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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APPELLANTS' BRIEF

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2. Whether Defendants' motions to dismiss for lack of standing under Mass. R. Civ. P. 12(b)(1) were properly allowed.
3. Whether M.G.L. c. 12, § 8 precludes tort claims that incidentally challenge the management of charitable assets.
4. Whether Harvard Defendants' investments are tortious under a theory of intentional harm or, alternatively, under a theory of negligence, such that they may give rise to injunctive liability.
5. Whether we may assert the interests of Future Generations with respect to the harm done to them by Harvard Defendants' investments in fossil fuel corporations.

III. Statement of the Case

On November 19th, 2014, we filed a complaint alleging mismanagement of charitable funds and tortious investment (under a novel theory, intentional investment in abnormally dangerous activities) against Defendants Harvard Corporation and Harvard Management Company ("Harvard Defendants") and seeking injunctive relief. We joined the Attorney General as a party pursuant to M.G.L. c. 12, § 8G. Harvard Defendants filed Motions to Dismiss asserting that we lack standing under Mass. R. Civ. P. 12(b)(1) and that the Complaint failed to state a cause of action under Mass. R. Civ. P. 12(b)(6). Harvard Defendants argued that we lack standing because the Massachusetts

Attorney General has exclusive standing to enforce charitable duties; that in any case the investments at issue are lawful; and that our tort claim does not provide a legally recognized basis for relief. The Attorney General filed a Motion to Dismiss reiterating these arguments. After a hearing on February 20th, 2015, the Superior Court allowed Defendants' Motions to Dismiss as to both counts and wrote an opinion.

In dismissing Count I, the court analyzed the injuries we had alleged and found that we lacked standing to challenge Defendants' investments on our own behalf. In dismissing Count II, the court found that we lacked standing to represent the interests of Future Generations and declined to recognize our tort claim. The court also declined to address the issue of whether Harvard Defendants' investments are lawful.

IV. Statement of Facts

The following facts appear in the Complaint and were cited in the Motions to Dismiss and Oppositions to those Motions.

Climate change will have catastrophic consequences if rapid, dramatic action is not taken to decrease emissions of carbon dioxide and other greenhouse gases. App. 4. At the time this case was

filed, the Harvard University endowment contained direct holdings in publicly-traded fossil fuel companies worth $79 million and unknown indirect holdings. App. 9. The business activities of fossil fuel companies include extraction and transportation of fossil fuels and the promotion of scientific falsehoods. *Id.* Those activities cause climate change, and investment in fossil fuel companies supports them. *Id.* Divestment of fossil fuel assets is an effective tool to change the behavior of fossil fuel companies. *Id.* Defendants know that their investments fund fossil fuel companies' business activities, that those activities cause climate change, and that climate change harms Future Generations. App. 14.

Under the terms of its Charter, Defendant Harvard Corporation is bound to safeguard the University's physical campus and the "advancement and education of youth." App. 8. We are students of Harvard University whose work, enjoyment, and opportunities as students are harmed by Defendants' fossil fuel investments. App. 12. Defendants' fossil fuel investments also harm Future Generations. App. 14-15. We assert the right to represent the interests of Future Generations within the narrow circumstances of this case. App. 15.

V. Summary of the Argument

It was error for the Superior Court to grant Defendants' motions to dismiss for failure to state a claim upon which relief can be granted. The court misapplied Mass. R. Civ. P. 12(b)(6)'s standard of review and moved beyond the permissible scope of factual inquiry. For similar reasons, it was error for the court to dismiss for lack of standing under 12(b)(1), as impermissible factual assumptions decided against our interest provided the basis for its conclusion. Our Complaint contains sufficient allegations to support our claims of special interest and injury. Under Massachusetts law governing special interest charitable enforcement, we have a personal right related to Harvard's fossil fuel investments. Precedent and policy support allowing our claim of mismanagement to proceed. Likewise, the court erred in dismissing our second claim. This novel tort claim is supported by common law rules governing intentional harms. We make sufficient allegations of harms caused by Harvard's fossil fuel investments, and it is appropriate for the court to allow us to represent Future Generations' interests. To correct these legal

errors, this Court should reverse the Superior Court's dismissal order and remand for further proceedings.

VI. Argument

A. The Superior Court Erred in Finding That We Failed to State a Claim upon Which Relief Can Be Granted

1. Standard of Review

In reviewing a dismissal pursuant to Mass. R. Civ. P. 12(b), the Appellate Court reviews the decision de novo. *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011).

In ruling on a 12(b)(6) motion, the Superior Court must accept as true "the factual allegations in the plaintiffs' complaint, as well as any favorable inferences reasonably drawn from them." *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998). Massachusetts has adopted the standard of review articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). *See Iannacchino v. Ford Motor Co.*, 451 Mass. 740, 751 n. 12 (2008). This standard dictates that the allegations in the complaint "be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations . . . are true

(even if doubtful in fact)." *Id.* at 636 (quoting *Twombly* at 555).

To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege "a plausible entitlement to relief." *Rodríguez-Ortiz v. Margo Caribe, Inc.*, 490 F.3d 92, 95 (1st Cir. 2007) (quoting *Twombly* at 559). This standard does not require heightened fact pleading of specific information. *Twombly* at 570. It requires that the complaint include sufficient facts to "nudge [the plaintiff's] claims across the line from conceivable to plausible." *Id.*

2. The Superior Court Did Not Apply the Correct Standard of Review

a. The Superior Court Did Not Accept the Facts in Our Complaint as True

The Superior Court characterized key facts in our Complaint as "beliefs." App. 41. Specifically, the court rejected our factual assertions about the severity of climate change and treated those assertions as mere opinions. *Id.* Based on this inaccurate characterization, the court found that the allegations lacked a limiting principle. In dismissing our Complaint, the court referred to this alleged lack of limiting principles as an "overarching problem with

[our] position," stating that "other students believe just as fervently in other causes." *Id.*

The harms caused by climate change are scientifically certain. App. 7-8. There is broad scientific agreement that, without urgent action to address it, climate change poses an existential threat to human civilization and that reduction of greenhouse gas emissions is essential. No other "cause" boasts such certainty. The issue is not our subjective belief in the veracity of those assertions, but whether they are objectively true. Furthermore, the standard of review requires the court to accept factual allegations as true. In treating the severity of climate change harms as a matter of opinion, the court misapplied the standard of review.

Relatedly, we alleged facts sufficient to establish several limiting principles for our tort claim. *Id.* Though we are not required to identify specific limiting principles in detail in our Complaint, we have outlined several possibilities in this brief. *See* Part VI.C.5. The severity of climate change harms to future generations and the coincidence of our own interests with those of future generations,

among other limitations, limit our claim's application to the narrow circumstances of this case.

b. The Superior Court Drew Inferences That Are Unfavorable to Us and Reached Inappropriate Factual Conclusions

In addition to accepting all of the plaintiff's allegations as true, the court deciding a motion to dismiss must consider those allegations generously and in plaintiffs' favor. *Vranos v. Skinner*, 77 Mass. App. Ct. 280, 287 (2010). The Superior Court found that our allegations were "too speculative and conclusory" to pass the *Iannachino* test. App. 35. In spite of the fact that Defendants did not contest our factual allegations, the court went beyond the alleged facts to reach conclusions that are unfavorable to us. Specifically, the court stated that our allegations "fail to account for breaks in the chain of causation leading from Harvard's investment in fossil fuel companies to the 'diminishment' of [our] educations." App. 36. The court also disputed our allegation that the requested injunctive relief would redress our harms, asserting that fossil fuel companies would spread scientific falsehoods even without Defendants' financial support. In doing so, the court failed to

accept as true our allegations specifically addressing this issue. *See* App. 9-11.

The court also failed to accept as true our allegation that Defendants' investments in fossil fuel companies have a chilling effect on academic freedom and the willingness of faculty, students, and administrators to publicly confront climate change. App. 36-37. It inferred that "the investments have not interfered with [our] academic freedom or intellectual capability," pointing to the fact that we "allege that [we] have successfully identified as false the fossil fuel companies' statements denying climate change." App 36. But the fact that we know that fossil fuel companies engage in misinformation campaigns is not proof that our academic freedom is unaffected by Defendants' investments: We do *not* yet know the full extent to which fossil fuel companies have undermined scientific understanding about climate change.

The court also points to the existence of this litigation as proof that there is no chilling effect. App. 37. This is clearly wrong: The fact that we have experienced harm and brought a claim to correct it does not prove that we have suffered no harm. On the contrary, the fact that we have filed a lawsuit to

challenge our university's support of fossil fuel companies could reasonably be interpreted as evidence of the degree to which this support negatively impacts our academic lives. Our Complaint contains allegations sufficient to support our claims, including allegations that Defendants' investments help fund fossil fuel companies' misinformation campaigns designed to deter action on climate change. App. 9. These campaigns interfere with our mission to educate students about climate change and our study of efforts to combat it. App. 12-13. It would be reasonable to infer that, if not for these campaigns, we could spend less time educating others about basic climate science and could focus on the development and implementation of solutions. These facts "raise our right to relief above the speculative level." *Iannachino* at 636 (internal quotation marks omitted).

The Superior Court also relied on statements by Harvard President Drew Faust to dispute our claim that Harvard's fossil fuels investments limit the willingness of Harvard community members to publicly confront climate change. This is another inference *against* us, made in spite of the fact that we provided exhibits detailing the deleterious effects of fossil

fuel companies' funding of climate falsehoods, including the use of Harvard's name and status to perpetuate such falsehoods. App. 12. These allegations are sufficient to secure us the opportunity to substantiate them.

The Superior Court's inferences against us require us to refute at the pleading stage any contrary conclusion that one could draw from the facts in the record. Viewed in the proper light, the allegations in the Complaint are sufficient to survive Defendants' Motions to Dismiss.

3. Our Allegations Contain Facts Sufficient to Raise a Reasonable Expectation That Discovery Will Substantiate Them

Plaintiffs can avoid dismissal by showing a reasonable expectation that they will be able to substantiate their claims through discovery. *Twombly* at 545. Our complaint should survive a motion to dismiss because we can show a reasonable expectation that discovery will reveal evidence substantiating our claims. First, we expect discovery to reveal evidence of the harms to Harvard's physical campus, perhaps in the form of internal risk assessments regarding the impacts of climate change on the University. Second, though we have substantiated our allegation that

Defendants know that their investments fund fossil fuel companies' business activities, that those activities cause climate change, and that climate change harms Future Generations, *see* App. 14, we reasonably expect that discovery will provide more evidence in support of these claims. Finally, we expect discovery to reveal information concerning internal deliberations on divestment, which could support our argument that Defendants are aware of the harms caused by their investments as well as our argument that our education is negatively affected by those investments.

B. The Superior Court Erred in Denying Us Special Interest Standing to Challenge Harvard Defendants' Fossil Fuel Investments

1. Our Claim for Special Interest Standing Is Supported by Massachusetts Precedent

a. Massachusetts Recognizes Special Interest Standing for Plaintiffs with Interests Distinct from the Public and Injuries Resulting from the Targeted Charitable Activity

Massachusetts law recognizes the right of special interest plaintiffs to bring suits against charities--an exception to the default rule of exclusive Attorney General enforcement under M.G.L. c 12, § 8. In order to qualify for special interest standing, plaintiffs must identify a "personal right" in some aspect of the

targeted charity's activity. *See, e.g., Weaver v. Wood*, 425 Mass. 270, 276 (1997). The personal right requirement is based on the distinction between two types of charitable beneficiaries: the general public, whose interests are protected by the Attorney General, and those with "interests in such [charitable] organizations which are distinct from those of the general public." *Lopez v. Medford Community Ctr., Inc.*, 384 Mass. 163, 167 (1981).

In determining whether a plaintiff has a distinct interest and therefore a personal right basis for standing, the Supreme Judicial Court's primary test has been to identify the relevant charitable benefit and to ask whether it is enjoyed by the public at large or only by a subset. In *Ames v. Attorney General*, 332 Mass. 246, 249 (1955), plaintiffs challenging the removal of the Arnold Arboretum's library to Cambridge lacked standing--despite sitting on the Arboretum's visiting committee--because they enjoyed the same benefits from the charity's educational and research activities as all other members of the public. Conversely, the plaintiffs in *Trustees of Dartmouth College v. City of Quincy*, 331 Mass. 219 (1954) had standing to sue because they were

entitled to a charitable trust fund upon the happening of a contingency, a benefit not enjoyed by the public.

In some cases the relevant distinction between general and special interest is finer: Rather than requiring plaintiffs to distinguish their interest from that of the general public, the Supreme Judicial Court has asked whether the plaintiffs enjoy benefits not enjoyed by a smaller but still general class of beneficiaries. In *Weaver*, for example, the Court narrowed the relevant "public" to members of the First Church of Christ, Scientist and barred standing because the plaintiffs enjoyed no benefits distinct from other members. 425 Mass. at 277. *See also Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 245 (2007) (finding standing where plaintiffs' claims were "distinguishable from those of the general class of parishioner-beneficiaries.") Plaintiffs must therefore demonstrate an interest distinct not only from the public but also from a "general class." This test simply requires plaintiffs to identify a differentiated interest enjoyed only by a subset of beneficiaries; it does *not* require proof that this subset is small or even definite. For example, the plaintiffs in *Jessie v. Boynton*, 372 Mass. 293 (1997)

had standing even though their interest was shared by all hospital "employee members," including employees, spouses, and children. The relevant criterion is thus distinction from the general benefit or interest, not unshared particularity.

