protect a range of different rights for a range of parties who lack adequate political representation. See, e.g., Brown

v. Bd. of Ed., 347 U.S. 483 (1954); Craig v. Boren, 429 U.S. 190 (1976); Griswold v. Connecticut, 381 U.S. 479 (1965). In line with the principles of the political process doctrine, the Court has recognized that an individual may bring a claim asserting the rights of a third party who is not before the court when substantial obstacles block that third party from asserting its own rights. See Sec'y of State v. Joseph H. Munson Co., 467 U.S. 947, 956 (1984) ("this Court has relaxed the prudential-standing limitation [against third-party standing] when [certain] concerns are present. Where practical obstacles prevent a party from asserting rights on behalf of itself, for example, the Court has recognized the doctrine of jus tertii standing"). In Barrows v. Jackson, 346 U.S. 249, 257-258 (1953), the Court granted third-party standing to Barrows, a white person, who asserted the rights of black community members after Barrows was sued for breaking a restrictive covenant. In protecting the vulnerable third party, the Court noted "it would be difficult if not impossible for the persons whose rights are asserted to present their grievance[s] before any court." Id. at 257.

Recently, Justice Sotomayor detailed the history of the political process doctrine and its vital role in Fourteenth Amendment jurisprudence. See Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623, 1668 (2014) (Sotomayor, J., dissenting). The political process doctrine has its roots in the oft-cited United States v. Carolene Products Co. footnote four. 304 U.S. 144, 152, n. 4 (1938). There, the Court recognized that 'legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation' could be worthy of 'more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.'" Schuette, 134 S. Ct. at 1668 (internal quotation marks omitted). In particular, paragraph two of Carolene Products footnote 4 "suggests that it is an appropriate function of the Court to keep the machinery of democratic government running as it should, to make sure the channels of political participation and communication are kept open." Id. (quoting Ely, Democracy and Distrust 76 (1980)) (internal quotation marks omitted). The Court in Carolene Products described the importance of

protecting "discrete and insular minorities" from bias that "curtail[s] the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." Carolene Products, 304 U.S., at 153, n. 4 (internal quotation marks omitted).

In Schuette, Justice Sotomayor stressed the core values of the political process doctrine, which is composed of three elements. Schuette, 134 S. Ct. at 1668-1669. The first two are that "every eligible citizen has a right to vote" and "the majority may not make it more difficult for the minority to exercise the right to vote." Id. The third is "that a majority may not reconfigure the existing political process in a manner that creates a two-tiered system of political change, subjecting laws designed to protect or benefit discrete and insular minorities to a more burdensome political process than all other laws." Id. at 1669. Under the Fourteenth Amendment, the Court "must [] vigilantly polic[e] the political process to ensure that the majority does not use other methods to prevent minority groups from partaking in that process on equal footing." Id.

Students have been able to bring suit for third parties under due process claims. Price v. Denison Indep. Sch. Dist., 694 F.2d 334, 375 (5th Cir. 1982). In Price, the Court granted standing to "black students and parents" on behalf of minority teachers when they asserted "that their Fourteenth Amendment rights were violated because minority students were denied role models by the DISD's failure to promote black teachers to elementary or junior high school principalships or vice principalships." Id.; see also Castaneda v. Pickard, 648 F.2d 989, 999–1000 (5th Cir. 1981); Otero v. Mesa County Valley School Dist. No. 51, 568 F.2d 1312, 1314–1315 (10th Cir. 1977).

The principles of the Equal Protection Clause, particularly in light of the political process doctrine, compel the Court to recognize Plaintiffs' claims on behalf of future generations. Here, as in Barrows, "it would be difficult if not impossible for the persons whose rights are asserted to present their grievance[s] before any court," since future generations have not yet been born. Therefore, while "discrete and insular minorities" may sometimes have their rights violated due to malfunctions in the political process, Carolene Products, 304 U.S. at 152,

n.4 (internal quotation marks omitted), future generations are vulnerable because they cannot participate in the political process until they become adults, long after the harm is done. This is especially important when the case involves future students' educational rights, which have consistently been protected under the Fourteenth Amendment.

