

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

HARVARD PRISON DIVESTMENT CAMPAIGN,
CITLALLI ALVAREZ ALMENDARIZ,
ISMAIL BUFFINS,
JARRETT DRAKE,
AMANDA CHAN,
and ANNA NATHANSON,

Plaintiffs,

V.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
LAWRENCE BACOW in his capacity as PRESIDENT OF
HARVARD UNIVERSITY,
WILLIAM LEE in his capacity as SENIOR FELLOW OF
HARVARD CORPORATION,
THE HARVARD MANAGEMENT COMPANY, INC.,
and MAURA HEALEY as she is the Attorney General of the
Commonwealth of Massachusetts,

Defendants.

Amended

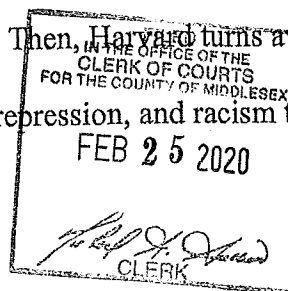
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

Harvard University invests in and profiteers from the prison-industrial complex. The prison-industrial complex encompasses the immense web of financial, economic, and governmental actors and interests that use prisons, police and surveillance to address issues arising from America's deeply racist social and economic systems. The Harvard University endowment presently amounts to \$40.9 billion. Private and public prisons contract internal services out to private companies that make their money on cutting costs and maximizing profit. As a result, the humans trapped in these cages—who are disproportionately, poor, Black and brown—suffer, and all too often, die as a result. These are the companies in which Harvard invests.

The Harvard Prison Divestment Campaign is a cross-school coalition of students and community members working to sever Harvard's ties to this deeply repugnant and ethically unjustifiable industry. This lawsuit is about justice, humanity, and morality. The prison-industrial complex is a crisis. Instead of helping to dismantle the entanglement of profiteering, government interests, and the system of human caging, Harvard makes profit off of it. That money funds the opulent lifestyles of Harvard's top administrators who are prison profiteers.

Time and time again, Harvard proves it only cares about the welfare of Black people when it benefits its Crimson reputation. For example, Harvard only proudly publicizes its history of hosting Dr. Martin Luther King Jr., or elevates the legacy of Dr. W.E.B. DuBois, when it stands to benefit from their legacy and influence. Then, Harvard turns away from their legacies by profiting from the same systems of violence, repression, and racism that Dr. King and Dr.



DuBois fought against. Most recently, Harvard has waged a morally unjustifiable fight against Ms. Tamara Lanier, who sued the university for the rights to the daguerreotypes of her enslaved ancestors.¹

By continuing to profit off the caging of people, Harvard violates its legal duty to consider the charitable purposes of its investments, as mandated by M.G.L. c. 180A § 2 (e)(2)(viii). In order to sell itself to donors and future students as a progressive institution, Harvard has perpetrated misleading and false statements in violation of Massachusetts law M.G.L. c. 266 § 91. As relief from Harvard's illegal and shameful practices, Plaintiffs pray solely for injunctive and declaratory relief, including but not limited to: enjoining Harvard from investing in and profiting from the prison-industrial complex and declaring such practices illegal.

PLAINTIFFS

1. Harvard Prison Divestment Campaign ("HPDC") is a plaintiff as an unincorporated association. Its principal place of business is in Cambridge, Massachusetts.
2. Citlalli ("Xitlalli") Alvarez Almendariz ("Mx. Alvarez") is a doctoral student at the Harvard Graduate School of Arts and Sciences. Mx. Alvarez is undocumented and a beneficiary of Deferred Action for Childhood Arrivals. They reside in Cambridge, MA. They are an organizer with the Harvard Prison Divestment Campaign. Plaintiff Mx. Alvarez is a donor to Harvard University.

¹ *Lanier vs. President and Fellows of Harvard College*, Superior Court Department Docket No. 1981CV00784

3. Ismail Buffins (“Mr. Buffins”) is a student at the Harvard Divinity School. He is a descendant of enslaved African people. He is an organizer with the Harvard Prison Divestment Campaign. He resides in Cambridge, Massachusetts. Plaintiff Mr. Buffins is a donor to Harvard University.
4. Jarrett Drake (“Mr. Drake”) is a doctoral student at the Harvard Graduate School of Arts & Sciences. He is a descendant of enslaved African people. He resides in Roxbury, MA. Plaintiff Mr. Drake is a donor to Harvard University.
5. Amanda Chan (“Ms. Chan”) is a student at Harvard Law School. She is an organizer with the Harvard Prison Divestment Campaign. She resides in Cambridge, Massachusetts. Plaintiff Ms. Chan is a donor to Harvard University.
6. Anna Nathanson (“Ms. Nathanson”) is a student at Harvard Law School. She is an organizer with the Harvard Prison Divestment Campaign. She resides in Cambridge, Massachusetts. Plaintiff Ms. Nathanson is a donor to Harvard University.