Along with distinction of interest, plaintiffs must demonstrate a personal right in the targeted charitable activity. The Court has found personal rights to exist by virtue of language in a trust instrument, *Quincy*, 331 Mass. at 219, a reversionary property interest, *Maffei*, 449 Mass. at 235, and a membership right, *Jessie*, 372 Mass. at 293. The Court has never found the existence or absence of any single factor to be dispositive, and as such personal rights cannot be determined *a priori* from a list of eligible interests. Instead, the unifying thread in the Court's grants of standing has been the special injuries suffered by plaintiffs as a result of the targeted charitable activity. For example, the plaintiffs in *Lopez* could challenge the policy used by the charity's board of directors to maintain themselves in office because the plaintiffs had been unlawfully denied membership. 384 Mass. at 168. On the other hand, the same plaintiffs could not challenge alleged

mismanagement because it did not affect them differently than other beneficiaries. *Id.*

In sum, plaintiffs are entitled to special interest standing to challenge charitable activity when they have identified some interest or right in the charity that is distinct from the interests of the public or of a general class of beneficiaries and when the targeted activity affects them in a special way. This test for standing is deliberately context-based and lacks formal requirements. Where plaintiffs bring claims that are "personal, specific, and exist apart from any broader community interest," *Maffei*, 449 Mass. at 245, standing is granted.

b. Our Complaint Asserts Personal Rights and Injuries Giving Rise to Special Interest Standing

The allegations in our Complaint make plain that we satisfy the Court's criteria for special interest standing. First, we have demonstrated that we enjoy benefits from Harvard's charitable activity that are distinct from the benefits enjoyed by the general public. As current students and a Harvard-exclusive student association,[1] the quality-of-life and academic

[1] The Superior Court did not decide whether the Harvard Climate Justice Coalition may sue in its own name. We ask this Court to recognize the Coalition as a party.

benefits we enjoy from Harvard's physical campus and educational activity are distinct from any general benefits enjoyed by members of the public. As future Harvard graduates, we will reap continued personal and economic benefits from Harvard's educational activity. More particularly, our study of environmental law, science, and policy depends entirely upon Harvard's offering such subjects to a select subset of admitted students. These interests are sufficiently distinct to pass the threshold benefits test.

In the decision below, the Superior Court made much of the fact that our interests are potentially shared by all current Harvard students, allegedly making us equivalent to members of a charity without distinct interests from each other. App. 31. This argument is flawed for two reasons. First, Harvard is a nonmembership charity, making analogies to membership interest standards at best irrelevant and at worst contrary to the spirit of the standing precedent. Because Harvard students are not members of the Harvard Corporation, they lack any membership

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While unincorporated associations generally lack party status, the Supreme Judicial Court has allowed such associations to remain parties once litigation has progressed. *Save the Bay, Inc. v. Dept. of Public Utilities*, 366 Mass. 667, 675 (1975).

rights whose violation could provide a basis for legal claims; Harvard should not evade legal challenge by simultaneously withholding membership status and benefiting from membership standards for special interest. Second, even were we considered analogous to members, Massachusetts does not bar claims based on the mere fact of shared membership interest. *See, e.g., Jessie*, 372 Mass. at 304.

The second and more important basis for our special interest standing is the effect that Harvard's fossil fuel investments have on us. These harms are listed at length in the Complaint: the chilling effect on academic freedom caused by Harvard's public support of the fossil fuel industry, diminished future enjoyment of the Harvard campus as a result of sea level rise, and detriment to the quality of our education flowing from fossil fuel companies' dissemination of scientific falsehoods. App. 12-13. Such harms are not shared by the general public. Moreover, the rights implicated by such injuries are based not only on our special relationship to Harvard but on the language of the Charter, where Harvard binds itself to look after "the advancement and education of youth" and the maintenance of the campus,

App. 8, and on subsequent statements by Harvard's president to obey a "special obligation" to the future by maintaining its investments in accordance with its Charter duties, App. 10. Bound to protect our special interests as students, Harvard has instead financed and furthered injuries that effectively curtail the benefits we enjoy as a result of our student status. Curtailment of such benefits was a sufficient basis for standing in *Jessie* (voting rights) and *Lopez* (membership rights), cases in which the alleged violations were much less detrimental to the charitable mission than those challenged here. Our limited personal right to challenge investments in fossil fuels that impinge on the enjoyment of our Charter-granted benefits lies well outside the scope of the Attorney General's exclusive control over publicly shared charitable interests, and as such our special interest standing claim fits neatly within the line of precedent.

2. The Superior Court Erred in Its Analysis of Special Interest Standing to Challenge Charitable Asset Management

The Superior Court found that our interests in Harvard's fossil fuel investments are too attenuated and speculative to support special interest standing.

The court reached this conclusion by distinguishing two asserted "personal rights" in our Complaint, each insufficient: 1) a personal right *as students* to enforce the terms of the Charter, and 2) a personal right *as victims of Harvard's fossil fuel investments* to challenge Harvard's investment activity. With regards to the first right, the court found our interest insufficiently distinct, analogizing our alleged student interest to the insufficient interests of the "life-long members in good standing" in *Weaver*. With regards to the second right, the court ruled that our alleged injuries were too widely shared and too speculative--and even disproven by evidence in the Complaint--to support our claim of direct, personal interest. App. 34-38.

In *supra* Part VI.A.2, we addressed the court's incorrect application of the standard of review. In addition to this error, the court's reasoning contains two flaws. First, it mischaracterizes our asserted interest and the target of our action. Nowhere do we assert a general right to "enforce the terms of the Charter of Harvard College," App. 29, or to "challenge how Harvard invests its endowment," App. 38. Our challenge is only to Harvard's fossil fuel

investments, which constitute a small subset of Harvard's endowment and an even smaller subset of its overall activity. As such, the appropriate question at the dismissal stage is: Who has standing to challenge Harvard's *fossil fuel* investment activity? By instead asking who has standing to challenge Harvard's investment activity writ large (or even its charitable activity writ large), the court set an impossibly high bar for special interest standing. Our asserted personal right is narrower than the court's characterization and poses no risk of eroding Defendants' lawful discretion in charitable management.

Second, the court erred in bifurcating our standing claim into two allegedly distinct bases—first, our student status, and second, the injuries we suffer from Harvard's fossil fuel investments. By analyzing interest and injury separately rather than as part of one claim, the court departed from precedent. As discussed above, special interest standing depends upon 1) a personal and specific interest in some subset of a charity's activity and 2) an injury resulting from that subset of activity. *See, e.g., Jessie*, 372 Mass. at 303. Plaintiffs who cannot

demonstrate special interest standing fail because they either 1) have no distinct interest in any subset of the charity's activity, *see, e.g., Weaver,* 425 Mass. at 277, or because 2) they allege injuries that lie outside the scope of a distinct interest, *see, e.g., Lopez,* 384 Mass. at 168. Our claim is structured to satisfy these requirements. We allege 1) a distinct interest in Harvard's fossil fuel investments, based on the language of the Charter and the personal effects of fossil fuel investments on our education; and 2) injuries that lie within the "zone" of this special interest, stemming only from Harvard's violation of our specific rights. The court erred in taking cognizance of our injury claims only insofar as they might support the unasserted, general right to challenge Harvard's overall investment activity—a "zone" of interest far larger than any we asserted. This mismatch between injury and interest led the court to incorrectly evaluate our injury claims according to one of the standards used for evaluating interests: The court found that our injuries from fossil fuel investments were "not personal" because widely shared. App. 35. But the "widely shared" test, insofar as it exists, applies only to *interests*, not

injuries: Where a sufficiently limited "zone" of interest is identified, the generality of the injury is irrelevant. *See, e.g., Jessie*, 372 Mass. at 303. The crucial link between our student status and the injuries caused by Harvard's fossil fuel investments forms the basis of our special interest standing claim. In ignoring this link, the Superior Court incorrectly applied precedent.

3. Granting Us Standing Would Serve the Purposes of Massachusetts's Charitable Enforcement Scheme

a. Our Standing Claim Does Not Invite Vexatious Litigation

Granting our standing claim would be consistent with past grants of special interest standing and would pose no risk of vexatious litigation. In its dismissal, the Superior Court suggested that the "governance of universities would be thrown into chaos" should our action proceed. App. 41. This is incorrect for two reasons. First, the class of beneficiaries who might share our special interest is identifiable and issue-specific. Only Harvard students whose specific rights and benefits vis-à-vis the Harvard Corporation are harmed by the Defendants' fossil fuel investments can claim standing.

Second, the egregiousness of the conduct targeted here limits the possibility of similar actions. Harvard's fossil fuel investments threaten both the purpose of the institution--the dissemination of truth and the cultivation of a free academic environment--and its very physical existence. While courts are rightly wary of lawsuits challenging the minutiae of university governance, actions challenging behavior that threatens the very core of university charitable activity are necessarily rare. Moreover, our standing claim is structured to limit potential plaintiffs: Only plaintiffs who can point to rights promised in a trust instrument and whose injuries are sufficiently distinct from those suffered by the public can challenge charitable management, and even then only conduct imperiling the character and existence of their institution. This leaves the vast majority of university activity--such as curriculum design, faculty hiring, building plans, or real estate investment (indeed, anything besides fossil fuel investment)--beyond the reach of a similar action.

In sum, we are definite (not potential) beneficiaries of Harvard's charitable activity, our interests are personal, and our injuries flow from

conduct that demonstrably harms the university's long-term well-being, facts that few other potential plaintiffs are likely to be able to demonstrate. There is thus no risk of excessive litigation based on similar principles. Likewise, we seek only one-time injunctive relief, obviating any concern that charitable coffers will be drained by similar actions.

b. Student Status Does Not Bar Our Standing

Precedent on the effect of student status on standing is ambiguous. As discussed above, and contrary to the Superior Court's reading of our Complaint, we have not based our standing claim on student status alone nor claimed any general right to challenge university governance or investment management. Relevant case law provides little guidance. In dicta in *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the Supreme Court noted that "students are fluctuating, and no individual among our youth has a vested interest in the institution, which can be asserted in a court of justice." 641. This statement is of limited applicability to our case, first because the students in *Woodward* were not parties and had asserted no special or specific interest, and second because the

Court's concern about granting standing to litigate "fluctuating" interests is irrelevant where, as here, the targeted conduct is of concern to all future students and will continue to affect the plaintiffs after their status as students is terminated. Subsequent decisions in state courts are split on the question of whether student status, without more, is sufficient to challenge university management generally. *Compare Miller v. Alderhold*, 228 Ga. 65 (1971) (denial of student standing based on *Woodward*), *and Russell v. Yale University*, 54 Conn. App. 573 (1999) (denial of student standing based on *Woodward* and *Miller*), *with Jones v. Grant*, 344 So.2d 1210 (1977) (grant of standing based on student status alone), *superseded by* Ala. Code § 10A-3-2-44 (1984) (generally adjusting the state's enforcement scheme without reference to student status). To reiterate, because our claim is based on more than student standing, the existing precedent is inapplicable.

In considering the relevance of our student status to our standing claim, this Court should be guided by the usual principles of special interest standing. Under these principles, the mere fact that student status expires after a set term of years is

irrelevant: In no case has it been suggested that the eventual termination of a plaintiff's relationship to a charity should weigh on the decision to grant standing, even where, as in *Jessie* and *Lopez*, such relationships were impermanent. To the contrary, the centrality of student education and well-being to Harvard's charitable mission should if anything favor student standing claims where, as here, such claims are personal, distinct, and aimed at a narrow subset of Harvard's management activity.

c. A Grant of Special Interest Standing in This Case Would Comport with Public Policy

Recognition of our standing claim would further the Commonwealth's interest in charitable enforcement for three reasons. First, a grant of standing would strengthen enforcement against nonmembership charities. As discussed above, the Supreme Judicial Court has been protective of the rights of non-profit corporation members by granting special interest standing to enforce them. *See, e.g., Jessie*, 372 Mass. at 293. This judicial remedy is in addition to the regular avenues of influence members enjoy over charity directors. In the absence of such membership rights and mechanisms, charitable mismanagement actions are the sole means of redress for plaintiffs

who meet the rigorous standards of special interest standing. Nonmembership charities like Harvard should not enjoy special protection from the law.

Second, a grant of standing would buttress the rights of students, who constitute a sizeable portion of the Commonwealth's citizenry. Universities exist because students pay to attend them. Nonetheless, students lack charitable membership status and enjoy few other means of challenging university violations of their rights. For example, no student sits on the governing board of either Harvard Defendant. While universities are entitled to broad discretion to manage their affairs without the threat of litigation, charitable mismanagement actions must remain a viable option for students whose personal rights have been violated and who lack other means of relief.

Third, novel climate change claims are best handled by supplementing Attorney General charitable enforcement power. Climate change harms are relatively untested in the law, and the Attorney General cannot be expected to keep fully abreast of or seek remedies for climate change-related injuries perpetrated by charitable corporations. Because of their unique access to information and proximity to these novel

harms, special interest plaintiffs are best situated to challenge such injuries.

