COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC No. _____
Appeals Court No. 2015-P-0905

HARVARD CLIMATE JUSTICE COALITION and others
Plaintiffs

v.

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

PLAINTIFF-APPELLANT BENJAMIN A. FRANTA'S APPLICATION FOR FURTHER APPELLATE REVIEW

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October 26, 2016

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1. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Pursuant to Massachusetts Rule of Appellate Procedure 27.1, Plaintiff Benjamin A. Franta hereby requests leave to obtain further appellate review of *Harvard Climate Justice Coalition et al. vs. President and Fellows of Harvard College et al.*, 90 Mass. App. Ct. 444 (2016). A copy of the Appeals Court opinion is appended hereto as Exhibit A.

This Court should grant further appellate review to consider three important questions affecting the public interest and the interest of justice. The first is whether individuals with a special interest in a public charity have standing to challenge the investments of that charity when those investments are known to trigger significant harm to those individuals.

The second question is whether Plaintiffs may represent the interests of future generations when a present-day activity threatens those interests to an unacceptable degree by a clear and uninterruptible causal chain and when the activity and the harm are separated by a timespan such that those who will be

harmed cannot be expected to obtain redress from those responsible.

The third question is whether the novel tort of "Intentional Investment in Abnormally Dangerous Activities" shall be recognized.

The case at hand raises important issues of law and public interest on which the highest court should speak. The Superior Court Judge in his memorandum and order noted that on rare occasions the Supreme Judicial Court has permitted persons other than the Attorney General to challenge the management of charitable funds, which is relevant to the first question for which review is requested. *Climate Justice Coalition et al. v. President & Fellows of Harvard Coll.,* No. SUCV-201403620H, 2015 WL 1519036, at *2 (2015). Additionally, the Judge noted that creating a new tort in the Commonwealth is the function of the Supreme Judicial Court or the Legislature, which is relevant to the third question for which review is requested. *Id.* at *8. The second question for which review is requested (whether Plaintiffs may represent the interests of future generations under particular conditions) is a critical

inquiry for the highest court to address, particularly in the context of anthropogenic climate change.

2. PRIOR PROCEEDINGS

In November of 2014, seven Harvard students and the Harvard Climate Justice Coalition brought a civil action against the President and Fellows of Harvard College and Harvard Management Company. The civil action comprised two counts. The first count argued that the Harvard Defendants' investments in fossil fuel companies constitute mismanagement of the charitable funds in the University's endowment in light of the harms arising from the climate change caused by those investments. The second count proposed a new tort called "Intentional Investment in Abnormally Dangerous Activities" and asserted harm to Plaintiffs and to Future Generations (represented by the Plaintiffs) deriving from Harvard Defendants' investments in fossil fuel companies. Because the Plaintiffs sought to challenge the investments of a charitable corporation, Plaintiffs also served the Attorney General of Massachusetts pursuant to M.G.L. c. 12, § 8G. A copy of the Plaintiffs' complaint (without appendices) is appended hereto as Exhibit C.

Following filing of the complaint, Harvard Defendants and the Attorney General filed motions to dismiss, and Plaintiffs filed memorandums in opposition. The motions to dismiss were granted by a Superior Court Judge in March 2015. *Harvard Climate Justice Coalition et al.* 2015 WL 1519036. A copy of the Superior Court decision is appended hereto as Exhibit B.

Following the Superior Court's dismissal, Plaintiffs filed an application for direct appellate review and filed an appellate brief in October of 2015 with amicus curiae briefs from the Animal Legal Defense Fund and Dr. James E. Hansen. The case was argued before the Appeals Court in June 2016, and the Appeals Court upheld the motions to dismiss on October 6, 2016. *Harvard Climate Justice Coalition,* 90 Mass. App. Ct. 444. A copy of the Appeals Court opinion is appended hereto as Exhibit A.

Plaintiff Benjamin A. Franta now seeks further appellate review because this case raises important issues of law, justice, and public interest on which the highest court should speak. Although the Plaintiff graduated in May 2016 with a PhD in Applied Physics and is thus no longer a student at Harvard University,

he holds an appointment as an Associate at the Harvard John A. Paulson School of Engineering and Applied Sciences and is an alumnus of Harvard University.