DEFENDANTS

7. Defendant President and Fellows of Harvard College (“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. The Harvard Corporation was established in the Harvard Charter of 1650, granted by the Massachusetts General Court. *See Exhibit A.*

8. Defendant Lawrence Bacow (“President Bacow”) is the President of Harvard University. President Bacow is a Defendant in his official capacity. President Bacow sits on the Harvard Corporation. His duties include strategic planning for the University, fundraising for the University, overseeing the various schools within the University, including Harvard Law School, and maintaining Harvard’s reputation and public image. His official office is in Massachusetts Hall in Harvard Yard.
9. Defendant William “Bill” Lee (“Senior Fellow Lee”) is the Senior Fellow of the Harvard Corporation and a partner at WilmerHale, LLC, an international law firm with close professional and business ties to the University. WilmerHale’s Boston office is located at 60 State Street, Boston, Massachusetts 02109. Senior Fellow Lee has served as a Corporation member since 2010. Senior Fellow Lee is a Defendant in his official capacity as the Senior Fellow of the Harvard Corporation. Senior Fellow Lee is the Chairman of the Harvard Corporation’s Corporation Committee on Shareholder Responsibility (“CCSR”).
10. Plaintiffs name the Massachusetts Attorney General Maura Healey as a party pursuant to M.G.L.A. 12 §§ 8 and 8G, which vests supervisory powers over charitable corporations in the Attorney General and which requires that she be named a party to actions involving charitable corporations.

JURISDICTION AND VENUE

11. This court has jurisdiction over this matter pursuant to M.G.L. 231A § 1 and 214 § 1. All parties currently reside in the Commonwealth of Massachusetts.
12. Venue is proper under M.G.L.A. 223 § 1 and proper due to the urgency and unique circumstances of the case. Defendants Harvard Management Corporation and Attorney General have their primary places of business in Suffolk County.

STATEMENT OF FACTS

The Prison-Industrial Complex is Present-Day Slavery

13. Slavery remains legal under the Constitution of the United States of America. The 13th Amendment states “Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States[.]” U.S. CONST. AMEND. 13, SECT. 1.
14. The 13th Amendment abolished slavery based on skin color, nationality, ethnicity, religion or caste, but it established and sanctioned slavery for “criminals.”
15. Today, more Black people are under correctional control than were enslaved in 1850. This is because every level of the criminal legal system targets and discriminates against Black communities. Incarceration is slavery because people are held in conditions of confinement and coercion. Thus, the prison-industrial complex is an extension of the institution of slavery. *See* Exhibits B, C.
16. In Harvard professor Cornel West’s foreword of Michelle Alexander’s book *The New Jim Crow*, West wrote:

- i. [Alexander's] subtle analysis shifts our attention from the racial symbol of America's achievement to the actual substance of America's shame: the massive use of state power to incarcerate hundreds of thousands of precious poor, black, male (and, increasingly, female) young people in the name of a bogus "War on Drugs." And her nuanced historical narrative tracing the unconscionable treatment and brutal control of black people—slavery, Jim Crow, mass incarceration—takes us beneath the political surfaces and lays bare the structures of a racial caste system alive and well in the age of colorblindness.

17. Assata Shakur included the following excerpt in her autobiography:

"Don't you know that slavery was outlawed?"

"No," the guard said, "you're wrong. Slavery was outlawed with the exception of prisons. Slavery is legal in prisons."

I looked it up and sure enough, she was right. The Thirteenth Amendment to the Constitution says: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Well, that explained a lot of things. That explained why jails and prisons all over the country are filled to the brim with Black and Third World people, why so many Black people can't find a job on the streets and are forced to survive the best way they know how. Once you're in prison, there are plenty of jobs, and, if you don't want to work, they beat you up and throw you in a hole. If every state had to pay workers to do the jobs prisoners are forced to do, the salaries would amount to billions... Prisons are a profitable business. They are a way of legally perpetuating slavery. In every state more and more prisons are being built and even more are on the drawing board."

18. The Incarcerated Workers Organizing Committee wrote (*see* Exhibit C):

Incarcerated people are legally slaves as per the 13th Amendment which abolished "slavery and involuntary servitude, except as punishment for a crime." We are legally slaves. If you've been to prison you'd know we are treated like slaves.

Billions are made annually off our backs. Outrageously priced or grossly inadequate privatized 'services' like health care, food, phone calls, assault our humanity—they feed us like animals, suck our families dry, and when sick leave us to die. The government spends as much as an elite college tuition per person to keep each of us incarcerated, but this money does not develop us as human beings, reduce crime or make our communities safer.

19. In his 1963 Letter from Birmingham Jail, Dr. Martin Luther King Jr. wrote:

First, I must confess that over the last few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Council-er or the Ku Klux Klanner, but the white moderate who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says "I agree with you in the goal you seek, but I can't agree with your methods of direct action;" who paternalistically feels he can set the timetable for another man's freedom; who lives by the myth of time and who constantly advises the Negro to wait until a "more convenient season."