In the present case, future generations cannot "assert their rights[,] but [their] future health, safety, and welfare depends on current efforts to slow the pace of climate change." Compl. ¶ 2. Thus, future generations are left to the mercy of current generations to curb global warming. Since Harvard University invests in fossil fuel companies, it supports the "abnormally dangerous" business that "inevitably contribute[s] to climate change, causing serious harm to Plaintiffs future generations' persons and property." Id. ¶ 66. By investing in such companies, Harvard "make[s] an appreciable difference [in] the magnitude of that harm, and any withdrawal of such investments would likely mitigate it." Compl. ¶ 70. As in Barrows, Plaintiffs simply look to stop private business practices on behalf of third parties who cannot assert their rights.

Future Harvard students will also suffer a particular harm, given that Harvard's own research shows that "large portions of the Harvard campus . . . are at risk of severe physical damage as a result of sea level rise and intensified storms caused by climate change. . . . [M]uch of the area of the campus bordering the Charles River will be flooded every two to three years by 2050." Id. ¶ 34 (citation omitted). Since future generations do not have access to the political process, it is imperative that the Court recognize Plaintiffs' right to assert a claim on their behalf and stop Defendants from "us[ing] their charitable funds to profit off of global warming" at the expense of both Plaintiffs and future generations. Pls.' Mem. in Opp'n to Def. Martha M. Coakley's Mot. to Dismiss, at 3.

B. The Court's Ruling in Massachusetts v. EPA Supports an Argument that Local Courts Can Extend Standing to Third Parties Injured by Climate Change When Political Processes Fail.

In Massachusetts v. EPA, the Supreme Court granted standing to Massachusetts to sue over the damage to its coastline from increasing sea levels, allegedly caused by growing levels of greenhouse gases from vehicles. 549 U.S. at 527. In determining

whether this was a sufficient injury-in-fact for standing purposes, the Court considered evidence from computer models that looked at the damage that would be done by greenhouse gases through the year 2100. Id. at 523 n.20. While the Court also recognized that Massachusetts was already experiencing harm from climate change, id. at 521-522, the Court's consideration of future harm to the state through the year 2100 indicates that the Court may have recognized standing even if all of the alleged harms were to have taken place in the future. While Massachusetts did have special standing as a state, id. at 520, this consideration of future harm could be extended to grant third-party standing to other plaintiffs who seek to protect future generations. The rationale in Massachusetts v. EPA should be extended to allow third parties to have standing to represent future generations when the injury is especially severe, like the environmental catastrophes associated with climate change.

Additionally, in Massachusetts, the Court rejected EPA's argument that relief from the Court would not mitigate global climate change and remedy Massachusetts's injuries, because a requirement of

national emission standards would not prevent foreign countries from emitting greenhouse gasses in destructive amounts. Id. at 523-524. The Court held instead that it is incorrect that "a small incremental step, because it is incremental, can never be attacked in a federal judicial forum." Id. The Court signaled thereby that it is appropriate for the judiciary to provide non-traditional relief, and that the judiciary is not prevented from addressing global problems through local solutions. The Court's ruling protected the State of Massachusetts, and both its current and future constituents, by requiring the federal executive branch to take an action it had neglected. Local courts may therefore adjudicate climate change issues as they have an important role to play when the other government branches are not appropriately addressing the issue.

V. The Court Erred by Denying Standing for Future Generations Out of a Misplaced Fear of a Slippery Slope Problem.

Granting the Plaintiff students standing to represent future generations in this case will not create a slippery slope. In holding that a favorable decision would create a slippery slope for any claim on behalf of future generations based on an ostensibly

urgent cause, the lower court restricted its assessment of limiting factors to the serious nature of climate change. Though the Plaintiffs have asserted that "climate change is the most serious threat facing the world," the court feared that any student so fervently believing in a different serious threat could not be prevented from similarly seeking relief. While the serious threat of climate change is an important limiting factor precluding many other suits on behalf of future generations, there are additional limiting factors that will prevent the slippery slope the court fears. First, claims on behalf of future generations with regard to natural resources and environmental quality are well-grounded in state, national, and international law; no other rights of future generations are so well recognized. Second, the lack of any other avenue for relief for this specific claim will limit future potential claims for which there are any other avenues of relief. Finally, the unique nature of climate change, both with respect to the irreparability of its harms and the certainty of its effects, will preclude other claims not based on such a threat.