3. STATEMENT OF FACTS

Three facts are of particular importance to this case: 1) the causal chain linking present-day activity by the Harvard Defendants and future harm incurred through climate change, 2) the consensus on boundaries defining what is "dangerous" in the context of climate change, and 3) the activities contraindicated by those boundaries.

The first aspect of interest in the causal chain linking present-day activity and future harm incurred through climate change concerns the chain's components and degree of uninterruptibility. The components of the causal chain can be mapped as follows. Harvard Defendants invest in fossil fuel exploration and development, which causes additional fossil fuel reserves to be discovered and additional fossil fuel reserves to be brought to market. When said fossil fuel reserves are brought to market, they are utilized and consequently release additional greenhouse gases to the atmosphere. When said greenhouse gases are

released to the atmosphere, additional global warming occurs over a period of multiple decades. James Hansen et al., *Earth's Energy Imbalance: Confirmation and Implications*, 308 Science 1431 (June 3, 2005). This additional global warming causes harms that are experienced over the same period and potentially longer. In general, each component of this causal chain follows necessarily from the prior and leads necessarily to the next, so that the chain, once triggered, is uninterruptible under normal conditions.

Another aspect of the causal chain linking present-day activity and future harm incurred through climate change concerns the timescales separating the relevant parties. The timescale separating the trigger of the harm (the investment in fossil fuel exploration and development) and the harm itself (which is incurred through the resulting climate change) is decades and longer, which is due fundamentally to the physics of global warming. Hansen, *supra.*

By way of analogy, we may consider a more familiar causal chain: firing a shot that results in harm. Pulling the trigger leads to firing the shot, which leads to the shot's trajectory, which may result in harm. The fact that the causal chain contains

multiple components does not decrease its certainty, because each follows from the prior and leads to the next with a high degree of certainty. Both the causal chain associated with pulling the trigger and the causal chain associated with investing in fossil fuel exploration and development are, under normal conditions, uninterruptible. Thus, in the case of climate change harm, we may consider investing in fossil fuel exploration and development analogous to pulling the trigger, even though the timescales associated with the causal chains are much different.

The second fact of particular importance to this case regards the consensus on boundaries defining what is "dangerous" in the context of climate change. Globally, official consensus has been obtained that global warming should not proceed beyond 2 degrees Celsius above the preindustrial average and, moreover, that it shall not proceed beyond 1.5 degrees Celsius above the preindustrial average if possible. United Nations Framework Convention on Climate Change, *Adoption of the Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015). These boundaries have been set to fulfill the objective of the United Nations Framework Convention

on Climate Change, which is to "prevent dangerous anthropogenic interference with the climate system." United Nations Framework Convention on Climate Change (UNFCCC), Sept. 5, 1992, 1771 U.N.T.S. 107. Because the harms incurred through climate change are abnormally dangerous, POTSDAM INSTITUTE FOR CLIMATE IMPACT RESEARCH AND CLIMATE ANALYTICS, TURN DOWN THE HEAT—WHY A 4° WARMER WORLD MUST BE AVOIDED (The World Bank, Nov. 2012), activities that are contraindicated by these boundaries and that trigger such harms may likewise be considered "abnormally dangerous."

The third fact of particular importance to this case is the set of activities contraindicated by the consensus boundaries noted above. The 2 degree Celsius boundary (which is the less restrictive boundary) contraindicates exploration for new fossil fuel reserves and development of new fossil fuel infrastructure. *See* Greg Muttitt, THE SKY'S LIMIT—WHY THE PARIS CLIMATE GOALS REQUIRE A MANAGED DECLINE OF FOSSIL FUEL PRODUCTION (Oil Change International, Sept. 2016); *see also* Alexander Pfeiffer et al., *The '2° Capital Stock' for electricity generation: Committed cumulative carbon emissions from the electricity generation sector and the transition to a green economy*, 179

Applied Energy 1395 (October 1, 2016). Thus, it can be inferred from the global consensus that continued exploration for fossil fuels and development of new fossil fuel infrastructure are abnormally dangerous activities.

4. POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW OF THE APPEALS COURT IS SOUGHT

As noted in Section 1, further appellate review is sought with respect to three points: 1) whether specially interested beneficiaries of a public charity have standing to challenge the investments of that charity when those investments are known to trigger significant harm to those beneficiaries, 2) whether members of the public may represent the interests of future generations under certain conditions, and 3) whether the novel tort of "Intentional Investment in Abnormally Dangerous Activities", which in this case includes plaintiffs seeking to represent their own interests as well as those of future generations, shall be recognized.

5. STATEMENT OF WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

Further appellate review is appropriate because this case raises important and timely issues of law, justice, and public interest on which the highest court should speak. Moreover, the courts have thus far declined to speak on the issues directly. The lower court dismissed the issue of special standing to challenge the investments of a public charity based on an inappropriate reliance on *Weaver v. Wood,* 680 N.E.2d 918 (1997). In addition, the lower court denied a tort representing the interests of future generations simply because it was novel. The Plaintiff acknowledges the novelty of the issues brought before the court. However, the issue of climate change, which is itself novel, urgently brings these issues before the public. It is thus of great public value for any court, and in particular the highest court, to speak on these issues.

The first point concerns whether Plaintiffs have standing to challenge the investments of a charity with which they have a special relationship, when those investments are known to trigger significant harm to those Plaintiffs as well as the public (Count

1). The granting of such standing requires the recognition of special standing, which typically applies only where "the claim has arisen from a personal right that directly affects the individual member." *Weaver v. Wood,* 680 N.E.2d at 923. Yet this rule should not be held to stand for the principle that an action must immediately affect an individual member in order for special standing to be appropriate. Many actions causing harm, such as climate change, do not immediately affect any individual member or specially interested person. Reliance on the *Weaver* rule to preclude standing here would enable charitable organizations to knowingly cause severe harm to specially interested individuals without redress, so long as the cause does not immediately precede the effect. To account for climate change harm, the Plaintiff proposes that special standing should also be granted when the investments of a public charity are known to gravely threaten the public interest, plaintiffs demonstrate a special interest in the charity's harmful conduct, and the Attorney General declines to remedy the offending investments. Here, Plaintiff's special interest in the fossil fuel investments of Harvard Defendants is based

upon his knowledge, derived from his professional work, of the harm caused to him and future generations by those investments and upon his professional reliance on the free exchange of scientific knowledge regarding climate change, which is undermined by activities supported by said investments.

The second point concerns whether Plaintiffs may represent the interests of future generations (part of Count 2). As noted in Section 3, the timescale separating the triggering of the causal chain resulting in climate change harm and the impact of the harm itself is decades and longer. Hansen, *supra*. Thus, those who are impacted by said harms cannot be expected to obtain redress from those who trigger the harm, because those who trigger the harm may no longer exist, among other complicating factors. Thus, if redress for such harms is to be pursued, it must be provided when the causal chain is triggered. This necessarily entails consideration and representation of the future interests of plaintiffs as well as the interests of future generations. Indeed, in multiple cases involving relief for environmental harm, courts have allowed claims on behalf of future persons on the grounds that their interests converged with those of

the individual plaintiffs. *See*, *e.g.*, *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 (D.N.J. 1971). Moreover, courts confronting climate change claims are increasingly recognizing the consideration of such long-range interests, including those of future generations, in the United States and elsewhere. *See, e.g., Foster v. Dep't of Ecology*, 362 P.3d 959 (Wash. 2015); *see generally* David Estrin, *Limiting Dangerous Climate Change, in* CIGI PAPERS NO. 101 (Center for International Governance Innovation, 2016).

In dismissing this theory of representation, the Superior Court cited *Doe v. The Governor*: "[I]f the individual plaintiffs may not maintain the action on their own behalf, they may not seek relief on behalf of a class." 381 Mass. 702, 704-05 (1980). Yet this rule is inapplicable to harms incurred through climate change, because the Plaintiffs who are present when the causal chain of harm is triggered are by definition separated by multiple decades from the class for whom relief is sought. Applying this precedent would lead to the undesirable result that parties would be free in the present to trigger severe

harms as long as the impact of said harm occurs multiple decades in the future. Thus, redress for climate change harm necessarily entails consideration of the interests of future generations.