20. The prison-industrial complex is "the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to what are, in actuality, economic, social, and political 'problems'."² It is a system that has ensnared almost 2.3 million people in 1,719 state prisons, 102 federal prisons, 1,852 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. *See* Exhibit D.
21. As Justice Sonia Sotomayor outlined in her dissent in *Utah v. Strieff*, 136 S. Ct. 2056, the prison-industrial complex results in the terrorism of Black and brown people ("For generations, Black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them." (quoting W.E.B. Du Bois, *The Souls of Black Folk* (1903); J. Baldwin, *The Fire Next Time* (1963); T. Coates, *Between the World and Me* (2015)).

² Herzing, Rachel. "What Is the PIC?" Prison Culture. Published October 12, 2010

22. The Harvard Prison Divestment Campaign is a reparatory justice initiative that seeks to sever the university's financial ties to the prison-industrial complex by advocating for Harvard's total divestment from all corporations whose existence depends on the capture, caging, and control of humans. More specifically, it asks that the Harvard Corporation divest from prisons and companies that contract with prisons.
23. As outlined in the Harvard-to-Prison Pipeline Report, found at tiny.cc/hpdcreport and attached to this complaint as Exhibit E, Harvard invests in and profiteers from the prison-industrial complex.
24. According to public Securities and Exchange Commission ("SEC") filings, the Harvard Management Company invests at least part of the Harvard endowment into ETFs which in turn invest in private prisons, weapons sellers, bail bond issuers, banks, surveillance and probation technology companies, prison telecommunications profiteers, and companies which use prison labor. *See* Exhibit F.
25. Only about 1% of the Harvard University endowment's investments are public.³ The allegations in this suit only pertain to the public investments. However, the relief requested pertains to the entirety of the 40 billion dollar endowment.
26. In October 2019, HPDC released a report which only detailed the Harvard Management Company's public investments in the prison-industrial complex. *See* Exhibit E.

³ Investments can be public or private. If public, it means that the entity is publicly-owned and publicly-traded. Usually, companies go public in order to raise capital. Investments in a publicly-owned company are subject to much more disclosure requirements by the Securities and Exchange Commission (SEC). In this instance, the Harvard Management Company, Inc. is required to disclose certain parts of its public investments. These disclosures are available to the public on a SEC database called EDGAR.

27. The Harvard Management Company, Inc. (“HMC”) is a wholly-owned non-profit subsidiary to the Harvard Corporation. HMC's Board of Directors is elected by the President and Fellows of Harvard College. *Ex officio* members of the HMC Board include Harvard University’s President, Treasurer, and Chief Financial Officer, as well as the Chief Executive Officer of HMC.
28. HMC does not hold the power to divest. The Harvard Corporation reserves the power to divest. In short, the Harvard Corporation must approve a resolution to divest the Harvard endowment before HMC can do so. The HMC can only divest from the prison-industrial complex with permission from the Harvard Corporation. The Corporation holds the decision-making power to divest; HMC does not. HMC is a servicer and the Corporation is the client.
29. Prior to April 2019, the HMC website stated that HMC has divested the endowment from industries that are “deeply repugnant and ethically unjustifiable[.]” *See* Exhibit G.
30. Around April 2019, the HMC deleted the information contained in paragraph 29 from its website. *See* Exhibit H.
31. The Corporation Committee of Shareholder Responsibility (“CCSR”) is a committee composed of four people from the Harvard Corporation. Senior Fellow Lee is the Chairperson of the CCSR. The CCSR makes proposals to the Harvard Corporation on matters of divestment and shareholder responsibility. Currently, Senior Fellow William F. Lee, Mariano-Florentino (Tino) Cuéllar, Paul Finnegan, and Shirley Tilghman sit on the CCSR. *See* Exhibit I.

Harvard's Public Statements on Slavery

32. In October 2019, HPDC released a report which only detailed the Harvard Management Company's public investments in the prison-industrial complex. *See* Exhibit E.

33. On March 30, 2016, then-President Drew Faust of Harvard University ("President Faust") published a statement in *The Crimson*, the student newspaper of Harvard College, called "Recognizing Slavery at Harvard" (hereinafter "Faust Statement"). The statement was also published on the Harvard website. *See* Exhibit J.

- a. In the Faust Statement, then-President Faust, in her capacity as President of Harvard University, wrote about her effort to recognize Harvard's entanglements with slavery by installing a plaque on Wadsworth House in memory of four slaves who worked there for past Harvard University presidents. Faust stated, "This plaque is the beginning of an effort to remember them and our shared history."
- b. Faust stated, "I have convened a committee of historians from our faculty to advise me about other sites on campus that should be similarly recognized as significant symbols of Harvard's connections to slavery."
- c. Faust also stated, "But Harvard was directly complicit in America's system of racial bondage from the College's earliest days in the 17th century until slavery in Massachusetts ended in 1783, and Harvard continued to be indirectly involved through extensive financial and other ties to the slave South up to the time of emancipation. This is our history and our legacy, one we must fully acknowledge and understand in order to truly move beyond the painful injustices at its core."