Because we are current (not potential) beneficiaries targeting exceptionally egregious conduct by Defendants, because our special interest is exclusive of beneficiaries lacking personal harms, and because the Commonwealth is served by enhancing Attorney General enforcement in the area of climate change, this Court should reverse the denial of standing and allow our claim of charitable mismanagement with regards to fossil fuel investments to proceed.

C. Our Tort Claim Is Legally Cognizable

Our second claim is a novel theory.[2] Under that theory, an institution would incur injunctive liability in tort for investing in activities that cause severe and irreparable harm to Future Generations' persons or property when the institution is or should be aware that its investments causally contribute to that harm.[3] We bring the claim on behalf

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[2] It is well established that Massachusetts litigants may advance novel arguments, including novel causes of action. *See, e.g., George v. Jordan Marsh Co.*, 359 Mass. 244, 249 (1971).

[3] The Restatement (Second) of Torts provides a list of seven factors to be considered in determining the appropriateness of an injunction. *See* § 936 (1979). In

of Future Generations because those persons are unable to appear in court.

1. Special Interest Standing Is Not Required

The gravamen of our claim lies in tort rather than mismanagement. It asserts interests in the physical integrity of persons and property and is grounded in a general duty of care. Because the targeted conduct is tortious injury rather than violation of charitable obligations or mismanagement, the mere fact that such injury occurs through the handling of charitable assets is insufficient to implicate the enforcement considerations of M.G.L. c. 12, § 8, for three reasons.

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this case, an injunction is the proper remedy because Defendants' harm-causing conduct is ongoing, the alleged harms cannot be meaningfully redressed by financial means alone, the value of a damage award to Future Generations would diminish over time, the hardship caused by Defendants' conduct is far greater than the hardship that would result from an injunction, and the requested injunction is both practicable and enforceable. An injunction is, moreover, likely to mitigate the harm because Defendants' investments cause that harm directly and indirectly, through their influence over other institutional investors. *See* App. 16. While injunctive relief is not usually available for torts against the person, that rule is inapplicable when there is no adequate remedy at law. *See, e.g., Alberti v. Cruise*, 383 F.2d 268, 272 (4th Cir. 1967).

First, tort claims and mismanagement claims are conceptually distinct and implicate entirely different interests and enforcement considerations. Tort claims implicate private wrongs. In the context of our claim, Future Generations and Harvard Defendants are in a victim-tortfeasor relationship (special rules related to charity tortfeasors do not apply here, as discussed below). Because Future Generations seek no special consideration based on any purported beneficiary or membership interest, Defendants' charitable status is irrelevant to its liability. Similarly, the fact that a charity tortfeasor's wrong occurs via investment does not thereby implicate statutory protections for charitable assets designed to maintain a distinction between charitable and non-charitable purposes. M.G.L. c. 12, § 8's grant of exclusive Attorney General enforcement regarding the "due application of funds" relates to concerns that "charitable funds have not been or are not being applied to charitable purposes or that breaches of trust have been or are being committed in the administration of a public charity," § 8H(1)--concerns unrelated to tort. As such, there is no reason to suppose that exclusive enforcement extends to the tortious use of assets.

Second, this lack of exclusive enforcement is made plain by the Legislature's express repeal of charitable tort immunity. *See* M.G.L. c. 231, § 85K.[4] To interpret M.G.L. c. 12, § 8 as a bar to our claim merely because the tortious conduct occurs via asset management would directly contravene the Legislature's intent to make charities liable. Moreover, § 85K explicitly bars immunity for commercial activity (which includes investment): "[T]he liability of charitable corporations . . . shall be not subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character, even though carried on to obtain revenue to be used for charitable purposes." The Supreme Judicial Court has extended the scope of "primarily commercial activity" to include a hospital's treatment of a patient where the primary objective is to generate revenue. *Harlow v. Chin*, 405 Mass. 697, 715 (1989). Under this rule, Harvard's investment activity is clearly outside the zone of charitable immunity.

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[4] That provision reads, in relevant part, "It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or association is or at the time the cause of action arose was a charity."

Finally, even if M.G.L. c. 12, § 8 could be construed to preclude tort claims that overlap with it, it would be absurd to do so here. Future Generations cannot vote, petition for writs of mandamus against the Attorney General, or otherwise influence her. Even if Future Generations were members of the public in an abstract sense, they cannot realistically be said to be members of the public to whom the Attorney General is accountable. It follows that Future Generations fall outside the reach of M.G.L. c. 12, § 8. It further follows that, even if the Attorney General wished to protect the interests of Future Generations, she could not do so adequately when their interests conflicted with perceived short-term interests of the public, whom she is bound to serve. Such a perceived conflict may well be present here, in which scarce taxpayer funds, political pressures, and any number of other considerations perfectly reasonable from a democratic accountability perspective but disastrous from an intergenerational justice perspective could lead the Attorney General to sit on her hands.

2. Harvard Defendants' Investments Are Tortious

Harvard Defendants' fossil fuel investments are tortious notwithstanding the fact that no statutory or case law explicitly proscribes them. Our theory rests principally upon the certainty and severity of the harms caused by Defendants' investments and Defendants' knowledge that their investments causally contribute to those harms. In this case as in others, intentional physical harms create a presumption of liability even in the absence of a preexisting cause of action. *See* Restatement (Third) of Torts § 5 (2010) ("An actor who intentionally causes physical harm is subject to liability for that harm."). Like negligent entrustment and related torts, the tort we propose would anchor liability in the defendant's aiding and abetting of wrongful activity.

a. Fossil Fuel Production Is Abnormally Dangerous and Properly Considered a Wrong

Massachusetts courts apply a six-factor balancing test to determine whether an activity is abnormally dangerous. *See Clark-Aiken Co. v. Cromwell-Wright Co.*, 323 N.E.2d 876, 878, 886 (1975).[5] The purpose of the

[5] The six factors are: "(a) existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage;

balancing test is to establish whether an activity is so dangerous as to presumptively give rise to liability no matter its social value and regardless of any care the defendant may have exercised. *See* Restatement (Second) of Torts § 520 cmt. f (1977).

Abnormal dangerousness is a useful proxy for the wrongfulness of an activity. While some moral theorists of tort law argue that strict liability harms are not wrongs in the usual tort sense, *see, e.g.*, John C.P. Goldberg and Benjamin C. Zipursky, *Torts* 267 (2010), those harms have occupied a central place in the development of modern tort law, *see* Gregory C. Keating, "Strict Liability Wrongs," *in* John Oberdiek, ed., *Philosophical Foundations of the Law of Torts* 294-95 (2014). Activities giving rise to strict liability are more properly characterized as classically tortious wrongs--in the case of abnormally

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(e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes." Restatement (Second) § 520 (1977). The use of Future Generations as plaintiffs for this claim alters somewhat the application of the balancing test. However, this slight difference in application does not negate the function of abnormal dangerousness as an element of our claim--that is, as a proxy for wrongful activity.

dangerous activities, because of the unreasonable harms they create. *Id.* at 296.[6]

The fossil fuel production activities in which Defendants invest are abnormally dangerous under the balancing test used in Massachusetts. They are especially dangerous to Future Generations insofar as they are certain to harm Future Generations' persons and property severely and irreparably. App. 7.[7] Those harms outweigh the value of fossil fuel production,

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[6] Keating goes on to note that a tortfeasor's payment of compensation to her victim(s) renders reasonable an unreasonable harm created by an abnormally dangerous activity. *See id.* at 296. However, this observation does not alter the preliminary determination that the activity is a wrong within the scope of tort law. And, in any case, fossil fuel companies do not compensate the victims of the harms their activities inflict (certainly not Future Generations).

Neither may Harvard Defendants escape liability by arguing that investor injunctive liability is inappropriate as long as the activities invested in do not give rise to such liability for the persons conducting them. Courts have indeed traditionally granted damages rather than injunctions in strict liability cases, *see, e.g., Clark-Aiken Co. v. Cromwell-Wright Co.*, 367 Mass. 70, 73-83 (1975); however, unlike in those cases, enjoining Defendants' fossil fuel investments would neither impose great economic hardship upon Defendants nor contravene the public policy interest in maintaining economic activity in the Commonwealth.

[7] It is production rather than consumption of fossil fuel products that is abnormally dangerous: Once extracted, fossil fuels must be burned to generate profit. Furthermore, fossil fuel corporations engage in subsidiary activities to shore up their market power, leaving consumers little choice but to buy their products.

see App. 7-8,[8] and fossil fuel companies cannot reduce the risk of harm through the exercise of reasonable care, App. 14.

b. Harvard Defendants Are Aware of the Harm Caused by Their Investments

Intentional tort liability may be imposed where an actor "believes that the conseguences [of his act] are substantially certain to result from it." *Breault v. Chairman of Bd. of Fire Comm'rs of Springfield*, 401 Mass. 26, 36 n. 12 (1987). Established defenses to intentional torts include consent, self-defense, defense of third persons, and protection of land and chattels. Restatement (Third) of Torts § 5 cmt. b (2010). A distinct but related doctrine allows for imposition of negligence liability when a defendant owes a duty to another[9] and acts with reckless disregard for her safety. *See Boyd v. Nat'l R.R. Passenger Corp.*, 446 Mass. 540, 546 (2006).

The circumstances of this case compel a finding of intentionality or, at the very least, reckless disregard of safety. Past statements by members of the Harvard Corporation demonstrate Harvard Defendants'

[8] The existential threat climate change poses to human societies outweighs even the most colossal value (to present or future generations).
[9] We discuss duty *infra* at Part VI.C.2.c.

knowledge that the Corporation's investments create environmental impacts, including climate impacts; that fossil fuel production significantly contributes to climate change; and that climate change causes certain and severe harms to Future Generations. *See* App. 14. Moreover, this causal relationship is common knowledge, and no privilege or defense exists.

c. Harvard Defendants Owe Future Generations a Duty of Care

While Defendants' actions are best characterized as intentional, we allege negligence in the alternative. *See* App. 14. Negligence liability imposes upon every person a "duty to exercise reasonable care to avoid physical harm to others." *Jupin v. Kask*, 447 Mass. 141, 147 (2006). That duty applies only where the risk of harm is foreseeable. *Id.* In determining the existence of a duty, courts "take into account social conditions and contemporary public policy concerns." *Commerce Ins. Co. v. Ultimate Livery Serv., Inc.*, 452 Mass. 639, 646 (2008). The amount of care owed varies in proportion to the danger created by the allegedly negligent actions. Restatement (Second) of Torts § 298 cmt. b (1965).

Harvard Defendants owe a duty of care to Future Generations. The interests at stake implicate physical

safety of persons and property, App. 7-8, 14, and the harm is not just foreseeable but certain, *see* App. 9, 14. Moreover, social conditions and public policy could hardly weigh more strongly in favor of inferring a duty: Without immediate and decisive action to address climate change, Future Generations will suffer severe and irreparable consequences. *See* App. 7-8.[10]

d. Harvard Defendants' Investments Harm Future Generations

Tort doctrine requires that plaintiffs establish both factual and proximate cause. Under factual cause doctrine, the defendant's conduct must be a necessary condition for the harm. *See* Restatement (Third) of Torts § 26 cmts. b, c (2010). The presence of other causes sufficient to produce the harm does not preclude liability. *Id.* at § 27. A court may then employ the doctrine of proximate cause to reduce a defendant's liability when the harm caused by his actions is not "within the scope of the foreseeable risk arising from the negligent conduct." *Leavitt v. Brockton Hosp., Inc.*, 454 Mass. 37, 45 (2009).

[10] While corporate law is structured in part to limit investor liability, *see Hanson v. Bradley*, 298 Mass. 371, 380 (1937), the justification for that limitation is inapplicable here: Our claim would enjoin only a single class of investments and therefore has no chilling effect on investment generally.

Many courts and commentators have observed that but-for causation is not the *sine qua non* of causation in tort law. *See, e.g.*, Restatement (Third) of Torts § 27 cmt. f (2010) ("The fact that an actor's conduct requires other conduct to be sufficient to cause another's harm does not obviate the applicability of this Section."); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* 354 (Lawyer's 5th ed. 1984) ("A number of courts have held that acts which individually would be innocent may be tortious if they thus combine to cause damage, [including] in cases of pollution . . . . The single act itself becomes wrongful because it is done in the context of what others are doing.").[11]

Cases of intentional harm or reckless disregard of another's safety, in particular, are governed by standards less stringent than those of a typical negligence case. First, factual cause requirements are relaxed in reckless disregard of safety cases. *See* Restatement (Second) of Torts § 501(2) (1965). Second, proximate cause doctrine distinguishes between

[11] Consistent with our proposed framework, Prosser and Keeton go on to note that knowledge of others' conduct coinciding with one's own, or negligent failure to discover it, provides a justification for imposing liability. *Id.* at 355.

intentionally- and negligently-caused harms, allowing liability for the former in a greater range of circumstances. *See Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 548 (1983) ("[P]roximate cause has traditionally been deemed unnecessary in suits against intentional tortfeasors.").