It would be inappropriate to allow harms to proceed based on the absence of complete certainty about the preferences of future generations. It is reasonable to infer that future generations would not find it in their interests to experience climate change harms (such as extreme storms, heat waves, drought, poverty and armed conflict, spreading of disease vectors, and so on). Potsdam Institute, *supra*. Indeed, that is the only reasonable inference here.

The third point is whether the novel tort of "Intentional Investment in Abnormally Dangerous Activities" shall be recognized. As described in Section 3, a global consensus states that activities that would lead to a breaching of the 1.5 and 2 degree Celsius boundaries constitute "dangerous" anthropogenic interference with the climate system. *See generally* United Nations Framework Convention on Climate Change, *Adoption of the Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015); United Nations Framework Convention on Climate Change

(UNFCCC), Sept. 5, 1992, 1771 U.N.T.S. 107. Scientific studies indicate that such activities include continued fossil fuel exploration and development (but not necessarily production and use) in which the Harvard Defendants continue to invest. Greg Muttitt, *supra*; Alexander Pfeiffer, *supra*. Thus, it can be inferred from the global consensus that the Harvard Defendants are investing in activity that is by definition "dangerous." Plaintiffs utilize the term "abnormally dangerous" in the proposed tort to highlight the fact that anthropogenic interference with the climate system causes extreme harms whose risks may not be reduced by the normal exercise of reasonable care. The Plaintiffs also utilize the term "intentional" to highlight the Harvard Defendants' knowledge of the dangerous nature of the activities in which they invest. *See*, *e.g.*, Christopher Field et al., CLIMATE CHANGE 2014—IMPACTS, ADAPTATION, AND VULNERABILITY (Cambridge University Press ed., 2014).

The Superior Court dismissed this proposed tort on the basis of its novelty rather than on the merits of its utility or substance. Yet the tort is novel by necessity due to the novel nature of the harms presented by climate change. Moreover, it is well

established that the Supreme Judicial Court may recognize novel causes of action. *See, e.g.*, *George v. Jordan Marsh Co.*, 359 Mass. 244, 249 (1971) ("No litigant is automatically denied relief solely because he presents a question on which there is no Massachusetts judicial precedent"); *Jenkins v. Jenkins*, 15 Mass. App. Ct. 934, 934 (1983) ("A complaint should not be dismissed simply because it asserts a new or extreme theory of liability"). Thus, it is in the interests of the public, the law, and justice for the highest court to speak on this tort.

The proposed tort, in addition to being necessary to provide relief for obvious and extreme harms, is capable of straightforward judicial application. Global scientific consensus provides an easy limiting principle on the sorts of harms that are cognizable under this theory of liability. The investments of the Harvard Defendants are expected to lead to dangerous anthropogenic interference with the climate system as defined by the United Nations Framework Convention on Climate Change. UNFCCC, *supra*. Such interference with the climate system is expected to cause largely irreversible harms on a planetary scale, such as sea level rise leading to regular flooding of major

cities; the promulgation of drought that may cause agricultural failure, economic distress, and social conflict; the production of severe storms that cause mortality, morbidity, and economic damage; extreme temperatures that pose dangers to health and productivity; and the spread of disease vectors that may result in increased mortality and morbidity. *See, e.g.*, Christopher Field, *supra*; Potsdam Institute, *supra*. The scale, severity, unavoidability, and largely irreversible nature of these harms differentiate them from day-to-day "normal" harms that can be avoided with due care, and thus the activities leading to them are considered "abnormally dangerous." Moreover, the official global consensus on what constitutes "dangerous" interference with the climate system includes quantitative boundaries (the 1.5 and 2 degree Celsius boundaries) and is associated with a scientific understanding of activities falling within and outside of those boundaries. UNFCCC, *supra*; Greg Muttitt, *supra*. Thus, the official global consensus provides a clear limiting principle to the application of this tort so as to exclude liability for investment in more quotidian harms.