- d. Faust stated, “There is a second essential purpose in confronting the distressing realities of America’s racial past and Harvard’s place within it. We need to understand the attitudes and assumptions that made the oppressions of slavery possible in order to overcome their vestiges in our own time.”
- e. Faust ended her statement with, “The past never dies or disappears. It continues to shape us in ways we should not try to erase or ignore. In more fully acknowledging our history, Harvard must do its part to undermine the legacies of race and slavery that continue to divide our nation.”
- f. Using this statement, Faust advertised Harvard as a powerful institution that cared about slavery, its legacy, and racism. With this statement, Faust polished Harvard’s reputation as a progressive place for race-oriented scholars, students, and workers. Faust held Harvard as a place where research and anti-racist work would flourish and be welcomed. Faust continued to use Harvard’s supposed attempts to recognize, address, and understand Harvard’s entanglements with slavery to boost Harvard’s reputation and attract more students who cared about anti-racist work.

34. In a February 2017 article in the *Harvard Gazette*, Faust stated “I think there have been very important voices here [at Harvard]. John Hope Franklin did his Ph.D. work at Harvard, W.E.B. DuBois was here, so we’ve had a wonderful tradition of people contributing to understanding this past and to communicating about it to the larger American community. I think we should be really proud of that. But we’ve also had

challenges throughout our history as well, and looking at the complexity of it, I think is an important part of understanding our history as we move forward.” See Exhibit K.

- a. Faust, in her capacity as President of Harvard University continued in this *Harvard Gazette* article to present and hold the image of Harvard as an institution that aimed to “understand” and welcome, foster, and nurture scholars who wanted to do anti-racist work. Faust held Harvard to be an institution which welcomed efforts to disentangle the University from its legacy with slavery.

35. Dr. Caitlin Galante DeAngelis Hopkins is a Lecturer in History and Literature at Harvard University. Dr. Hopkins is a scholar and expert in American slavery. Dr. Hopkins was previously a Research Associate at Harvard and Slavery, which is the aforementioned “committee” that then-President Faust established in 2016 to research Harvard’s history with slavery. Harvard broke its promise to establish a committee. The committee of that was commissioned operated solely on a volunteer basis and thus was unable to successfully carry out its mandate given the scholars’ demanding schedules. Harvard hired a single postdoctoral fellow to write a research report and failed to provide adequate resources to effectively carry out the project. A postdoctoral fellowship is a temporary position for a PhD to complete research after the completion of their doctoral program.
36. According to Dr. Hopkins, as of September 2019, the Harvard and Slavery fellowship was dead. Harvard did not engage in the bare minimum activity that other universities have undertaken to research and address its entanglements with slavery, such as collaborating with descendants of enslaved people or setting up an accessible website. See Exhibit L.

37. The promised committee was strictly voluntary and was chronically under-resourced. *See* Exhibit L.
38. Harvard commissioned the research that Dr. Hopkins undertook as proprietary research instead of forming an open academic committee. Keeping the research as proprietary meant that Harvard could keep the research private and never release it to the public. Consequently, on information and belief, Dr. Hopkins' research may never be released to the public.
39. Four years after having made no progress on its promise to address the legacy of slavery at Harvard, on November 21, 2019, current Harvard President Lawrence Bacow announced the creation of a new faculty committee that will "allow us to continue to understand and address the enduring legacy of slavery within our university community." *See* Exhibit M.
40. On November 21, 2019, Defendant President Bacow announced the Initiative on Harvard and the Legacy of Slavery (hereinafter "Slavery Initiative"). *See* Exhibit M. President Bacow falsely claimed that Harvard had taken many steps in fulfilling its promise of addressing the legacy of slavery. A boulder and a plaque do not address Harvard's legacy of slavery. An underfunded post-doc position, as outlined by Dr. Hopkins in para. 35–39, is not an reckoning with Harvard's legacy of slavery.
- a. In this Slavery Initiative, President Bacow committed \$5 million to fund "events" and "scholarly conversations" about slavery. However, in contrast, Defendants Harvard Corporation and President Bacow have been ignoring Ms. Tamara Lanier's requests for Harvard Corporation to cease its possession of the daguerreotypes of Ms. Lanier's enslaved ancestors. Left with no other recourse,

Ms. Tamara Lanier was forced to file suit in March of 2019. *See* Exhibit N. As a result, Defendants Harvard Corporation and President Bacow have been discrediting Ms. Lanier's calls for repair regarding the images of her enslaved ancestors Renty and Ms. Delia, who were photographed by, then, racist Harvard biologist Louis Agassiz. Harvard has not only fought Ms. Tamara Lanier on this matter, but also gone against the wishes of Agassiz's descendants who want the images ceased to Ms. Lanier. Harvard's actions speak for themselves.

