



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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November 7, 2016

HAND DELIVERY

Francis V. Kenneally, Esq.
Clerk for the Commonwealth
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, MA 02108

Re: Harvard Climate Justice Coalition, et al. v. President & Fellows of Harvard College, et al., FAR No. 24794

Dear Clerk Kenneally:

The Attorney General defendant-appellee submits this letter in response to the application for further appellate review ("FAR") of plaintiff-appellant Benjamin Franta. In sum, the Appeals Court's thorough published decision was correct, applying long-settled law in reaffirming the Attorney General's exclusive standing to litigate a claim that a public charity has been mismanaged. This Court has already denied the plaintiffs' earlier application for direct appellate review. *See* DAR-23618, Paper No. 4 (10/29/15). This FAR application too should be denied, as the questions presented are not founded upon substantial reasons affecting the public interest or the interests of justice. *See* Mass. R. App. P. 27.1(a).

Plaintiffs — including the Harvard Climate Justice Coalition, which itself has not filed an application for further appellate review — filed suit alleging that the President and Fellows of Harvard College breached their fiduciary duties to Harvard University ("Harvard"), a public charity, by investing a portion of Harvard's endowment in publicly traded fossil fuel companies.¹ The Attorney General moved to dismiss this claim, asserting that — under long-standing precedent — she has the exclusive standing to litigate a claim of mismanagement concerning a public charity.

Both the Superior Court and the Appeals Court agreed, recognizing that this Court's precedent establishes that the Attorney General has the exclusive standing to prosecute (or to decline to prosecute) such a mismanagement claim. *See, e.g., Weaver v. Wood*, 425 Mass. 270 (1997); *Lopez v. Medford Cmty. Ctr., Inc.*, 384 Mass. 163 (1981); *Ames v. Attorney Gen.*, 332 Mass. 246 (1955); *Dillaway v. Burton*, 256 Mass. 568 (1926); *Burbank v. Burbank*, 152 Mass. 254 (1890). For example, in *Weaver*, two life-long church members sought to bring an action alleging that the church's investment violated its governing documents and amounted to a breach of fiduciary duty. *Weaver*, 425 Mass. at 271-74. The *Weaver* Court concluded that the plaintiffs

¹ The Attorney General is not a party to plaintiffs' claim for "intentional investment in abnormally dangerous activities."



lacked standing, recognizing that, “[w]hile the plaintiffs’ relationship with the Mother Church is indeed different from a member of the public who is not a member of the Church, we have never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted *ultra vires*.” *Id.* at 277.

Moreover, the Appeals Court here correctly found that the circumscribed exceptions to the general rule do not apply. While the Appeals Court observed that private individuals may have standing to litigate a mismanagement claim relating to a public charity, such “special standing” may attach only where such individuals have “a personal right that directly affects the individual member” of the charity, a right distinct from those of the public at large. 90 Mass. App. Ct. 444. Here, the Appeals Court correctly determined that the plaintiffs, Harvard students, “fail[ed] to show that they have been accorded a personal right in the management or administration of Harvard’s endowment that is individual to them or distinct from the student body or public at large.” *Id.* Indeed, the plaintiffs’ relationship to Harvard is quite similar to the *Weaver* plaintiffs’ relationship to their church. As a result, and under this Court’s precedent, the plaintiffs here lack standing to litigate their breach of fiduciary duty claim.

Notably, the plaintiff’s application focuses principally on the novel tort claim and fails to identify with any specificity a defect in the Appeals Court’s reasoning on the special standing claim. *See* Application at 10-12 (referencing the special standing doctrine, but omitting any discussion of the Appeals Court decision).

In sum, because the Appeals Court correctly determined in a published opinion that plaintiffs lack standing to litigate their mismanagement claim, and because the FAR application fails to meet requirements under Mass. R. App. P. 27.1(a), this Court should deny the petition.

Thank you for your attention to this matter.

Very truly yours,



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cc: Martin Murphy (by email and mail)
Benjamin Franta (by email and mail)

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

SUFFOLK, SS.

FAR No. 24794

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-Appellants,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE (“HARVARD CORPORATION”),
HARVARD MANAGEMENT COMPANY, INC., AND ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS,
Defendants-Appellees.

NOTICE OF APPEARANCE

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NOTICE OF APPEARANCE

Defendant Maura Healey, as she is the Attorney General of the Commonwealth of Massachusetts, hereby gives notice of the appearance of Philip Schreiber as counsel in the above-captioned matter.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

By:



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November 7, 2016

Certificate of Service

The undersigned hereby certifies that, on this date, a true and accurate copy of the foregoing was served on all the following parties by delivering a copy via first-class mail, postage prepaid and by e-mail to:

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