Cases involving complex environmental or health harms may also be more appropriately governed by relaxed standards of causation. *See, e.g.*, Sanne H. Knudsen, *The Long-Term Tort: In Search of A New Causation Framework for Natural Resource Damages*, 108 Nw. U. L. Rev. 475, 531 (2014) (noting that "courts and scholars recognize that deviation from traditional causal paradigms is both necessary and appropriate" in toxic tort cases and arguing for a similar paradigm for ecological harms); *Kilpatrick v. Bryant*, 868 S.W.2d 594, 600 (Tenn. 1993) ("Several courts have . . . relaxed the traditional causation standard [in medical malpractice cases] to allow recovery [under the loss of chance doctrine]").[12]

[12] In the Article III context, the Supreme Court has come to similar conclusions. In two recent cases, the Court held that alleged property damage and public nuisance proximately caused by climate change met Article III causation requirements. *See Massachusetts*

Harvard Defendants' conduct presupposes causation. Defendants provide capital for the extraction and sale of fossil fuels with the expectation that those activities will generate profit. But those activities cannot do so without harming Future Generations' persons and property.[13] Our representation of the *collective* interests of Future Generations makes causation simpler than in ordinary tort cases, as Defendants' conduct need not be traced to harm suffered by particular individuals or groups.[14]

The but-for standard does not require us to allege that Harvard Defendants single-handedly cause the entirety of the harms that Future Generations will

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v. E.P.A., 549 U.S. 497, 521, 524 (2007); *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2535 (2011). In both cases, the defendants were among many contributors to the problem. *See Massachusetts*, 549 U.S at 523; *Connecticut*, 131 S. Ct. at 2533.

[13] While it is possible, as an intellectual exercise, to enumerate several intermediate steps in the causal chain linking Defendants' conduct to Future Generations' injuries, those steps are inextricably linked. Because there is no meaningful possibility that more than one outcome will occur at each point along the causal chain, viewing causation in this case as a series of independent events would be logically absurd. Defendants' investments necessarily lead to climate change, which necessarily leads to harm.

[14] This fact does not eliminate specific causation. Just because we do not know the names of the people who will suffer harm from Defendants' investments in the future (and, for that reason, do not plead harm to individuals) does not mean that those people will not suffer harm.

suffer as a result of climate change. We need only assert--and do assert, *see* App. 14--that Defendants contribute to the problem enough to cause at least some discrete, indivisible harms.

The significance of Defendants' contribution is heightened in the context of scientific research on tipping points. Without aggressive mitigation of greenhouse gas emissions, scientists expect the Earth to reach tipping points beyond which climate impacts will become catastrophic. *See* App. 8. In this case the most serious climate-caused harms to Future Generations will occur after reaching such tipping points. [15] Although the precise origin of the tiny quantity of future emissions that will force a crossing of a tipping point threshold is impossible to determine, any tipping point scenario would involve multiple sufficient causes.[16]

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[15] It is impossible to determine with complete scientific certainty when a tipping point will occur or whether the Earth has already reached one. However, justifying non-imposition of liability on this basis would be an utter abdication of this Court's powers and duties.

[16] It is not the case that, under such a causal theory, virtually anyone whose contribution to global greenhouse gas emissions is non-negligible might be held liable. Our causal theory is bounded by the other elements of our proposed tort--which require, among other things, investment in wrongful activity and knowledge of the harms caused by such investment.

Even if Defendants' investments were not but-for causes of harm to Future Generations' persons and property, they would "combine [with other acts] to cause damage." Keeton et al. at 354. Moreover, limitation of Defendants' liability under proximate cause doctrine would be inappropriate given Defendants' knowledge of the harms caused by their investments. *See supra* at VI.C.2.b.

Finally, even if our allegations could not demonstrate causation under any of the standards summarized above, denying our claim on this basis would be a failure of judicial imagination. There is nothing essential about causation in tort law; courts fashion causation standards from the fabric of common sense and broadly held notions of fairness. Holding Defendants liable for knowingly funding an activity that damages the health and livelihoods of Future

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Additionally, the impact of Defendants' investment decisions extends beyond the investments themselves. *See* App. 16 (documenting Defendants' influence upon other institutional investors and the domino effect created by its past decisions to divest).

Neither is it unreasonable to hold Defendants liable for harms made more likely by past greenhouse gas emissions. Past emissions are a pre-existing, foreseeable reality not contemporaneous with Defendants' ongoing investment decisions. The tortiousness of those decisions must be determined "in the context of what others [have done]." Keeton et al. at 354.

Generations with scientific certainty would accord with common sense.

3. Individual Plaintiffs Properly Assert Future Generations' Interests

a. Judicial Protection of Those Interests Is Appropriate and Necessary

It is axiomatic that the basic welfare interests of Future Generations merit protection and that Future Generations are unable to secure it. Whether courts are institutionally competent to provide that protection is a separate question. While legal protection for Future Generations would be inappropriate in many contexts, it is appropriate here. Climate change threatens to severely impair the health and livelihoods of Future Generations, and the harms it inflicts will become certain before Future Generations can so much as attempt to avert them.[17]

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[17] The failure of the political system to protect Future Generations' interests makes judicial protection still more appropriate. That is especially true where, as here, such protection would likely reduce the ability of fossil fuel trade associations and lobbyists to block political action. *See* Peter C. Frumhoff, Richard Heede, and Naomi Oreskes, *The Climate Responsibilities of Industrial Carbon Producers*, 132(2) Climatic Change 157, 163-66 (2015).

Some philosophers have argued that Future Generations are incapable of possessing rights because they consist of non-identifiable individuals. *See, e.g.*, Bradley C. Bobertz, *Toward a Better Understanding of Intergenerational Justice*, 36 Buff. L. Rev. 165, 168 (1987) (summarizing the literature).

We are not the first voices to call for such protection. *See, e.g.*, Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* 120-21, 123 (1989) (advocating for "giving standing to a representative of future generations in judicial or administrative proceedings" or, alternatively, "allow[ing] all members of the public standing in legal proceedings to vindicate a public interest") (internal citation omitted).

Courts may in any case entertain claims of future harm when the harm is reasonably probable and present injury exists. *See, e.g.*, *Anderson v. W.R. Grace & Co.*, 628 F. Supp. 1219, 1231 (D. Mass. 1986) (leukemia). Even absent these circumstances, "where irreparable injury is threatened, a court of equity may act by injunction to prevent the harm before it occurs." Keeton et al. at 165 n. 8. In this case, the certainty of future harm without action by Defendants and others renders the distinction between present and future harm trivial. Even if it did not, the climate

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But our legal system is unencumbered by merely theoretical impossibilities. For instance, "[u]nlike rights theory, charitable trust law does not require the existence of identifiable individuals; 'all human generations, born and unborn, are beneficiaries.'" *Id.* at 188 (citing Edith Brown Weiss).

impacts that have already occurred provide abundant evidence of present harm. *See* App. 7-8.

b. Existing Mechanisms for Third-Party Representation Demonstrate its Practical Feasibility

Ample precedent exists for the legal protection of absent third parties' interests. First, in at least two cases also involving injunctive relief for environmental harms, courts have allowed claims on behalf of future persons on the grounds that their interests converged with those of the individual plaintiffs. *See Oposa v. Factoran* (Supreme Court of the Philippines 1993); *Cape May Cnty. Chapter, Inc., Izaak Walton League of Am. v. Macchia*, 329 F. Supp. 504, 514 (D.N.J. 1971).

Second, numerous formal mechanisms allow for third-party representation, including those involving guardians ad litem, trustees, executors or administrators of estates, and "next friends." Courts have also routinely granted standing to plaintiffs in cases involving fictive legal personalities.[18] Finally, class action rules allow for the representation of

[18] For instance, ships and corporations, whose interests are no more compelling or easily delineated than that of Future Generations in their physical security. *See Sierra Club v. Morton*, 405 U.S. 727, 742 (1972) (Douglas, J., dissenting).

large groups of third-party individuals in circumstances similar to those of this case. *See, e.g.*, Mass. R. Civ. P. 23(a)-(b).[19]

As Steven Winter writes, "[T]he problems that arise from representation are only *instrumental*--that is, only practical problems . . . . [They] present choices to be made, not moral evils pretermitted by a priori philosophic or constitutional limitations." *The Metaphor of Standing and the Problem of Self-Governance*, 40(6) Stanford L. Rev. 1480-81 (1988). The same principle ought to guide representation of the interests of Future Generations where, as here, those interests are foreseeable, necessary to the enjoyment of basic rights, and threatened by conduct that harms Future Generations with scientific certainty.

4. Tort Law Has Long Mirrored Changing Social Conditions

There is no reason that tort law is inherently unsuited to an expansion along the dimensions we propose.[20] Tort law has long expanded and contracted in response to changed social conditions, particularly industrial activities. Perhaps the most dramatic

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[19] Indeed, the *Macchia* court invoked class action requirements. *See Macchia*, 329 F.Supp. at 514.

[20] See also our discussion of specific causation, *supra* note 14.

example of expansion occurred between 1916 and 1963, when courts began to hold manufacturers strictly liable for injuries caused by their products. *See* Steven P. Croley and Jon D. Hanson, *Rescuing the Revolution: The Revived Case for Enterprise Liability*, 91(4) Michigan L. Rev. 683, 707-12 (1993).

Other areas of tort law, too, have seen tectonic shifts, with consequences for both the definition of a tort and those to whom a duty is owed. *See, e.g.*, *Tunkl v. Regents of Univ. of Cal.*, 60 Cal. 2d 92 (1963) (establishing liability of charitable hospitals for negligence of employees); *George v. Jordan Marsh Co.*, 359 Mass. 244, 249 (1971) (establishing tort of intentional infliction of emotional distress); *Li v. Yellow Cab Co.*, 13 Cal. 3d 804 (1975) (adopting comparative negligence standard); *Kerans v. Porter Paint Co.*, 61 Ohio St. 3d 486 (1991) (establishing tort of sexual harassment).

5. Several Limiting Principles Restrict Our Claim's Availability for Future Plaintiffs

The Superior Court opined that granting us standing would be to teeter on the edge of a slippery slope: "Tomorrow another group of students may decide that the most pressing need of Future Generations . . . is for green space." App. 40. The court

misinterpreted our assertion of standing; under our theory, standing derives not from subjective beliefs but from the ability to plausibly allege that the defendant's investments cause certain, severe, and irreparable harm to Future Generations.

Our claim also contains several limiting principles, including the convergence of our interests with those of Future Generations, the existential threat posed by climate change, the one-time nature of the relief we request, the factual allegations supporting an inference of knowledge on the part of Harvard Defendants, the institutional identity and educational mission of Harvard Defendants, and the size of Harvard Defendants' investments. Of course, our complaint contains only short and simple allegations. Yet a court may read our claim narrowly, particularly given its novelty.

VII. Conclusion

For the foregoing reasons, this Court should reverse the Superior Court's dismissal of our action and should remand for further proceedings on our claims of mismanagement of charitable funds and intentional investment in abnormally dangerous activities against Harvard Defendants.

Respectfully submitted,

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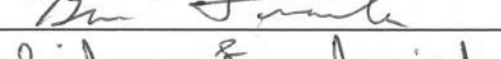
Benjamin A. Franta	
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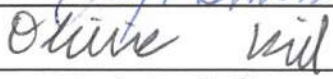
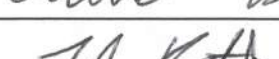
Olivia M. Kivel	
Talia K. Rothstein	
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APPENDIX

Table of Contents

Massachusetts Superior Court
Suffolk County
Docket for Case #: SUCV2014-03620

Harvard Climate Justice Coalition et al v Harvard Corporation et

Date Filed:	Nov 19, 2014
Status:	Disposed: Appeal assembled
Jury demand:	No
Case location:	Civil H, 3 Pemberton Sq, Boston
Case Type:	Misc equitable remedy
Status Date:	Jun 18, 2015

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Calendar

Date	Time	Status	Description
Feb 10, 2015	14:00:00	Event not reached by Court	Motion/Hearing: Rule12 to Dismiss
Feb 20, 2015	14:00:00	Event held as scheduled	Motion/Hearing: Rule12 to Dismiss

Docket Entries

Reverse Entries

Numbers shown are court assigned numbers.