- b. In a statement to *USA Today*, Marian Shaw Moore, Agassiz's great-great-great granddaughter, said, "By stepping forward and owning my family connection to Louis Agassiz, I give voice to my belief that transforming out of the governing lie of white supremacy is both possible and necessary." Yet, Defendants Harvard Corporation and President Bacow have not heeded the wishes of Ms. Moore and 43 other descendants of Agassiz who wrote a letter in support of Ms. Lanier, proving again that Defendant President Bacow is not interested in addressing Harvard's legacy with slavery in good faith. On information and belief, Defendants Harvard Corporation and President Bacow continue to stifle and censor its undesirable entanglements with the institution of slavery from the public eye. Further, Defendants Harvard Corporation and President Bacow refuse to capitulate to Ms. Lanier's reasonable requests to return her ancestors home. In this way, Defendants Harvard Corporation and President Bacow refuse to acknowledge its legacy with slavery and honor the role of enslaved people in its history. Therefore, Defendant Harvard Corporation and President Bacow has not

fulfilled its promises in the Faust Statement, or at least, publicly made deceptive and misleading statements.

- c. Upon information and belief, Defendant President Bacow's new initiative is not in good faith fulfilling the promises laid out in the Faust Statement. On information and belief, Defendant President Bacow lays out a \$5 million initiative, possibly with funds taken from the \$40.9 billion endowment, to distract from Defendant Harvard Corporation's continued enslavement of Papa Renty and Ms Delia.
- d. On February 4, 2020, Ms. Tamara Lanier visited Harvard College to give a lecture about her struggle to free ancestors Papa Renty and Ms. Delia from Defendant Harvard Corporation's possession. However, Defendants Harvard Corporation and President Bacow refused to grant permission to Boston journalists unaffiliated with Harvard to cover Ms. Lanier's speech.
- e. By continuing the enslavement of Papa Renty and Ms. Delia, Defendants Harvard Corporation and President Bacow publicly misled the public about its efforts to address its ties to slavery. The University continued to perpetuate untruths about its efforts to disentangle its legacy from slavery. Such public pronouncements contribute to Harvard's reputation, which boosts its admissions numbers, its rejection rate, its selectivity, and increases donations from alumni. In reality, Harvard refuses, in the words of the Senior Fellow Lee, to even consider the possibility of divestment from the prison-industrial complex, which is present-day slavery.

Harvard's Refusal to Consider Divestment

41. On February 14, 2019, student organizers, including Plaintiff Ms. Chan and Plaintiff Mr. Buffins, along with other members of the Harvard Prison Divestment Campaign, visited Defendant President Bacow, acting in his capacity as President of Harvard and member of Harvard Corporation, during his "Office Hours," a program where he allows Harvard affiliates to sign up for a 10-minute meeting slot with him.
42. At this meeting, Plaintiffs Ms. Chan and Plaintiffs Mr. Buffins asked Defendant Bacow to support divestment from prisons and the greater prison-industrial complex. Defendant Bacow refused to support the students' demand for divestment. He cited that he received too many divestment requests, including requests to divest from corn "sweetener."
43. On March 1, 2019, the HPDC student organizers delivered a petition with over 3,000 signatures to Defendant President Bacow. *See* Exhibit O. Students rallied outside of his office in Massachusetts Hall in Harvard Yard. This petition stated, *inter alia*:

Beginning in early 2016, Harvard's leadership took steps to publicly acknowledge and express remorse for the university's direct complicity in the institution of slavery. Nevertheless, Harvard continues to profit from the caging and forced labor of Black people through its investments in the prison-industrial complex, through which the legacies of slavery persist. After the Civil War, the 13th amendment's abolition of slavery "except as punishment for a crime" facilitated efforts by Southern elites to preserve slavery—through the passage of the Black Codes, convict leasing programs, and Jim Crow-era laws—that would eventually evolve into the modern prison system.

44. The March 1, 2019 petition demanded:

We demand that you and the Harvard Management Company divest Harvard's holdings from companies that profit from the prison-industrial complex and reinvest in communities disproportionately affected by mass incarceration by doing the following:

Disclose and Divest

a) Publicly disclose and release endowment holdings in all funds with stock in companies whose existence depends on the prison-industrial complex.

b) Provide an authenticated copy of endowment holdings to the Harvard community in the interests of transparency, prior to divestment and regularly thereafter.