The second issue raised by this tort concerns the

avoidance of undue burden. In this case, the Harvard Defendants might argue that avoiding investment in fossil fuel exploration and development is impracticable. However, hundreds of institutional investors globally have already announced either their intent or success in avoiding such investments while maintaining adherence to fiduciary duties. *Divestment Commitments*, Go Fossil Free, http://gofossilfree.org/commitments/ (last visited Oct. 24, 2016). Furthermore, it is important to recognize that the definition of "abnormally dangerous" in this case is limited and refers only to fossil fuel exploration and development and does not include fossil fuel production and use from already-existing infrastructure. Finally, the court has the option of ordering the injunction to the degree that the Harvard Defendants are also able to maintain their fiduciary duties. Thus there is no reason to expect undue burden on the Defendants in applying this tort.

The third issue raised by this tort concerns the Plaintiffs' representation of their own interests aside from those of future generations. Plaintiffs are sufficiently young to expect that they will, at some point, experience the climate change harms triggered

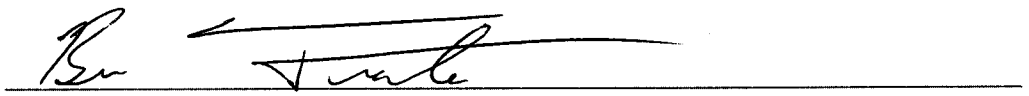
by the Harvard Defendants' present investments. Moreover, Plaintiffs are cognizant of the abnormally dangerous nature of said harm, the scale of its expected impact on society, and the unavoidability of said harm once the causal chain is triggered by the Harvard Defendants' investments. Thus, although the impact of the harm itself is expected multiple decades hence, the psychological impact of being cognizant of said harm exists in the present and is individuated. *See, e.g., Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795, 805 (Cal. 1993) (holding tire factory liable for negligent infliction of emotional distress when plaintiff showed anxiety due to a reasonable fear of a future harm). Thus, it is appropriate that Plaintiffs represent their present interests as well as their future interests and those of future generations.

Finally, the court may limit the scope of the proposed tort by recognizing it only in cases of the investment of charitable funds. Such a limitation is logical as public charities carry special duties to the public. M.G.L. c. 180, § 4. Intentional investment in abnormally dangerous activities may violate those duties, particularly when such investments are not strictly required by fiduciary duties.

CONCLUSION

Plaintiff Benjamin A. Franta respectfully requests further appellate review of the novel legal questions raised in this case. These questions have been dismissed on the basis of novelty alone or on the basis of precedent that is ill suited to the special harms of climate change. Far from being a "garden variety" case, this case raises urgent and important issues of law and the public interest on which the highest court should speak. Furthermore, consensus on climate change harms is sufficiently developed for the court to speak to them with confidence.

Respectfully submitted,



Benjamin A. Franta

Dated this 26th day of October, 2016.

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APPENDIX

APPENDIX

EXHIBIT A:

COPY OF THE OPINION OF THE APPEALS COURT

1 of 100 DOCUMENTS

HARVARD CLIMATE JUSTICE COALITION & others[1] vs. PRESIDENT AND FELLOWS OF HARVARD COLLEGE & others.[2]

1 Benjamin A. Franta, Sidni M. Frederick, Olivia M. Kivel, and Talia K. Rothstein in their capacity as student members of the Harvard Climate Justice Coalition. After oral argument, three plaintiffs who are named in the complaint as members of the coalition withdrew from the appeal.

2 Harvard Management Company, Inc., and the Attorney General.

No. 15-P-905.

APPEALS COURT OF MASSACHUSETTS

2016 Mass. App. LEXIS 141

June 7, 2016, Argued
October 6, 2016, Decided

PRIOR-HISTORY: Suffolk. Civil action commenced in the Superior Court Department on November 19, 2014. Motions to dismiss were heard by Paul D. Wilson, J.

HEADNOTES-1 *Charity*. *Corporation*, Charitable corporation. *Practice, Civil*, Motion to dismiss, Standing.

COUNSEL: Joseph E. Hamilton, Pro se.

Benjamin A. Franta, Pro se.

Brett Blank, Assistant Attorney General, for the Attorney General.

Martin F. Murphy for President and Fellows of Harvard College & another.

Jeffrey D. Pierce, of California, & Piper Hoffman, for Animal Legal Defense Fund, amicus curiae, submitted a brief.