Entry #	Filing Date	Action	Description
			MANUALLY-COLLECTED COMPLAINT
1	Nov 19, 2014	Request	Complaint
	Nov 19, 2014		Origin 1, Type D99, Track F.
2	Nov 19, 2014	Request	Civil action cover sheet filed (n/a)
	Dec 10, 2014		DefendantS Harvard Corporation & Harvard Management Company, Inc.'s Notice of intent to file motion TO EDISMISS
	Dec 11, 2014		Notice of Motion to Dismiss
3	Dec 19, 2014	Request	Joint Stipulation to extend deadline for Plaintiffs' response to Defendants' motion to dismiss
	Dec 24, 2014		Motion (P#3) ALLOWED (Edward P. Leibensperger, Justice) Dated: 12/23/14 Notices mailed 12/23/2014
4	Jan 8, 2015	Request	President and Fellows of Harvard College and Harvard Management Company, Inc's MOTION to Dismiss (with Opposition)
5	Jan 8, 2015	Request	The Commonwealth;s Motion to Dismiss (w/opposition)
5	Mar 17, 2015	Request	Memorandum: of Decision & Order on defts Motion to Dismss The President & Fellows of Harvard College and Harvard Management Co Inc Motion to Dismiss is ALLOWED The Commonwealth's Motion to Dismiss is ALLOWED The case is DISMISSED (Wilson,J) Notice Sent 3/17/15 (entered 3/17/15)
6	Mar 18, 2015	Request	JUDGMENT ON MOTION TO DISMISS (MASS R CIV P 12(b) That the complaint of plffs is herby Dismissed agianst

			thed efts and defts recover costs entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)
7	Apr 13, 2015	Request	Plaintiffs' notice of appeal
8	Apr 13, 2015	Request	Letter received from the Plaintiffs informing us that they do not plan to order a transcript of the hearing on the motion to dismiss
	Apr 14, 2015		Notice of service of the filing of Notice of Appeal to: Harvard Climate Justice Coalition, Alice M. Cherry, Benjamin A. Franta, Sidni A. Frederick, Joseph E. Hamilton, Oliva M. Klvel, Talia K. Rothstein, Kelsey C. Skaggs; Martin M. Murphy, Esquire, Jennifer A. Kirbyy, Esquire, Foag Hoag LLP: Mary A. Beckman, Esquire, Nora J. Mann, Esquire, Brett J. Blank, Esquire, Mass Atty General's Office
	June 18, 2015		Notice of assembly of record on Appeal
9	July 3, 2015	Request	Notice of entry (2015-P-0905) In accordance with Massachusetts Rule of Appellate Procedure 10 (a) (3), please note that the above-referenced case was entered in this Court on June 26, 2015

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.

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.

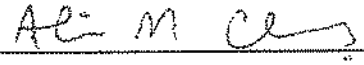
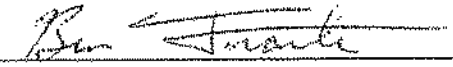
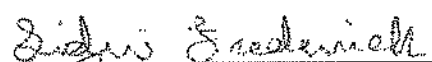
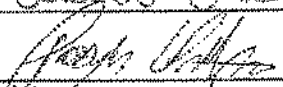
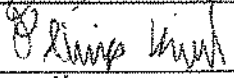
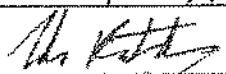
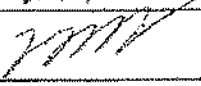
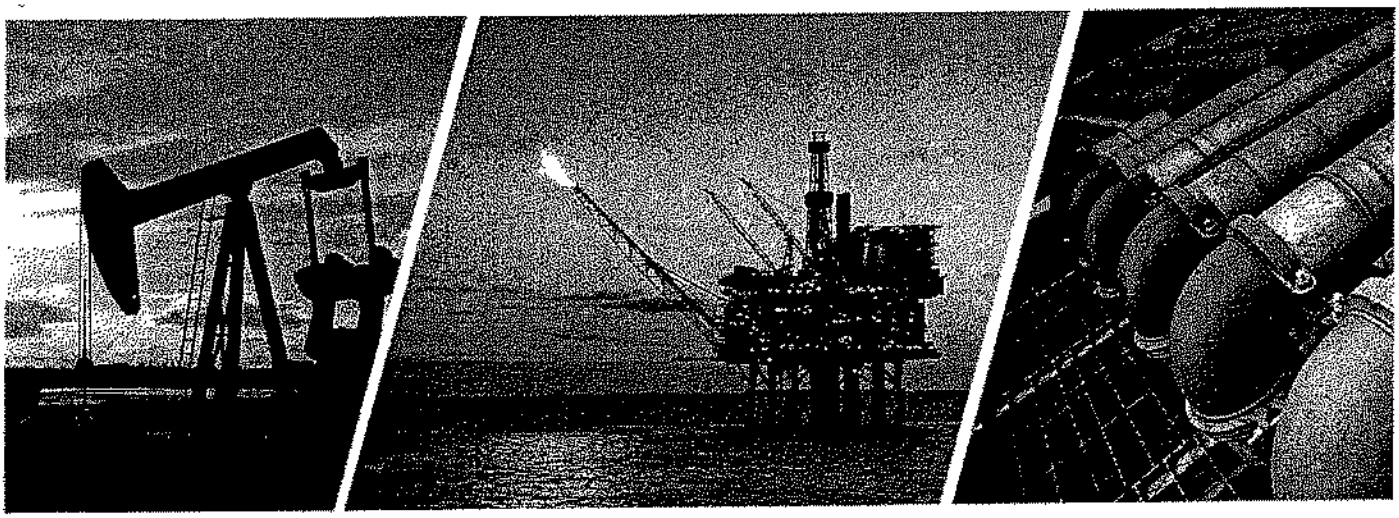
Alice M. Cherry	
Benjamin A. Franta	
Sidni M. Frederick	
Joseph E. Hamilton	
Olivia M. Kivel	
Talia K. Rothstein	
Kelsey C. Skaggs	

Exhibit M

STRANDED ASSETS

PROGRAMME



Stranded assets and the fossil fuel divestment campaign: what does divestment mean for the valuation of fossil fuel assets?

Authors Atif Ansar | Ben Caldecott | James Tilbury

Executive Summary

'Stranded assets', where assets suffer from unanticipated or premature write-offs, downward revaluations or are converted to liabilities, can be caused by a range of environment-related risks. This report investigates the fossil fuel divestment campaign, an extant social phenomenon that could be one such risk. We test whether the divestment campaign could affect fossil fuel assets and if so, how, to what extent, and over which time horizons.

Divestment is a socially motivated activity of private wealth owners, either individuals or groups, such as university endowments, public pension funds, or their appointed asset managers.[1] Owners can decide to withhold their capital—for example, by selling stock market-listed shares, private equities or debt—firms seen to be engaged in a reprehensible activity. Tobacco, munitions, corporations in apartheid South Africa, provision of adult services, and gaming have all been subject to divestment campaigns in the 20th century.

Building on recent empirical efforts, we complete two tasks in this report. First, we articulate a theoretical framework that can evaluate and predict, albeit imperfectly, the direct and indirect impacts of a divestment campaign.

Second, we explore the case of the recently launched fossil fuel divestment campaign. We have documented the fossil fuel divestment movement and its evolution, and traced the direct and indirect impacts it might generate. In order to forecast the potential impact of the fossil fuel campaign, we have investigated previous divestment campaigns such as tobacco and South African apartheid.

Aims of the fossil fuel divestment campaign

The aims of the fossil fuel divestment campaign are threefold: (i) 'force the hand' of the fossil fuel companies and pressure government—e.g. via legislation—to leave the fossil fuels (oil, gas, coal) 'down there'[2]; (ii) pressure fossil fuel companies to undergo 'transformative change' that can cause a drastic reduction in carbon emissions—e.g. by switching to less carbon-intensive forms of energy supply; (iii) pressure governments to enact legislation such as a ban on further drilling or a carbon tax. Inspiration for the fossil fuel divestment idea leans heavily on the perceived success of the 1980s South Africa divestment campaign to put pressure on the South African government to end apartheid.

Footnotes:

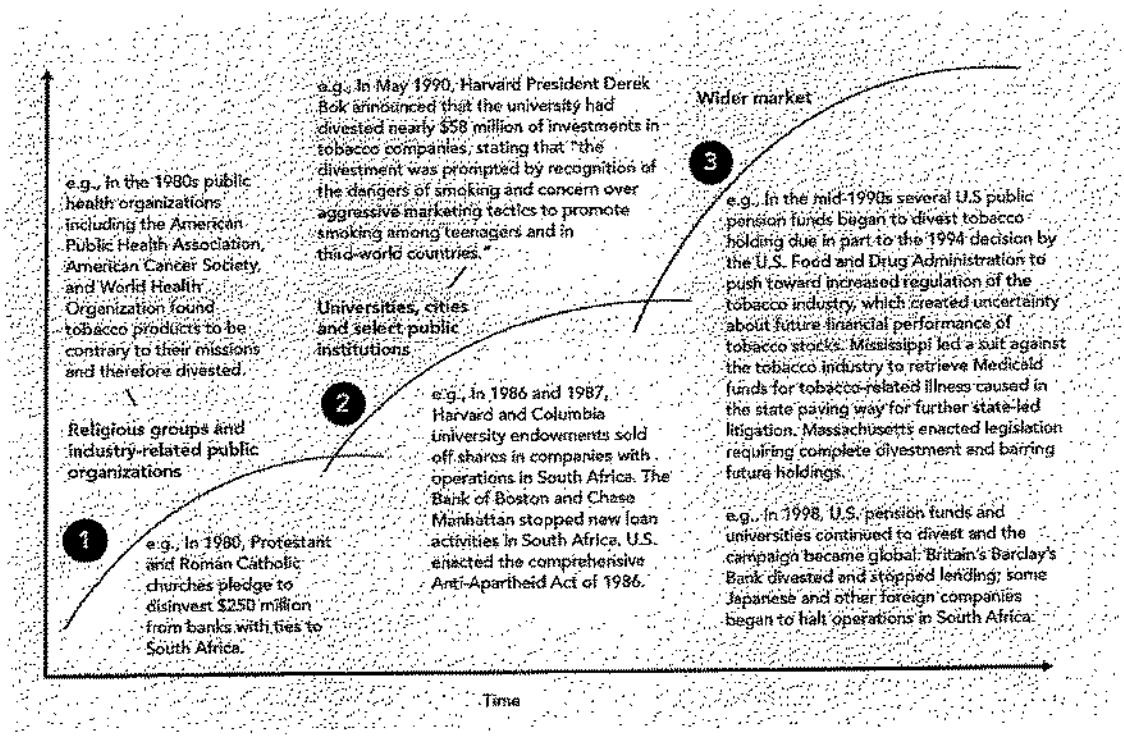
[1] Examples: Lehman, and Luxenberg, 'Divestment, Investment Sanctions, and Disinvestment.'

[2] The Economist, 'Unburnable Fuel.'

Evolution of divestment campaigns

Divestment campaigns typically evolve over three waves, with examples drawn from the tobacco and South African experiences included in the figure below.

The three waves of a divestment campaign



The first wave begins with a core group of investors divesting from the target industry. All previous divestment campaigns have found their origin in the United States and in the first phase focus on US-based investors and international multilateral institutions. The amounts divested in the first phase tend to be very small but create wide public awareness about the issues.

Both in the case of tobacco and South Africa the campaigns took some years to gather pace during the first wave until universities such as Harvard, Johns Hopkins and Columbia announced divestment in the second phase. Previous research typically credits divestment by these prominent American universities as heralding a tipping point[1] that paved the way for other universities, in the US and abroad, and select public institutions such as cities to also divest.

Footnotes:
[1] Teoh, Welch, and Wazzan, 'The Effect of Socially Activist Investment Policies on the Financial Markets: Evidence from the South African Boycott.'

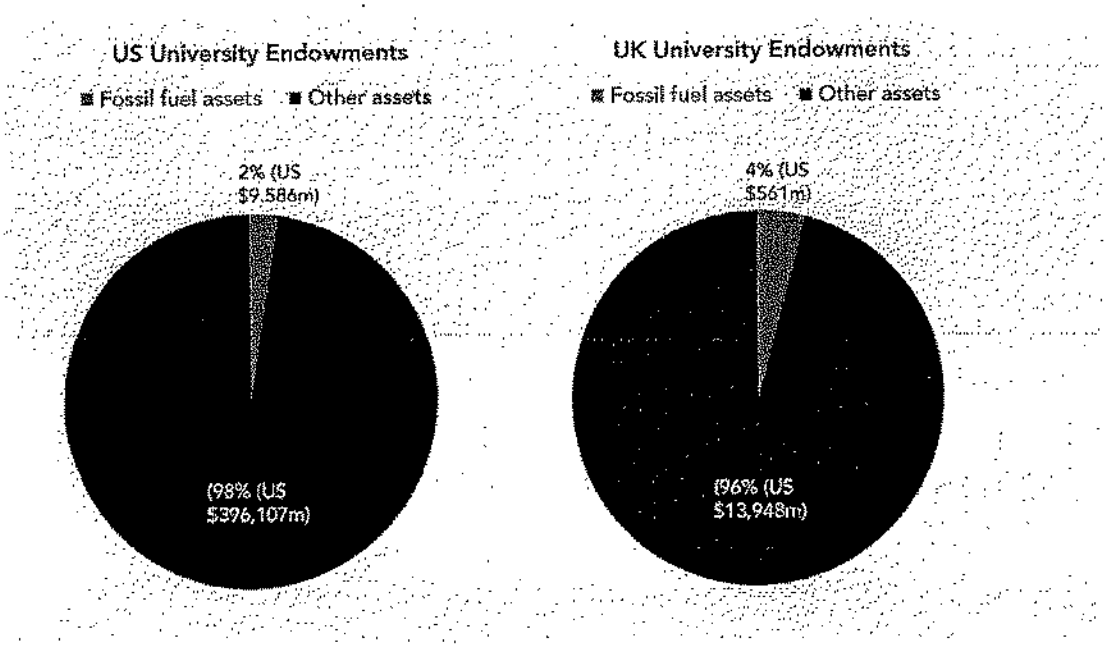
In the third wave, the divestment campaign goes global and begins to target very large pension funds and market norms, such as through the establishment of social responsibility investment (SRI) funds.

Like all previous divestment campaigns, the fossil fuel divestment campaign has started in the US and in the short term focused on US-based investors. In recent months, the campaign has attempted to build global momentum by targeting other universities with large endowments such as the universities of Oxford and Cambridge in the United Kingdom. Despite its relatively short history, the fossil fuel campaign can be said to entering the second wave of divestment.