Repair and Rebuild

a) Apportion a significant percentage of divested funds towards companies, organizations, and initiatives in Cambridge and Boston that are led by people directly impacted by the prison-industrial complex. Establish an accountability structure for the appropriate redistribution of funds, with timed mandates and oversight accorded to people and communities who have been the central victims of mass incarceration.

b) Launch a cross-school initiative to research and teach creative ways to eliminate structural social harms that do not rely on prisons and police. Develop funded academic projects (e.g. scholarships, centers, institutes, departments, and concentrations) that employ formerly incarcerated people, organizers, and scholars. End discrimination against and create opportunities for current and formerly incarcerated persons.

45. In the April 11, 2019 Town Hall, Defendant President Bacow publicly offered to broker a meeting between the CCSR and HPDC. On July 26, 2019, HPDC officially accepted.

Defendants Senior Fellow Lee and President Bacow proposed a meeting date of October 28 at 5pm for 1 hour. HPDC accepted.

46. On October 28, 2019, the CCSR and HPDC, including Plaintiffs Mx. Alvarez and Mr.

Buffins, met in Memorial Church at 5pm. Defendant Senior Fellow William F. Lee,

Mariano-Florentino (Tino) Cuéllar, Paul Finnegan, Shirley Tilghman, and Defendant

Lawrence Bacow were present at the meeting on behalf of the CCSR (hereinafter “CCSR

Meeting”). The meeting ended approximately twenty minutes later.

47. At the CCSR Meeting, an unnamed HPDC member made an opening argument, which was followed by a statement from Mr. Pat Tomaino, Director of Socially Responsible Investing for Zevin Asset Management. As an investment professional, Mr. Tomaino joined the meeting in solidarity with HPDC, explaining to Defendants Senior Fellow Lee and President Bacow that ethically restructuring Harvard's endowment is both feasible and fiscally responsible. *See* Exhibit P. In this statement, Mr. Pat Tomaino emphasized that 1) the prison-industrial complex is a risky investment, 2) socially responsible investment and divesting from harmful, risky industries do not hurt portfolio performance, and 3) divestment is practicable.
48. Also at the October 28, 2019 CCSR Meeting, Mr. Tomaino gave Defendants Senior Fellow Lee and President Bacow a general outline for which the Defendants Harvard Corporation and HMC could approach divestment:

The Harvard Corporation can begin the process of divesting from the prison-industrial complex right now. This would entail giving the Harvard Management Company (HMC) and sub-managers clear instructions roughly regarding the following, for example:

A. HMC and sub-managers should report to the Corporation and to the public on the University's exposure to the prison-industrial complex.

B. HMC and sub-managers should begin divesting on an expeditious, best-efforts basis.

C. HMC and sub-managers should report substantively to the Corporation and to the public in successive years on their progress regarding (A) and (B). The Corporation should in turn report to the public on its assessment of progress.

49. Although Defendant Senior Fellow Lee claimed to have read the Harvard-to-Prison Pipeline Report by HPDC (Exhibit E) in depth, he asked no questions of, nor

commissioned even cursory research from, any of Harvard Corporation or HMC's existing financial advisors about the research's implications. On information and belief, Defendant Senior Fellow Lee did not prepare for nor entertain a conversation that included the possibility of divestment.

- a. At the October 28, 2019 CCSR Meeting, Plaintiffs Mx. Alvarez and Mr. Buffins asked Defendant Senior Fellow Lee whether he would consider examining divestment from the prison-industrial complex with their external asset managers. Defendant Senior Fellow Lee refused.
- b. Plaintiffs Mx. Alvarez and Mr. Buffins asked for an exposure assessment from the Defendant Harvard Management Company's fund managers to provide an initial frame for potentially problematic companies. Defendant Senior Fellow Lee refused.
- c. Plaintiffs Mx. Alvarez and Mr. Buffins pressed Defendant Senior Fellow Lee several times to resolve the confusion. Plaintiffs Mx. Alvarez and Mr. Buffins asked the Defendant Senior Fellow Lee simply to commit the possibility of divestment, not even to divestment per se. Plaintiffs Mx. Alvarez and Mr. Buffins asked whether divestment was even "on the table." Again and again, Defendant Senior Fellow Lee refused to consider divestment. Divestment was not "on the table" for Defendant Senior Fellow Lee. On information and belief, Defendant Senior Fellow Lee refused to consider divestment from the prison-industrial complex in good faith.

- d. Plaintiffs Mx. Alvarez and Mr. Buffins asked Defendant Senior Fellow Lee by what formal and public process the CCSR had arrived at the decision to foreclose the possibility of divestment, Defendant Senior Fellow Lee refused to provide an answer. On information and belief, Defendant Senior Fellow Lee arrived at his decision through no process but through his own dictatorship over the CCSR as Senior Fellow of the Harvard Corporation.
- e. Defendant Senior Fellow Lee, acting in his capacity as Senior Fellow and Chairperson of the CCSR, on behalf of the CCSR, refused to divest, refused to consider divestment, refused to share information on his decision-making process, refused to ask the Defendant HMC to look into prison-related assets, and he refused to ask the University's external asset managers to look into Harvard's prison-related investments. In response, Plaintiffs Mx. Alvarez and Mr. Buffins, as well as the other members of HPDC, left the meeting.
- f. Defendant Senior Fellow Lee refused to do an exposure assessment.⁴ Defendant Senior Fellow Lee refused to ask the University external asset managers to conduct an exposure assessment. Defendant Senior Fellow Lee refused to ask the Harvard Management Company, Inc. to conduct an exposure assessment. Senior Fellow refused to discuss the lengths to which Harvard is invested in prisons and the prison-industrial complex.