Daniel M. Galpern, of Oregon, & Joseph B. Simons, for James E. Hansen, amicus curiae, submitted a brief.

JUDGES: Present: Cypher, Grainger, & Kinder, JJ.

OPINION BY: CYPHER

OPINION

CYPHER, J. The plaintiffs, Harvard Climate Justice Coalition, an unincorporated association of students at Harvard University (university), and its members, appeal from a Superior Court judgment dismissing their action that sought a permanent injunction requiring the President and Fellows of Harvard College (the university's formal name) and Harvard Management Company, Inc. (the company that manages the endowment funds) (collectively, Harvard), to divest the university's endowment of investments in fossil fuel companies. In a two-count complaint, the plaintiffs allege that those investments contribute to climate changes (commonly known as global warming), which adversely impact their education and in the future will adversely impact the university's physical campus. We affirm.[3]

3 We acknowledge the amicus briefs submitted by Dr. James E. Hansen and the Animal Legal Defense Fund.

The students filed their complaint in November, 2014. Almost two months later, the defendants, Harvard and the Attorney General,[4] filed motions to dismiss. In count one of the complaint, the plaintiffs asserted that the harms of global warming resulting from investments in fossil fuel companies constitute mismanagement of the charitable funds in the university's endowment. In count two, the plaintiffs sought to assert the rights of "[f]uture [g]enerations" to be free of what the plaintiffs call the "[a]bnormally [d]angerous [a]ctivities" of those companies, and proposed a new tort of "[i]ntentional [i]nvestment in [a]bnormally [d]angerous [a]ctivities."

> 4 Because this case concerns investment decisions of a charitable corporation, the plaintiffs joined the Attorney General as a defendant as required by *G. L. c. 12, §§ 8*, *8G*. See *Brady v. Ceaty, 349 Mass. 180, 181 (1965)*.

The judge allowed both motions to dismiss. As to count one, the judge ruled that the plaintiffs failed to show that they had standing to maintain their claim of mismanagement of the endowment. As to count two, the judge declined to allow the plaintiffs to assert the rights of future generations, and declined to recognize the proposed new tort.

Analysis. 1. *Count one*. The plaintiffs' complaint asserts that the "burning of fossil fuels results in the emission of greenhouse gases that become trapped in the atmosphere . . . [and] accumulate . . . [resulting in] climate change[, which causes] physical changes to the Earth's ecosystems" and results in "deleterious geopolitical, economic, and social consequences." In count one of their complaint, the plaintiffs allege that Harvard's investments in fossil fuel companies is a breach of Harvard's fiduciary and charitable duties to uphold the university's "special obligation and accountability to the future, to the long view needed to anticipate and alter the trajectory and impact of climate change." The plaintiffs seek a permanent injunction requiring Harvard immediately to sell their direct holdings in fossil fuel companies and to begin divesting their indirect holdings in those companies.

The plaintiffs recognize that their challenge to Harvard's investments invokes the exclusive standing of the Attorney General under *G. L. c. 12, § 8*, inserted by St. 1979, *§ 716*, to "enforce the due application of funds given or appropriated to public charities."[5] While acknowledging that authority, the plaintiffs note that Massachusetts law recognizes the right of special interest plaintiffs to bring suits against charities.

> 5 "The power and duty delegated to the Attorney General to enforce the proper application of charitable funds are a recognition by the Legislature not only of his [or her] fitness as a representative of the public in cases of this kind, but of the necessity of protecting public charities from being called upon to answer to proceedings instituted by individuals, with or without just cause, who have a private interests distinct from those of the public." *Dillaway v. Burton, 256 Mass. 568, 575 (1926)*.

In his memorandum and order, the judge noted that on "rare occasions," the Supreme Judicial Court has permitted persons other than the attorney general to challenge the management of charitable funds. The judge's noting of "rare occasions" appears to be a reference to a limited exception to the Attorney General's exclusive standing known as the "special standing" doctrine. Special standing applies only where "the claim has arisen from a personal right that directly affects the individual member" of a charitable organization. *Weaver v. Wood, 425 Mass. 270, 276 (1997)*.