Exposure of university endowments and public pension funds to fossil fuel assets

Fossil fuel equity exposure is a ratio of the broader equity market exposure for each fund. Thus, on average, university endowments in the US have 2-3% of their assets committed to investable fossil fuel public equities. The proportion in the UK is higher with an average of 5% largely because the FTSE has a greater proportion of fossil fuel companies.

Equity exposure to fossil fuel stocks is relatively limited[4]



Public pension funds, likewise, have 2-5% of their assets invested in fossil fuel related public equities.

Footnotes:

[4] NACUBO-Commonfund, *Study of Endowments*; The Economist, 'Unburnable Fuel'; World Federation of Exchanges, 'Statistics'; Acharya, *Endowment Asset Management: Investment Strategies in Oxford and Cambridge*.

University endowments and public pension funds also invest in bonds. In summary, of the $12 trillion assets under management among university endowments and public pension funds — the likely universe of divestment candidates — the plausible upper limit of possible equity divestment for oil & gas companies is in the range of $240-$600 billion (2-5%) and about another half that for debt.

Direct impact of divestment

In this report we find that the direct impacts of fossil fuel divestment on equity or debt are likely to be limited. The maximum possible capital that might be divested by university endowments and public pension funds from the fossil fuel companies represents a relatively small pool of funds. Even if the maximum possible capital was divested from fossil fuel companies, their shares prices are unlikely to suffer precipitous declines.

the direct impacts of fossil fuel divestment on equity or debt are likely to be limited.

Divested holdings are likely to find their way quickly to neutral investors. Some investors may even welcome the opportunity to increase their holding of fossil fuel companies, particularly if the stocks entail a short-term discount.

We find that there are likely to be greater direct effects on coal valuations. Coal companies represent a small fraction of the market capitalisation of fossil fuel companies. Coal stocks are also less liquid. Divestment announcements are thus more likely to impact coal stock prices since alternative investors cannot be as easily matched as in the oil & gas sector.

Looking back to earlier divestment campaigns also suggests that only a very small proportion of the total divestable funds are actually withdrawn. For example, despite the huge interest in the media and a three-decade evolution only about 80 organisations and funds (out of a likely universe of over 1,000) have ever substantially divested from tobacco equity and even fewer from tobacco debt.

We find that there are likely to be greater direct effects on coal valuations.

As a result, if divestment outflows are to have any direct impact on the valuations of fossil fuel companies, they would have to emerge from (i) changes in market norms, or (ii) constrained debt markets.

Changes in market norms

Even when divestment outflows are small or short term and do not directly effect future cash flows, if they trigger a change in market norms that closes off channels of previously available money, then a downward pressure on the stock price of a targeted firm is possible.

The potential trajectory of a divestment campaign might entail small outflows from 'lead investors' in a trickle-like fashion in early phases of a campaign, followed by a more drastic deluge once a certain tipping point has been reached.

Debt financing

The withdrawal of debt finance from fossil fuel companies by some banks or an increase in discount rate is unlikely to pose serious debt financing problems (either in terms of short-term liquidity or Capex) for fossil fuel companies. Our analysis, however, suggests two caveats. First, change in market norms are more relevant in relatively poorly functioning markets. In particular, borrowers in countries with low financial depth will experience a restricted pool of debt financing if any banks pre-eminent in the local financial network withdraw. Second, while an increase in discount rate is unlikely to have an effect on overall corporate finance of major fossil fuel companies, their ability to undertake large Capex projects in difficult technical or political environments will be diminished due to a higher hurdle rate and lower availability of debt financing.

A diminishing pool of debt finance and a higher hurdle rate will thus have the greatest effect on companies and marginal projects related to coal and the least effect on those related to crude oil.

While markets for crude oil and many oil products are very liquid, markets for coal are more fragmented and less liquid, with markets for natural gas in-between. A diminishing pool of debt finance and a higher hurdle rate will thus have the greatest effect on companies and marginal projects related to coal and the least effect on those related to crude oil.

Indirect impact of divestment

Even if the direct impacts of divestment outflows are meagre in the short term, a campaign can create long-term impact on the enterprise value of a target firm if the divestment campaign causes neutral equity and/or debt investors to lower the subjective probability of target firm's net cash flows. The outcome of the stigmatisation process, which the fossil fuel divestment campaign has now triggered, poses the most far-reaching threat to fossil fuel companies and the vast energy value chain. Any direct impacts pale in comparison.

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Stigmatisation outcomes

As with individuals, a stigma can produce negative consequences for an organisation. For example, firms heavily criticised in the media suffer from a bad image that scares away suppliers, subcontractors, potential employees, and customers.[5] Governments and politicians prefer to engage with 'clean' firms[6] to prevent adverse spill-overs that could taint their reputation or jeopardise their re-election. Shareholders can demand changes in management or the composition of the board of directors of stigmatised companies. Stigmatised firms may be barred from competing for public tenders, acquiring licences or property rights for business expansion, or be weakened in negotiations with suppliers. Negative consequences of stigma also include cancellation of multibillion-dollar contracts or mergers/acquisitions.[7] Stigma attached to merely one small area of a large company may threaten sales across the board.

In almost every divestment campaign we reviewed from adult services to Darfur, from tobacco to South Africa, divestment campaigns were successful in lobbying for restrictive legislation affecting stigmatised firms.

Restrictive legislation

One of the most important ways in which stigmatisation could impact fossil fuel companies is through new legislation. In almost every divestment campaign we reviewed from adult services to Darfur, from tobacco to South Africa, divestment campaigns were successful in lobbying for restrictive legislation affecting stigmatised firms.

If during the stigmatisation process, campaigners are able to create the expectation that the government might legislate to levy a carbon tax, which would have the effect of depressing demand, then they will materially increase the uncertainty surrounding the future cash flows of fossil fuel companies. This will indirectly influence all investors—those considering divestment due to moral outrage and those who are neutral—to go underweight on fossil fuel stocks and debt in their portfolios.

A handful of fossil fuel companies are likely to become scapegoats.

Multiples compression

Stigmatisation can lead to a permanent compression in the trading multiples, e.g. the share price to earnings (P/E) ratio, of a target company. For example, Rosneft (RNFTF) produces 2.3 million barrels of oil of day, slightly more than ExxonMobil (XOM). Rosneft was, however, valued at $88 billion versus $407 billion for ExxonMobil as of June 2013. Rosneft suffers from the stigma of weak corporate governance. Investors thus place a lower probability on its reserves being converted into positive cash flows. If ExxonMobil (and similar publicly traded fossil fuel firms) was to become stigmatised due to the divestment campaign, its enterprise value per 2P reserves ratio might also slide towards that of Rosneft permanently lowering the value of the stock.

Footnotes:

[5] Vergne, 'Stigmatized Categories and Public Disapproval of Organizations: A Mixed-Methods Study of the Global Arms Industry, 1996-2007.'

[6] Jacobs and Kopecki.

[7] Ibid.

Stigma dilution

While the above negative consequences are economically relevant, stigma does not necessarily drive whole industries out of business such that a particular activity stops altogether. Target firms, particularly when a whole industry is being stigmatised, take steps to counteract it. For example, in stigmatised industries, such as arms or tobacco, some players are able to avoid disapproval, while others face intense public vilification.

In stigmatised industries, such as arms or tobacco, some players are able to avoid disapproval, while others face intense public vilification.

Fossil fuel companies will attempt to dilute stigma and while stigmatisation will slow fossil fuel companies down, its outcomes are unlikely to threaten their survival. The outcomes of stigmatisation will be more severe for companies seen to be engaged in willful negligence and 'insincere' rhetoric[8] saying one thing and doing another.[9] Moreover, a handful of fossil fuel companies are likely to become scapegoats. From this perspective, coal companies appear more vulnerable than oil & gas.

Due to the phased nature of the process of stigmatisation, investors seeking to reduce their fossil fuel exposure in general are thus likely to begin by liquidating coal stocks. Storebrand—a Scandinavian asset manager with $74 billion under management—has taken precisely such as step.

Footnotes:

[8] Yoon, Gürler-Cioli, and Schwan, 'The Effect of Corporate Social Responsibility (CSR) Activities on Companies With Bad Reputations.'

[9] Setzer and Stjepcevic, 'Oil Companies and Climate Change: Inconsistencies Between Strategy Formulation and Implementation?'

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2014-3620-H

Notice sent
3/17/2015
A. M. C.
B. A. F.
S. M. F.
J. E. H.
O. M. K.
T. K. R.
K. C. S.
H. C. J. C.
M. F. M.
J. A. K.
M. A. B.
N. J. M.
B. J. B.

HARVARD CLIMATE JUSTICE COALITION and others[1]

vs.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE ("HARVARD CORPORATION") and others[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs, students at Harvard University, bring this lawsuit to challenge the manner in which the University is investing its considerable endowment. Harvard, however, says that the (sc) real issue here concerns not where Harvard should invest, but rather which members of the Harvard community should make its investment decisions. The Attorney General of the Commonwealth of Massachusetts, also a Defendant, asserts that this case is really about who has the power to challenge a charitable organization's decisions about the investment of its funds.

Both Harvard and the Attorney General have moved to dismiss the students' lawsuit. After reviewing the Complaint and the extensive written materials submitted by the parties, and hearing oral argument, I will allow both motions to dismiss, because standing to bring a lawsuit "is not measured by the intensity of the litigant's interest or the fervor of his advocacy." Enos v. Sec'y of Envtl. Affairs, 432 Mass. 132, 135 (2000) (internal citations omitted).

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

2. Harvard Management Company, Inc., and Martha M. Coakley as she is Attorney General of the Commonwealth of Massachusetts

Background

Plaintiffs are seven undergraduate, graduate and law students at Harvard University, along with an unincorporated association to which they and other students belong. Also named as a plaintiff is "Future Generations."[3] Plaintiffs believe that the use of fossil fuels is contributing to the problem of climate change, which they see as the most serious current threat to their own well-being, to future generations, and to the planet itself. Therefore Plaintiffs want Harvard to divest itself of investments in fossil fuel companies.

To that end, Plaintiffs brought this lawsuit, seeking a permanent injunction requiring that Harvard immediately sell off its direct holdings in fossil fuel companies, and begin divesting itself of its indirect holdings in those companies. Plaintiffs have named as Defendants the University (under its formal name, President and Fellows of Harvard College) and Harvard Management Company, which manages the University's endowment.[4] Because this lawsuit concerns investment decisions of a charitable corporation, an area regulated by the Attorney General, Plaintiffs have joined the Attorney General as a defendant, as required by G. L. c. 12, § 8G.

In deciding these motions to dismiss, I must deem all allegations in the Complaint to be true, Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), and I must consider those allegations generously and in Plaintiffs' favor. Vranos v. Skinner, 77 Mass. App. Ct. 280, 287 (2010). Those allegations, in brief, are as follows.

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3. Plaintiffs point to no precedent for naming "Future Generations" as a plaintiff in a lawsuit, and the parties disagree about whether an unincorporated association can sue in its own name. Because the individual plaintiffs have the capacity to file a lawsuit, I need not decide whether Future Generations and the Harvard Climate Justice Coalition are proper plaintiffs. In this Memorandum of Decision and Order, I will use the word "Plaintiffs" to refer to the seven individual plaintiffs.

4. Defendant Harvard Management Company, Inc. joins in the University's motion to dismiss, which means that all three Defendants are seeking dismissal.

The Complaint first alleges, in detail and at length, that the burning of fossil fuels results in the emission of greenhouse gases that is causing physical changes to the Earth's ecosystems, resulting in deleterious geopolitical, economic and social consequences. The Complaint further alleges that Harvard directly owns stocks in publicly traded fossil fuel companies worth at least $79 million, and indirectly owns additional shares in such companies.

The Complaint notes that the Charter of the Harvard Corporation imposes obligations on the University's President and Fellows to, among other things, advance the education of youth, and promote "the advancement of all good literature, arts, and sciences in Harvard College." Investment in fossil fuel companies, according to the Complaint, is at odds with these obligations, and harms Plaintiffs because that investment directly supports climate change denial by fossil fuel companies, which interferes with Plaintiffs' attempts to educate other students on the facts of climate change and to promote a safe transition to a healthy and secure energy future. Those fossil fuel investments also have a chilling effect on academic freedom, among other things by impeding Plaintiffs' ability to associate with like-minded colleagues and to avail themselves of the open scholarly environment that Harvard has a duty to maintain. Plaintiffs also allege "diminishment" of their educations because fossil fuel companies' promotion of scientific falsehoods, funded by Harvard, impedes Plaintiffs in preparing for their intended careers, in, among other areas, environmental law, renewable energy science, and organic farming.

The Complaint also notes that the Charter obligates the University's President and Fellows to maintain the University's physical campus. Harvard's investment in fossil fuel companies is at odds with that obligation, because even under optimistic scenarios, the

Complaint alleges, parts of the Harvard campus near the Charles River will be flooded every two to three years by 2050 as a result of climate change.

The Complaint points out that Harvard has divested from companies whose activities ran counter to the University's educational mission in the past. The Complaint alleges that a broad array of Harvard alumni and faculty, as well as political leaders and scientists, have called upon the University to sell its investments in fossil fuel companies.