Any of these limiting factors alone is sufficient to assuage fears of a flood of similar claims on behalf of future generations. The combination of these three limiting factors makes this claim for standing on behalf of future generations even more unique and unlikely to be imitable by future claimants of a different cause. For that reason, it is highly unlikely that permitting this unique claim on future generations' behalf will allow for other potential unrelated claims on behalf of future generations.

A. Unlike Other Potential Claims on Behalf of Future Generations, Plaintiffs' Claims Related to Climate Chare are Grounded in International, National, and State Laws.

Future generations' claims related to environmental interests and climate change are unique from other claims that might be brought on their behalf. Because the planet provides the conditions necessary for human life, its well-being is uniquely important to future generations. Scholars have described "wide agreement that the state should protect the interest of the future in some degree against the effects of our irrational discounting, and of our preference for ourselves over our descendants." Frazier, The Green Alternative to Classical Liberal

Property Theory, V. L. Rev. 348, 350 (citing Daly & Cobb, For the Common Good 411 (1989)). This consensus is recognized in international, national, and state-level agreements and laws.

i. National and International Environmental Laws Recognize Future Generations' Rights.

The need for "intergenerational justice" is recognized in federal environmental policy as well as in international accords to which the United States is a signatory party. Davidson, Tomorrow's Standing Today: How the Equitable Jurisdiction Clause of Article III, Section 2 Confers Standing Upon Future Generations, 28 Colum. J. Envt'l. L. 185, 191 (2003). This principle also derives support from the text of the federal Constitution. Various interpretations of the text itself have established as much, while the Preamble's Posterity Clause explicitly provides that "We the People . . . to ourselves and our Posterity, do ordain and establish the Constitution." Id. at 193.

The United Nations Framework Convention on Climate Change (U.N.F.C.C.), to which the United States is a signatory, states in its preamble that the signatory countries entered the agreement

"*[d]etermined* to protect the climate system for present and future generations." U.N.F.C.C. Preamble, May 9, 1992, 1771 U.N.T.S. 197 (emphasis in original). Moreover, the first principle of the Convention provides that, "The Parties should protect the climate system for the benefit of present and future generations of humankind." Id. at Art. 3. The U.N.F.C.C. also emphasizes the importance of precautionary measures to anticipate or prevent climate change, as well as to mitigate its impacts. Id. These principles all add weight to the importance of future generations and future interests regarding climate change.

Federal environmental policy also recognizes the need to protect future generations. The Clean Air Act section on "Congressional findings and declaration of purpose" declares that the primary goal of the Act is "to encourage or otherwise promote . . . pollution prevention." 42 U.S.C. § 7401(c). This precautionary goal speaks to the recognition that mere abatement and mitigation of pollution is not sufficient to address the population's needs, implicitly recognizing the value of preventing further harm. Underlying this implication is a recognition that we are preventing

future harm not necessarily for ourselves, but for those generations who will succeed us.[1] Similarly, the National Environmental Policy Act (NEPA) recognizes in its "Congressional declaration of national environmental policy" the requirements of both "present and future generations of Americans." 42 U.S.C. § 4331(a).

International law and foreign courts have recognized the importance of protecting the rights of future generations, and American courts should do the same. International law, much of which the US has had a role in creating, emphasizes that nations and citizens have a "moral and legal obligation to protect the rights of future generations." See Mank, Standing and Future Generations: Does Massachusetts v. EPA Open Standing for Generations to Come?, 34 Colum. J. Envtl. L. 1, 16-17 (2009). The 1972 Stockholm Declaration of the United Nations Conference on the Human Environment states that, "man has the fundamental right to freedom, equality and adequate conditions of life, in

[1] "We, as a species, hold the natural and cultural environment of our planet in common, both with other members of the present generation and with other generations, past and future. At any given time, each generation is both a custodian or trustee of the planet for future generations and a beneficiary of its fruits. This imposes obligations upon us to care for the planet and gives us certain rights to use it." Dawn Jourdan, Standing on Their Own: The Parallel Rights of Young People to Participate in Planning Processes and Defend Those Rights, 11 Sustainable Dev. L. & Pol'y 41 (2010).