On appeal, the Attorney General cites to cases in which our courts have determined that the special standing doctrine is applicable because the plaintiffs have been accorded a personal right in the administration or management of a public charity and, as such, may enforce that right against the charitable organization.[6] While the plaintiffs recognize that courts have acted on personal rights in such cases, they do not assert any of the personal rights identified in those cases, or any other personal right in the management or administration of Harvard's endowment. Instead, the plaintiffs assert that they satisfy the criteria for special standing because as student members of the university, they are to receive the benefits of Harvard's charitable authority and therefore enjoy benefits that are distinct from the general benefits enjoyed by members of the public.

> 6 The cases cited by the Attorney General include *Jessie v. Boynton, 372 Mass. 293, 302-305 (1977)* (members had standing to challenge elimination of voting rights in charitable corporation); *Lopez v. Medford Community Center, Inc., 384 Mass. 163, 166-168 (1981)* (individuals had standing to litigate claim

that they were unlawfully denied membership in charitable corporation but could not litigate claim of mismanagement); *Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235, 245 (2007)* (plaintiffs alleged personal rights that entitled them to standing to litigate claim of equitable reversion of land conditionally gifted to church).

"[M]embership in a public charity, alone, is [in]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*. The plaintiffs, moreover, fail 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.

The plaintiffs further assert that the fossil fuel investments have a chilling effect on academic freedom and have other negative impacts on their education at the university. The judge understood that argument as an attempt by the plaintiffs to obtain standing on the theory that the investments had impacts that interfered with their personal rights. After lengthy consideration, the judge concluded that those arguments were too speculative, too conclusory, and not sufficiently personal to establish standing.

As the students failed to demonstrate special standing, count one fails to state a claim upon which relief may be granted, and was properly dismissed. See *Doe v. The Governor, 381 Mass 702, 705 (1980)*; *Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-636 (2008)*.

2. *Count two*. With regard to their second count, the judge stated that the plaintiffs assert the rights of future generations to be free of what they call "[i]ntentional [i]nvestment in [a]bnormally [d]angerous [a]ctivities," referring to that count as a tort claim. The judge noted that no court in any jurisdiction has ever recognized that tort, and in any event creating a new tort in the Commonwealth is the function of the Supreme Judicial Court or the Legislature.

The judge also stated that the plaintiffs had not provided any recognized legal principle in support of their unilateral assertion to represent the interests of future generations. "[I]f the individual plaintiffs may not maintain the action on their own behalf, they may not seek relief on behalf of a class." *Doe v. The Governor, supra at 704-705*. The judge therefore properly dismissed the second count.

Conclusion. We conclude, as did the judge below, that the plaintiffs "have brought their advocacy, fervent and articulate and admirable as it is, to a forum that cannot grant the relief they seek."[7]

7 The plaintiffs also represented their cause before this court with a commendable degree of skill, passion, and ingenuity.

Judgment affirmed.

APPENDIX

EXHIBIT B:

COPY OF THE DECISION OF THE

SUPERIOR COURT

EXHIBIT B

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 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. (sc)

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

EXHIBIT B

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.

EXHIBIT B

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

APPENDIX

EXHIBIT C:

COPY OF THE COMPLAINT

(WITHOUT APPENDICES)

EXHIBIT C

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.

EXHIBIT C

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

EXHIBIT C

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.

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

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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

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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

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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

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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.

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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.

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

PRAYER FOR RELIEF

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

Dated this 19th day of November, 2014.

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

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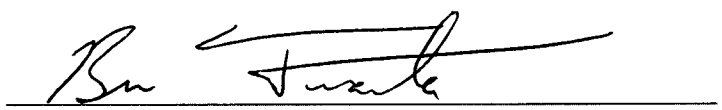
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above application 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, MA 02210.

Dated this 26th day of October, 2016.

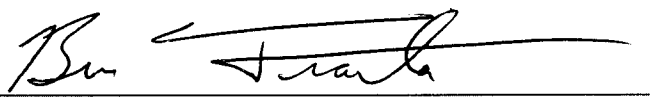


Benjamin A. Franta

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above application 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 26th day of October, 2016.



Benjamin A. Franta