From these allegations, Plaintiffs construct a two-count complaint. First, Plaintiffs accuse Harvard of mismanagement of charitable funds. Second, Plaintiffs assert the right of "Future Generations" to be free of what the Plaintiffs call "Intentional Investment in Abnormally Dangerous Activities."

ANALYSIS

In deciding these motions to dismiss, I must accept as true "all facts pleaded by the nonmoving party," Jarosz v. Palmer, 436 Mass. 526, 529 (2002) (citation omitted), in this case Plaintiffs. I also must accept as true "such inferences as may be drawn [from those facts] in the [nonmoving party's] favor." Blank v. Chelmsford Ob/Gyn. P.C., 420 Mass. 404, 407 (1995). This deference to the nonmoving party's statement of the claim is not unbounded, however, because I must "look beyond the conclusory allegations in the complaint," Curtis v. Herb Chambers I-95 Inc., 458 Mass. 674, 675 (2011), and determine if the nonmoving party has pled "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief," which "must be enough to raise a right to relief above the speculative level." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 (2007).

1. Standing to Sue Over Mismanagement of Charitable Funds

Count I of the Complaint charges Harvard with mismanagement of its endowment, which consists of funds given in trust to the University to further its charitable purposes, including the purposes set out in the Charter of the Harvard Corporation quoted above. Both Harvard and the Attorney General argue that Plaintiffs have no standing to maintain this claim.

Plaintiffs concede, as they must, that, under G. L. c. 12, § 8, "Authority to enforce the due application of charitable funds in Massachusetts normally rests with the Attorney General." Plaintiffs' Memorandum in Opposition to Defendant Martha M. Coakley's Motion to Dismiss ("Opp. to Attorney General's Motion") at 5. In fact, the Supreme Judicial Court has often stated that the Attorney General has exclusive jurisdiction in this area. See, e.g., Weaver v. Wood, 425 Mass. 270, 275 (1997). However, as Plaintiffs point out, the Supreme Judicial Court has also created a small chink in the armor of Attorney General exclusivity, through which private citizens can also assert claims that a public charity is mismanaging its assets – "but only where the plaintiff asserts interests in such organizations which are distinct from those of the general public." Id. at 276.

Plaintiffs in today's case claim that they are entitled to standing because they hold such "personal rights" distinct from those of the general public. Plaintiffs refer to two types of "personal rights."

Their first basis for standing, Plaintiffs say, is their status as Harvard students who "currently and actually enjoy the benefits of Harvard's charitable activity." Opp. to Attorney General's Motion at 10; see, e.g., Complaint ¶¶ 50(C), 51. Because they are students, Plaintiffs suggest, they have standing to enforce the terms of the Charter of Harvard College requiring Harvard to engage in "the advancement of education of youth" and the maintenance of the

University's physical campus, id. ¶ 49, and the "advancement of all good literature, arts, and sciences in Harvard College." Id. ¶ 50.

Second, Plaintiffs point to "the crucial, additional [to student status] factor that builds upon this [student] status: namely, the exceptional harms caused by investment in fossil fuels." Opp. to Attorney General's Motion at 12. The Complaint alleges that Plaintiffs are suffering these exceptional harms personally, as a result of Harvard's investment in fossil fuel companies. See Complaint ¶¶ 54-55, 57-62.

A. Standing Based on Status as Harvard Students

The Supreme Judicial Court has permitted persons other than the Attorney General to sue over mismanagement of charitable assets only on rare occasions. One recent case in which the court found such standing, discussed by all parties, provides a logical starting point for the analysis of Plaintiffs' claimed standing.

Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235 (2007), arose from the defendant Catholic Archbishop's decision to close a church in Wellesley. The lawsuit was filed by members of the family that had provided the land on which the church was built, who claimed that the closing of the church triggered an equitable reversionary interest in that land in their favor. Another plaintiff was a parishioner who was seeking the return of her substantial financial contributions to the parish, on a theory of negligent misrepresentation. The Supreme Judicial Court held that these plaintiffs "alleged personal rights that . . . entitle them to standing." Id. at 245. The Maffei plaintiffs had standing, the court said, because "the plaintiffs' claims are readily distinguishable from those of the general class of parishioner-beneficiaries." Id. The charitable entity assets over which they brought suit – the land in one case, and the financial contributions in the other – had belonged to the plaintiffs in the past, and would belong to them in the future if

they prevailed in their lawsuit. No other parishioners could make that claim, and thus the interests of these plaintiffs were specific and personal enough to give them standing to litigate the church's alleged misuse of those assets.[5]

If the general class of parishioners of the church lacked standing in Maffei, then the general class of students at the University lacks standing here, by the same reasoning. Supreme Judicial Court precedent on this point could hardly be clearer.

For example, Weaver v. Wood, 425 Mass. 270 (1997), arose when members of the Christian Science Church objected to church investments in ventures in electronic media. The church members claimed that this investment decision violated the church's governing documents – just as Plaintiffs claim here that the investment decisions of the University's President and Fellows violate the Charter of Harvard College. Even though the Weaver plaintiffs were "life-long members in good standing of the Church," 425 Mass. at 274 – just as Plaintiffs here are students in good standing at Harvard – the Supreme Judicial Court "conclude[d] under well-settled principles of law long enforced by this court that the plaintiffs do not have standing to obtain judicial redress in this matter." Id. at 271.

In ruling that members of the church lacked standing to challenge the church's investment decisions, the Weaver court noted that the Attorney General had always had the exclusive right and duty to decide whether to sue a charitable organization over the alleged misuse of its assets. Quoting from a decision that it had issued more than a century earlier, the court remarked that the law "has not left it to individuals to assume this duty" of suing over misuse of charitable assets. "Nor can it be doubted that such a duty can be more satisfactorily

5. An older case to the same effect is Trustees of Dartmouth College v. Quincy, 313 Mass. 219, 225 (1954), where the court held that the plaintiff college had standing to challenge the administration of a trust fund because the college would be entitled to the entire fund upon the occurrence of a contingency, and the college's lawsuit raised the question of whether that contingency had occurred.

performed by one acting under official responsibility [that is, the Attorney General] than by individuals, however honorable their character and motives may be." Id. at 275, quoting Burbank v. Burbank, 152 Mass. 254, 256 (1890).

The Supreme Judicial Court has made similar rulings in cases involving governance of Harvard University itself. For example, Ames v. Attorney General, 332 Mass. 246 (1955), concerned the University's management of the Arnold Arboretum in West Roxbury, run by Harvard as the "trustee of a public charitable trust." Id. at 247. When Harvard decided to move the main body of the Arboretum's library and herbarium to Cambridge, the plaintiffs attempted to convince the Attorney General to challenge the decision. Failing in that effort, the plaintiffs sued the Attorney General, asking the court to force him to intervene. The plaintiffs claimed standing as financial contributors to the Arboretum who were actively interested in its welfare. In addition, all but two of them were "members of the visiting committee appointed by the board of overseers of [Harvard] College to visit the arboretum," which was, the court noted, an advisory committee "with no rights or powers." Id. at 249. Although these plaintiffs were members of the Harvard community as financial contributors and officially recognized advisers to the Harvard administration, the court said, "We are not convinced that the petitioners, with no other interest other than that of the general public, have any legal right to demand a decision of the court." Id. at 252. See also Harvard Law School Coalition for Civil Rights v. President & Fellows of Harvard College, 413 Mass. 66 (1992) (rejecting student standing, albeit under statutes not at issue in today's case, to challenge the allegedly discriminatory faculty hiring practices of Harvard Law School).

The cases on which Plaintiffs rely do not support Plaintiff's entitlement to standing. As one example, Trustees of Andover Theological Seminary v. Visitors of the Theological

Institution in Phillips Academy in Andover, 253 Mass. 256 (1925), concerned a challenge to a plan by the trustees of a theological seminary to more closely affiliate that entity with Harvard Divinity School. The court held that the Board of Visitors of Andover Theological Seminary had standing to mount such a challenge, because that Board of Visitors had been created at the founding of that seminary and given a "wide sweep of powers," id. at 255, "to see to it that there was no deviation in the management of that institution from the declared purposes of the founders," id. at 266, because the founders "were unwilling to trust the trustees with the management of their foundation in its theological aspects." Id. However, none of the litigants in that case were students,[6] and nothing in the court's opinion suggests that students at the seminary – who stood on far different footing than the institution's Board of Visitors – had standing to challenge the trustees' decisions about management of the seminary.

In fact, at least one case central to Plaintiffs' argument actually supports the position of Harvard and the Attorney General. In Lopez v. Medford Community Center, Inc., 384 Mass. 163 (1981), the court ruled that persons claiming to be members of a charitable corporation organized for civic and educational purposes had no standing to sue the organization over alleged corporate mismanagement. "It remains the general rule that 'it is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings.'" Id. at 167, quoting Ames, 332 Mass. at 250-251. The court allowed the Lopez plaintiffs to litigate only the issue of whether they had been unlawfully denied membership status

6. The rights of students to challenge the reorganization of a divinity school was at issue in a much more recent case from another jurisdiction, Russell v. Yale University, 54 Conn. App. 573 (1999). There the Appellate Court of Connecticut held that the students lacked standing because, "absent special injury to a student or his or her fundamental rights, students do not have standing to challenge the manner in which the administration manages an institution of higher education." Id. at 579. Plaintiffs attempt to distinguish Russell by pointing out that they, unlike the Russell plaintiffs, do plead special injury. However, as explained elsewhere in this Memorandum and Order, Plaintiffs' allegations of special injury are insufficient for a variety of reasons.

status in the charitable organization. Here, Plaintiffs do not allege that the University has denied them student status.

In short, like the rights of "parishioner-beneficiaries" of the Catholic parish in Maffei, or the rights of "life-long members in good standing" of the Christian Science Church in Weaver, the rights of "students at Harvard University" are widely shared, because Harvard University has thousands of students. Plaintiffs' status as Harvard students, therefore, does not endow them with personal rights specific to them that would give them standing to charge Harvard with mismanagement of its charitable assets.

B. Standing to Sue Based on Particular Alleged Impacts

Plaintiffs also argue for standing on the theory that Harvard's investment in fossil fuel companies has impacts that interfere with rights personal to them. The education of each of the Plaintiffs suffers "diminishment," they allege, because Harvard's investment is funding "fossil fuel companies' promotion of scientific falsehoods," which "distorts academic research into scientific remedies for climate change and stymies efforts to make the transition to a clean energy economy." Complaint ¶¶ 57-62. This funded-by-Harvard "distort[ion of] academic research" results in "diminishment" of the educations of Plaintiff Cherry, Skaggs, and Hamilton in environmental law, the educations of Plaintiffs Rothstein and Frederick in history and literature as they prepare for careers in renewable energy and journalism, the education of Plaintiff Franta as he studies renewable energy technology in preparation for a career as a renewable energy scientist, and the education of Plaintiff Kivel in biology as she prepares for a career as an organic farmer. The "climate change denial" funded by Harvard also allegedly "has a chilling effect on academic freedom and the willingness of faculty, students, and administrators to publicly confront climate change," and impedes the ability of Plaintiffs "to associate with like-

minded colleagues and to avail themselves of the open scholarly environment that Defendant Harvard Corporation has a duty to maintain." Id. ¶ 55.

This argument for standing suffers from at least two flaws.

First, the universe of Harvard students who could claim these particular negative impacts is far broader than just these seven Plaintiffs. The basic right at issue, to learn in an academic environment unpolluted by scientific falsehoods, is held by the entire Harvard student body.

If the measuring rod for standing instead is the impact of these particular alleged falsehoods on a particular student's course of study, the pool of affected students is still quite large. The Complaint itself alleges that these falsehoods diminish the education of students in courses of study as diverse as renewable energy technology, id. ¶ 58, "organismic and evolutionary biology," id. ¶ 61, and history and literature. Id. ¶¶ 59, 62. But every Harvard student studying any aspect of environmental law or energy law is suffering the same "diminishment" of his or her education as that alleged by Plaintiffs Cherry, Skaggs, and Hamilton. Every Harvard student studying any aspect of science or engineering, relating at the very least to evolutionary biology, or the use of energy, or man-made impacts on our environment, or climate change, is suffering the same "diminishment" of his or her education as that alleged by Plaintiffs Franta and Kivel. In other words, the harm resulting from Harvard's financing of alleged scientific falsehoods by the fossil fuel industry is not personal to these seven Plaintiffs, in the way that the loss of their land was personal to the Maffei parishioners who donated that land for the construction of the church.

The second problem with Plaintiff's theory is that the allegations on which it is based are too speculative and conclusory to pass the test of Iannacchino v. Ford Motor Co., 451 Mass. 623 (2008). While Iannacchino requires me to accept the allegations of the Complaint as true in

deciding these motions to dismiss, it also requires me to "look beyond the conclusory allegations in the complaint," Curtis v. Herb Chambers I-95 Inc., 458 Mass. 674, 675 (2011), and to determine if the nonmoving party has pled "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief," which "must be enough to raise a right to relief above the speculative level." Iannacchino, 451 Mass. at 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 (2007). The allegations of this Complaint, as they attempt to connect Harvard's fossil fuel investments with the "diminishment" of Plaintiffs' educations and a chilling of academic freedom, are simply too speculative.