an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." Declaration of the United Nations Conference on the Human Environment Principles, June 16, 1972, at http://www.unep.org/Documents.-Multilingual/Default.asp?documentid=97&articleid=1503. Language supporting the obligation to preserve the environment for future generations is found in the 1973 Convention on International Trade in Endangered Species, Preamble, Mar. 3, 1973, 993 U.N.T.S. 14537, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, Art. 4, Nov. 16, 1972, 1037 U.N.T.S. 151, the 1982 United Nations World Charter for Nature, Preamble, Oct. 28, 1982, 22 I.L.M. 1442, and the 1992 Convention on Biological Diversity, Preamble, 1992, 1760 U.N.T.S. 79.

The constitution, laws, and court decisions of foreign nations both directly and indirectly support the protection of future generations. In Minors Oposa v. Secretary of the Department of Environment and Natural Resources, 33 I.L.M. 173, 185 (1994), the Supreme Court of the Philippines held that a group of

schoolchildren had standing to challenge timber leasing of old growth forests "for themselves, for others of their generation and for the succeeding generations." While the Constitution of the Philippines did support this principle, the court also emphasized the universal idea that the right to a healthy environment "concerns nothing less than self-preservation and self-perpetuation . . . the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind." Id. at 187.

ii. Massachusetts Law and the Constitution of the Commonwealth Recognize the Interests of Future Generations.

Massachusetts statutes and case law similarly recognize the interests of future generations with regard to environmental protections and natural resources. Massachusetts accounts for public interest in resources, while assuring that current owners do not lose their ownership or enjoyment rights of their property.

The Massachusetts Constitution establishes that "[t]he people shall have the right to clean air and

water . . . and the protection of the people in their right to the conservation, development and utilization of the . . . water, air and other natural resources is hereby declared to be a public purpose." Art. 49 of the Amendments to the Massachusetts Constitution. Moreover, the Massachusetts Environmental Protection Act directs all state agencies to "evaluate" and "determine the impact on the natural environment" of any work or project they execute, and to "use all practicable means and measures to minimize damage to the environment." M.G.L.A. 30, § 61. State agencies are further directed to "consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise." Id.

In Blair v. Massachusetts Department of Conservation and Recreation, the plaintiff Massachusetts landowners requested a variance to complete alterations to their land, which would have impacted a local watershed. 21 Mass. L. Rptr. 603 at *3 (2006). The court upheld the Massachusetts Watershed Management Act in denying the plaintiffs' motion for judgment on the pleadings. Id. at *8. In its decision, the court emphasized the importance of

the Act's limited use restrictions on landowners in order to preserve and protect the State's water sources, highlighting the fact that "[t]he benefit derived is one which is bestowed upon every Massachusetts citizen, and it is one which will be realized by our future generations as well." Id.

iii. The Federal Constitution Supports Extending Standing to Vulnerable Third Parties.

As previously discussed, the political process doctrine supports extending standing to vulnerable parties that lack legislative remedies. Additionally, the Court has protected the availability of future liberties to vulnerable groups under the Fourteenth Amendment. See Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992) (protecting future women's right to privacy). In Roe, the Court recognized an interest in protecting future women from the future harm of "[m]aternity, or additional offspring, [which] may force upon the woman a distressful life and future." Roe v. Wade, 410 U.S. 113, 153 (1973). Extending the protection even further, the Court has allowed two doctors to raise claims to safeguard the privacy rights of patients by granting doctors standing in suits against restrictive

abortion laws, which outlawed the use of state Medicaid benefits to fund nontherapeutic abortions. See, e.g., Singleton v. Wulff, 428 U.S. 106 (1976).