⁴ This is a report that would outline the amounts of money and ways in which the University endowment was invested in companies whose profits significantly depend on the prison-industrial complex.

g. On information and belief, Defendant Lee refused to consider Harvard's charitable purposes in choosing the University's assessments. He refused to consider what the donors would possibly want. He refused to commission research on the will of his donors. He refused to consider the will of the donors. He refused to meet with students in good faith. He refused to be transparent about his decision-making process. He refused to even consider the possibility of divestment. He refused to answer questions about his refusal.

50. On November 21, 2019, which was approximately three weeks after the CCSR Meeting, Plaintiff Nathanson asked Defendant Senior Fellow Lee for a follow-up meeting to discuss the problem of divestment from the prison-industrial complex. Defendant Senior Fellow Lee refused.

STATEMENT OF CLAIMS

COUNT 1

Violation of Fiduciary Duty and Breach of the Harvard Charter

51. Plaintiffs reassert paragraphs 13–31 of this Complaint and incorporate them herein by reference.
52. Defendant Harvard Corporation, as a nonprofit corporation organized for educational purposes under M.G.L. 180 § 4 and as a public charity bound by the purposes enumerated in its Charter, 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. 180A § 2 (e)(2)(viii).

See Secretary of State filing from Harvard Corporation, adopting the Harvard Charter of 1650, Exhibit Q.

53. The Harvard Charter of 1650 lists “the advancement of all good literature arts and sciences” and “the advancement and education of youth in all manner of good literature arts and sciences” as motivating purposes for the President and Fellows of Harvard College. *See* Exhibit A.

54. Defendant President Bacow knows of the existence of a legal obligation. In an email to HPDC (*See* Exhibit R) dated May 19, 2019, President Bacow wrote:

Harvard has a fiduciary duty to maintain the endowment for current and future generations. These gifts were made, dating back to the early days of the College’s existence, with the understanding that perpetual funding was the promise made in return for their generosity and shared commitment to our mission. To inject public policy goals or social objectives, absent a concern for financial materiality, into the investment process would not only limit our ability to sustain this funding, but also signal that an endowed gift is not just funding for teaching and research, but a political statement.

There are certain, rare circumstances where divestment is warranted. Those decisions are made by the Corporation Committee for Shareholder Responsibility (CCSR) in consultation with the Advisory Committee on Shareholder Responsibility. On those occasions, the CCSR issues a directive to Harvard Management Company that restricts direct holdings by their investment team, as well as direct holdings by investment advisers trading in the name of President and Fellows of Harvard College through separately managed accounts.

55. However, Defendant President Bacow’s understanding of Defendants’ legal obligation does not comport with the requirements under M.G.L. c. 180A. President Bacow claims that a “social objective” or “public policy” investment strategy would contradict the

purpose of the fund. But Defendant Harvard Corporation has previously divested from the tobacco industry, industries related to genocide in Darfur, and industries related to South African apartheid. Therefore, Defendant President Bacow misstates the Defendants' legal obligation to maintain the University endowment.

56. Furthermore, none of the Defendants have released any research, report, documentation, assessment, or evaluation of the endowment's exposure to the prison-industrial complex. Therefore, on information and belief, Defendant President Bacow, acting on behalf of the Harvard Corporation, cannot and does not know whether there is a concern for "financial materiality" related to divestment from the prison-industrial complex.

57. Further, Defendant President Bacow seriously interferes with the will of the donors.

Defendant President Bacow notes the "early days of College's existence" but he distorts the actual obligation as is stated in the Harvard Charter, which granted the establishment of the Harvard Corporation in the first place. There is nothing in the Harvard Charter which states that the endowment cannot have social policy objectives. There is nothing in the Harvard Charter which requires that the endowment cannot make a political statement. Rather, the Charter requires that the profits, revenues, and disposings of the endowment "be according to the will of the donors[.]" *See* Exhibit A.

58. The Harvard Management Company states that its purpose is to provide investment management so that Harvard can "confidently maintain and expand its preeminence in teaching, learning, and research for future generations." Harvard has acknowledged that it should divest from a company when "the very nature of a company's business makes it inappropriate for a university to invest in the enterprise." *See* Exhibit S.