First, the allegations of the Complaint fail to account for breaks in the chain of causation leading from Harvard's investment in fossil fuel companies to the "diminishment" of Plaintiffs' educations. If this court ultimately directed Harvard to divest itself of all fossil fuel stocks, the fossil fuel companies would still exist, would still have every motive to continue to spread the alleged scientific falsehoods, and would certainly have the resources to continue to do so. The Complaint does not allege otherwise.

Second, although the Complaint alleges in conclusory fashion that Harvard's investment in fossil fuel companies "has a chilling effect on academic freedom and the willingness of faculty, students, and administrators to publicly confront climate change," Complaint ¶ 55, it leaves entirely to speculation how this can be so. Harvard's fossil fuel investments certainly have not interfered with the academic freedom, or the intellectual capability, of these Plaintiffs, who allege that they have successfully identified as false the fossil fuel companies' statements denying climate change. The Complaint also makes obvious that Harvard's investment in fossil fuel companies has not chilled academic debate on the topic of climate change; indeed, one of the putative Plaintiffs is a campus organization whose function is to "educate the Harvard

community about the facts of climate change and advocate for environmental and climate justice." Id. ¶ 2. The very existence of this lawsuit, filed by members of the Harvard community to stop Harvard from investing in fossil fuel companies, shows that Plaintiffs have failed to plead facts "plausibly suggesting" that Harvard's fossil fuel investments have had "a chilling effect on . . . the willingness of faculty, students, and administrators to publicly confront climate change." Id. ¶ 55.

In fact, other allegations in the Complaint and its exhibits point out the entirely speculative nature of Plaintiffs' allegation that Harvard's investment in fossil fuels has chilled academic freedom and affected the willingness of members of the Harvard community to publicly confront climate change. The Complaint acknowledges that Harvard "has recognized its obligation as an economic and intellectual leader to respond to climate change," id. ¶ 31 – and at the highest levels of the University at that. As Plaintiffs point out, "Harvard President Drew Faust has stated that 'climate change poses a serious threat to our future – and increasingly to our present.'" Plaintiffs' Memorandum in Opposition to Defendant President and Fellows of Harvard College and Harvard Management Company, Inc.'s Motion to Dismiss ("Opp. to Harvard's Motion") at 2. Plaintiffs are quoting the opening sentence of a three-page letter dated April 7, 2014 from President Faust to "Members of the Harvard Community,"[7] where she says that "[w]orldwide scientific consensus has clearly established" this serious threat to our future and our present. Exhibit J to Complaint at 1. Although in this letter President Faust reaffirms Harvard's decision not to divest from the fossil fuel industry, id. at 2, she also describes at length Harvard's academic research efforts to find solutions to climate change, Harvard's institutional

7. Although ordinarily a court deciding a motion to dismiss may consider only the allegations in the complaint itself, I may consider this document in deciding these motions to dismiss because Plaintiffs have attached it to the Complaint and referred to its terms in the Complaint. *See Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000), quoting 5A C.A. Wright & A.R. Miller, Federal Practice and Procedure § 1357, at 299 (1990).

efforts to reduce its own greenhouse gas emissions, and Harvard's efforts in its role as an investor to consider environmental, social and governance issues among the many factors that inform its investment decisions. Id. at 3.

"Alleged injury that is 'speculative, remote, and indirect' will not suffice to confer standing"; rather, the alleged injury "must be a direct consequence of the complained of action. Brantley v. Hampden Div. of Family and Probate Court Dept., 457 Mass. 172, 181 (2010), quoting Ginther v. Comm'r of Ins., 427 Mass. 319, 323 (1998). "Speculative, remote, and indirect" is a fair description of the allegations of the Complaint about how Harvard's investment in fossil fuel companies diminishes Plaintiffs' educations and chills debate at Harvard about climate change. More is required to establish standing.

In summary, although the Complaint alleges that Harvard's investment in fossil fuel companies diminishes Plaintiffs' educations, chills academic freedom, and makes students, faculty and administrators reluctant to confront climate change, those alleged impacts are not sufficiently personal to Plaintiffs to form a foundation for their standing to challenge how Harvard invests its endowment. Even if this were not so, those allegations are too conclusory and speculative to pass muster under Iannacchino, and cannot form a foundation for Plaintiffs' standing for that reason as well. Count I therefore must be dismissed, because Plaintiffs lack standing to bring it.[8]

8. Harvard also argues for dismissal of this count on the ground that the Complaint fails to allege that the President and Fellows have misappropriated charitable assets or engaged in self-dealing with regard to those assets, which, Harvard says, are the only forms of mismanagement of charitable assets that are unlawful. In light of my ruling that Plaintiffs lack standing, I need not, and do not, reach this argument.

2. Intentional Investment in Abnormally Dangerous Activities

In Count II, Plaintiffs assert the right of "Future Generations" to be free of what the Plaintiffs call "Intentional Investment in Abnormally Dangerous Activities." Plaintiffs refer to this count as a tort claim, see Opp. to Harvard's Motion at 15, 16, even though they seek an injunction rather than the usual tort remedy of money damages. This claim, too, must be dismissed, for three independent reasons.

First, as Plaintiffs conceded at oral argument, no court in any jurisdiction has ever recognized this proposed new tort. Plaintiffs are certainly entitled to argue for an extension of existing law, even to seek recognition of what Plaintiffs suggest is a "new or extreme theory of liability." Id. at 15, quoting Jenkins v. Jenkins, 15 Mass. App. Ct. 934, 934 (1983) (rescript opinion). However, a Superior Court judge, bound by existing precedent, must be circumspect in that regard, because it is more properly the function of the Supreme Judicial Court (or the state legislature) to extend the law by creating a new tort. And, indeed, that is exactly what happened at the birth of the tort of intentional infliction of emotional distress, cited by Plaintiffs as precedent; the Superior Court judge dismissed the complaint alleging this then-nonexistent tort, leaving it to the Supreme Judicial Court to recognize the tort on appeal. See George v. Jordan Marsh Co., 359 Mass. 244 (1971).

Second, Plaintiffs actually seek not one but two extensions of existing law. Plaintiffs apparently do not bring Count II on their own behalves; instead "Plaintiffs assert Plaintiffs Future Generations' rights on their behalf." Complaint ¶¶ 71-73. They must do this, Plaintiffs allege, because Future Generations, whom the Complaint defines as "individuals not yet born or too young to assert their rights," id. ¶ 2, are "unable to appear before the court." Id. ¶ 71. Therefore Count II, like Count I, raises the issue of standing.

Plaintiffs point out that a disinterested adult can be appointed by a court to "represent a child's basic welfare rights as a guardian ad litem." Opp. to Harvard's Motion at 18, citing G. L. c. 215, § 56A. But Plaintiffs have not moved for such an appointment, probably because that statute apples only in the Probate Court and limits the guardian's duties to investigating and reporting on the "care, custody and maintenance of minor children." Id. Plaintiffs' unilateral assertion of the interests of every not-yet-born or young person on earth is a far cry from representing the interests of a single child as guardian ad litem after convincing a court that such representation is necessary and that the proposed guardian is an appropriate person to provide it. I am unwilling to make this second extension of existing law by granting Plaintiffs a roving commission to litigate on behalf of Future Generations.

Finally, the overarching problem with Plaintiffs' position – again, like standing, arising as to both counts of their Complaint – is the absence of any limits on the subject matter and scope of lawsuits of this sort. These Plaintiffs assert that climate change is such a serious problem that they are entitled, on behalf of Future Generations, to seek a court order requiring Harvard to divest itself of fossil fuel company investments. Tomorrow another group of students may decide that the most pressing need of Future Generations of Allston and Cambridge is for green space, and so that student group may seek a court order requiring Harvard to abandon its plans to redevelop its property in Allston into academic buildings and instead build a park on that land. Or perhaps today's Plaintiffs, whose Complaint makes clear that they believe that fossil fuel companies are promoting "scientific falsehoods . . . [that] distort[] academic research" at Harvard, Complaint ¶ 57, will petition the court to ban such "falsehoods" from the Harvard curriculum so that Future Generations of Harvard students will not have their academic research distorted.

Plaintiffs apparently recognize that the governance of universities would be thrown into chaos if courts were to permit lawsuits such as this one to proceed, because Plaintiffs attempt to downplay that risk by pointing to a supposed limiting principle: "While we refrain to speculate whether any investments other than those in fossil fuels could rise to the level of certain and pervasive harm described in the Complaint, the exceptional risks posed by climate change readily provide a limiting principle." Opp. to Harvard's Motion at 8 n.3. Put more bluntly, the limiting principle, Plaintiffs assert, is that climate change is the most serious threat facing the world. These Plaintiffs fervently believe that, and perhaps they are right. But other students believe just as fervently in other causes. If Plaintiffs can bring this lawsuit, nothing would prevent other students from seeking court orders that Harvard – or any other charitable organization – take other actions to deal with the "exceptional risks" posed by whatever danger to Future Generations those other students fear above all others. Plaintiffs' suggested limiting principle imposes no limits at all.

I decline to recognize the tort of intentional investment in abnormally dangerous activities, or to allow these Plaintiffs to assert the rights of Future Generations. Count II must be dismissed.

Conclusion and Order

Plaintiffs note that Harvard "has several times *chosen* to divest from morally repugnant sectors." Opp. to Harvard's Motion at 3 (emphasis added). In none of those cases was Harvard ordered to do so by a court. Plaintiffs have brought their advocacy, fervent and articulate and admirable as it is, to a forum that cannot grant the relief they seek.

Notice sent
3/17/2015

The President and Fellows of Harvard College and Harvard Management Company, Inc.'s Motion to Dismiss is **ALLOWED**. The Commonwealth's Motion to Dismiss is **ALLOWED**. This case is **DISMISSED**. (sc)

Paul D. Wilson
Justice of the Superior Court

March 17, 2015

ADDENDUM

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)

M.G.L.A. 12 § 8

§ 8. Due application of charity funds enforced

Currentness

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.

Credits

Added by St.1979, c. 716.

Editors' Notes

DISPOSITION TABLE

Showing where the subject matter of former §§ 8 to 8K of this chapter, stricken out by St.1979, c. 716, can now be found in §§ 8 to 8M enacted thereby.

Former Section	New Section
8	8
8A	8A
8B	8B
8C	8C

Section 8J, which related to the filing with the attorney general of charters and other documents by public charities, was derived from St.1962, c. 401, § 2.

Notes of Decisions (19)

M.G.L.A. 12 § 8, MA ST 12 § 8
Current through Chapter 92 of the 2015 1st Annual Session

End of Document

KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or Preempted**Preempted by** Pike v. Woods Hole Oceanographic Institution, D.Mass., Dec. 02, 2002
KeyCite Yellow Flag - Negative TreatmentProposed Legislation

Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title II. Actions and Proceedings Therein (Ch. 223-236)
Chapter 231. Pleading and Practice (Refs & Annos)

M.G.L.A. 231 § 85K

§ 85K. Limitation of tort liability of certain charitable organizations; liability of directors, officers or trustees of educational institutions

Effective: November 4, 2012

Currentness

It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or association is or at the time the cause of action arose was a charity; provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs; and provided further, that in the context of medical malpractice claims against a nonprofit organization providing health care, such cause of action shall not exceed the sum of $100,000, exclusive of interest and costs. Notwithstanding any other provision of this section, the liability of charitable corporations, the trustees of charitable trusts, and the members of charitable associations shall not be subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character even though carried on to obtain revenue to be used for charitable purposes.

No person who serves as a director, officer or trustee of an educational institution which is, or at the time the cause of action arose was, a charitable organization, qualified as a tax-exempt organization under 26 USC 501(c)(3) and who is not compensated for such services, except for reimbursement of out of pocket expenses, shall be liable solely by reason of such services as a director, officer or trustee for any act or omission resulting in damage or injury to another, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct. The limitations on liability provided by this section shall not apply to any cause or action arising out of said person's operation of a motor vehicle.

Credits

Added by St.1971, c. 785, § 1. Amended by St.1987, c. 238; St.2012, c. 224, § 222, eff. Nov. 4, 2012.

Notes of Decisions (67)

M.G.L.A. 231 § 85K, MA ST 231 § 85K
Current through Chapter 92 of the 2015 1st Annual Session

End of Document

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Paul D. Wilson
Justice of the Superior Court

March 17, 2015

Certificate of Compliance

We, Alice M. Cherry, Benjamin A. Franta, Sidni M. Frederick, Joseph E. Hamilton, Olivia M. Kivel, Talia K. Rothstein, and Kelsey C. Skaggs, the individual pro se appellants, do hereby certify that the herein Brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

Dated this 5th day of October, 2015.

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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above brief was served upon Martin Murphy and Jennifer Kirby, attorneys for President and Fellows of Harvard College and Harvard Management Company, Inc., by email to MMurphy@foleyhoag.com and JKirby@foleyhoag.com and by first-class mail to Foley Hoag LLP, 155 Seaport Boulevard, Boston, Massachusetts 02210.

Dated this 5th day of October, 2015.

Joseph Hamilton

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above brief was served upon Assistant Attorney General Brett Blank by email to brett.blank@state.ma.us and by first-class mail to 1 Ashburton Place, Boston, MA 02108.

Dated this 5th day of October, 2015.

Joseph Hamilton