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STUDENTS PUSH FOR FOSSIL FUEL DIVESTMENT

Natural Resource (/full-blog?category=Natural+Resource)

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Recently, students from all over the country have started pushing their college or university to divest from fossil fuel companies. Students at Swarthmore College, where the movement was born in 2011, have been staging a sit-in for nearly a month asking the school to sell its holdings in the top 200 coal, oil, and gas companies.^[i]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn1) Likewise, Harvard University students held "Heat Week" April 12-17, which consisted of demonstrations on Harvard Yard.^[ii]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn2)



(<http://divestharvard.com>)

The goal of the divestment campaigns is to slow climate change by "creating a world where campaign contributions from fossil fuel companies will carry the same stigma as cash from Big Tobacco."^[iii]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn3) Although divestment campaigns have been successful at about two-dozen U.S. colleges and universities, most schools have declined to divest, including Swarthmore and Harvard.^[iv]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn4)

Frustration led the Harvard students to press beyond protests and seek resolution with the courts. Undergraduate, graduate, and law students filed a lawsuit in Suffolk County Superior Court last November charging the president and fellows of Harvard with "mismanagement of charitable funds"

and “intentional investment in abnormally dangerous activities.”^[v]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn5) The students subsequently asked the court to “compel divestment on behalf of the students and future generations.”^[vi]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn6) The legal arguments are interesting because the tort of misallocating funds by investing in “abnormally dangerous activities” has no apparent precedent.^[vii]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn7) Furthermore, the students cited the original Harvard charter with the Massachusetts Bay Colony in 1650 to support their claim that those with a “special interest” in an organization can bring claims concerning mismanagement of its funds.^[viii]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn8) Although the students recognized they might not have standing, they were hopeful that their “special interest” argument would be considered only a slight expansion of current law.^[ix]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn9)

Ultimately, the lawsuit was dismissed in March for lack of standing. Superior Court Justice Paul D. Wilson dismissed the suit because a student’s status is widely shared with other Harvard students, and does not “endow them with personal rights specific to them that would give them standing to charge Harvard with mismanagement of its charitable assets.”^[x]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn10)

Furthermore, the justice refused to recognize the proposed new tort of intentional investment in abnormally dangerous activities.^[xi]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn11) The overarching problem, however, was that the suit lacked limits on the subject matter and scope. The student’s belief that climate change poses a very serious threat to the world was considered too broad, because other students could just as fervently believe that some other cause poses the most serious threat.^[xii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn12)

Undeterred, the Divest Harvard students plan to appeal.^[xiii]

(file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_edn13)

[i] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref1) *Students Push College Fossil Fuel Divestment To Stigmatize Industry*, NPR.org (Apr. 11, 2015, 8:55 AM), <http://www.npr.org/2015/04/11/398757780/students-push-college-fossil-fuel-divestment-to-stigmatize-industry>.

[ii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref2) *Harvard Heat Week*, <http://harvardheatweek.org> (last visited Apr. 21, 2015).

[iii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref3) NPR.org, *supra* note 1.

[iv] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref4) *Id.*

[v] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref5) John Schwartz, *Harvard Students Move Fossil Fuel Fight to Court*, N.Y. Times (Nov. 19, 2014), <http://www.nytimes.com/2014/11/20/us/harvard-students-move-fossil-fuel-divestment-fight-to-court.html>.

[vi] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref6) *Harvard Climate Justice Coal. v. President & Fellows of Harvard Coll.*, No. SUCV201403620H, 2015 Mass. Super. LEXIS 30, at *2 (Super. Ct. Mar. 17, 2015).

[vii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref7) *Id.* at *23.

[viii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref8) Schwartz, *supra* note 5.

[ix] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref9) *Id.*

[x] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref10) Harvard Climate Justice Coal., 2015 Mass. Super. LEXIS 30, at *9.

[xi] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref11) *Id.* at *23.

[xii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref12) *Id.* at *25.

[xiii] (file:///C:/Users/195184/Downloads/Watkins%20Blog%20Edited%20(1).docx#_ednref13) Mariel A. Klein & Theodore R. Delwiche, *Judge Dismisses Divestment Lawsuit*, The Harvard Crimson (Mar. 23, 2015, 10:36 PM), <http://www.thecrimson.com/article/2015/3/24/judge-dismisses-divestment-lawsuit/>.

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