B. There Is No Incentive for Similar Claims Because Plaintiffs Seek Equitable Relief.

Plaintiffs in this case make a limited claim for injunctive relief and do not request damages. For that reason, granting relief in this case will not create a slippery slope by providing incentive for other similar claims motivated by a desire for monetary relief. Injunctive relief is an "extraordinary" remedy for which plaintiffs must meet a strict four-factor test. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 24 (2008). One required factor for a permanent injunction is that "'remedies available at law, such as monetary damages, are inadequate to compensate for that [irreparable] injury.'" Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 156 (2010) (quoting eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006)). As such, injunctive relief will be granted only in cases where monetary relief is not appropriate or sufficient. This requirement indicates that claims similar to this one, which require injunctive relief,

will not be brought merely in hopes of monetary damages. Instead, they will necessarily be limited to similarly serious claims for irreparable damages for which monetary damages do not suffice.

C. Plaintiffs' Claim Is Limited Because They Have No Access to Other Forms of Relief.

Another important limiting factor is that this is a unique claim for which there is no currently recognized cause of action, and for which there is a great public need. Because there is currently not sufficient incentive for the state to bring this claim, it is appropriate for the court to recognize standing for these plaintiffs on behalf of future generations. Doing so in this case will not result in a flood of similar cases because this situation is so rare. This case is unusual because not only is there no appropriate remedy because there is no recognized tort claim, but also because there is such a clear and important public need for justice. This situation is uncommon, and for that reason, granting this claim will not result in a slippery slope of similar claims.

Because this is a situation in which there is no existing source of a remedy, the court should recognize an extension of the private attorney general

doctrine. This doctrine, which is found in both federal and California law, allows for "the enforcement of public rights through the use of private lawsuits." Cheng, Important Rights and the Private Attorney General Doctrine, 73 Cal. L. Rev. 1929, 1929 n.1 (1985). The private attorney general doctrine applies to situations in which "a party brings suit to enforce a right left unenforced by the ordinary enforcement mechanisms of the political process." Id. at 1929. That is what the plaintiffs here seek to do on behalf of future generations: confer a significant benefit on them by ensuring that their future is not compromised by the destructive effects of climate change.

D. Plaintiffs' Claim is Limited Due to the Unique Nature of Climate Change.

The plaintiffs' claims on behalf of future generations are further limited by the serious and irreversible nature of climate change. The most recent Intergovernmental Panel on Climate Change ("IPCC") Assessment Report establishes that "[c]ontinued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the

likelihood of severe, pervasive and irreversible impacts for people and ecosystems." Pachuari et al., supra at 8. Moreover, in recognition of the irreparable nature of continued anthropogenic warming, the report highlights that "[m]any aspects of climate change and associated impacts will continue for centuries, even if anthropogenic emissions of greenhouse gases are stopped. The risks of abrupt or irreversible changes increase as the magnitude of the warming increases." Id. at 16.

VI. Conclusion

For the foregoing reasons, the decision by the Massachusetts Superior Court should be reversed, and this court should recognize citizen standing to enforce charitable mandates whereby students may challenge their university's investment practices that harm the students personally, that harm future generations, and that further exacerbate climate change.

DATE: October 5, 2015 Respectfully submitted,

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APPENDIX

Statutes

42 U.S.C. § 4331

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

42 U.S.C. § 7401

§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds--

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative

Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are--

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

M.G.L.A. 12 § 8

§ 8. Due application of charity funds enforced

The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof.

M.G.L.A. 30 § 61

§ 61. Determination of impact by agencies; damages to environment; prevention or minimization; foreseeable climate change impacts; definition applicable to this section and Sec. 62

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means

and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

In considering and issuing permits, licenses and other administrative approvals and decisions, the respective agency, department, board, commission or authority shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.

As used in this section and section sixty-two, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth and shall include but not be limited to air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources; destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

Other Sources

U.S. Constitution, Article III

Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and

inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3.

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two

witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Massachusetts General Laws Const. Amend. Art. 49

Art. XLIX. Right of people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment

Art. XLIX. The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

CERTIFICATE OF COMPLIANCE

I, Piper Hoffman, Counsel of Record for the Amicus, hereby certify that this brief submitted herewith complies with the rules of court that pertain to the filing of amicus briefs, including but not limited to Massachusetts Appellate Procedure Rules 17 (Brief of an Amicus Curiae), 19 (Filing and Serving Briefs and Motions), and 20 (Forms of Briefs, Appendices and Other Papers).

Respectfully submitted
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