59. Defendant Harvard Corporation, as a charitable organization, is required by Massachusetts law to manage and invest funds “in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.” M.G.L. c. 180A § 2(b).
60. The Harvard Charter requires accountability to donors surrounding the use of funds: “provided that all the said disposings be according to the will of the donors.” *See* Exhibit A.
61. Individuals who have made financial contributions to charitable organizations have standing to sue those organizations. *See* *Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 867 N.E.2d 300 (2007). As such, Plaintiffs Mr. Drake, Mx. Alvarez, Mr. Buffins, Ms. Chan, and Ms. Nathanson have standing to sue. Plaintiffs Mr. Drake, Mx. Alvarez, Mr. Buffins, Ms. Chan, and Ms. Nathanson are each donors to Harvard University, which is an entity under the control and management of the Harvard Corporation, which is subject to the provisions of M.G.L. c. 180A.
62. 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.
63. Defendant Harvard Corporation’s investment in the prison-industrial complex is a breach of its fiduciary and charitable duties under M.G.L. c. 180A as a public charity and nonprofit corporation to uphold the purposes as described above. The prison-industrial complex profits off of the caging, de-humanizing, and segregation of Black and brown peoples. It is a continuation of the institution of slavery. To profit off this industry is

contradictory to charitable purposes. Neither the Harvard Corporation nor the Harvard Management Company has provided any evidence to allege otherwise, despite our repeated asks for them to do so.

64. Further, Defendant Harvard Corporation's refusal to produce a risk assessment or exposure report of its investments in the prison-industrial complex is a violation of its fiduciary duty to its donors because it demonstrates that it has not and is unwilling to consider its assets' "special relationship" to the charitable purpose, per M.G.L. c. 180A § 2 (e)(2)(viii).
65. Defendant Harvard Corporation and Defendant Senior Fellow Lee's refusal to consider even the possibility of divestment from the prison-industrial complex, and their refusal to explain why they refused to consider divestment, also show that Defendants have not adequately considered the investment's relation to the charitable purposes of Harvard, in breach of its duty to do so per M.G.L. c.180A § 2 (e)(2)(viii).
66. In fact, when Defendant Senior Fellow Lee met with members of the Harvard Prison Divestment Campaign he repeatedly assured the members that the possibility of divestment was not even "on the table[.]" The students of the Harvard Prison Divestment Campaign pleaded with him to reconsider at least 5 times during that meeting. Defendant Senior Fellow Bill Lee and Defendant President Bacow refused every time to even consider divestment from the prison-industrial complex.
67. On information and belief, Defendant Senior Fellow Lee has never considered any of the legally-required factors in his decision not to divest from the prison-industrial complex. Senior Fellow Lee has himself refused to engage with the issue of prison-divestment at

all, which is a clear violation of his obligation under the Harvard Charter to consider the will of the donors and under M.G.L. 180A to consider the University's charitable purposes and the purpose of the charitable fund.

68. Without doing a thorough audit of Harvard's endowment, Defendants cannot know how much money Harvard has invested in the prison-industrial complex, and thus Defendants have no responsible estimate to give to Harvard's faculty, donors, students, or alumni when they ask for it.
69. Defendant Harvard Corporation's investment in the prison-industrial complex is unreasonable and in violation of the Charter and M.G.L. c. 180A § 2 (e)(2)(viii) because it does not have knowledge of the scope or risk of the investment, in breach of its duty to manage the endowment in "good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances." M.G.L. c. 180A § 2(b).
70. Defendant President Bacow has repeatedly made false statements about the extent of Harvard's investment in the prison-industrial complex. *See Exhibit T.*
71. Defendant President Bacow, acting in his capacity as President, has repeatedly made false and misleading statements about the purposes of the endowment, in violation of the charitable purposes required by law. *See Exhibit T.*
72. Defendant Bacow's false statements about Harvard's investments in the prison-industrial complex and the Harvard Corporation's refusal to do a study on the risks of investment in the prison-industrial complex establish that Harvard has made an unreasonable investment, in breach of their duty, without any knowledge of the risk involved per M.G.L. c. 180A § 2(b).

73. The removal of a standard for divestment: “deeply repugnant and ethically unjustifiable” from the Defendant Harvard Management Company’s website after Plaintiff Harvard Prison Divestment Campaign’s protest on April 4, 2019, shows that Defendant Harvard Management Company knew that the prison-industrial complex met that standard. *See* Exhibits G; H.
74. Instead of acknowledging that the prison-industrial complex was “deeply regunant” and requiring divestment, Defendant Harvard Management Company simply removed that language from its website. This is further proof of the unreasonableness of Defendant Harvard Corporation’s investment in the prison-industrial complex.
75. Removing the “deeply repugnant and ethically unjustifiable” language from Defendant Harvard Management Company’s website also demonstrates that Defendant Harvard Management Company knew that investments in the prison-industrial complex was a violation of Defendant Harvard Corporation’s fiduciary duty to its donors and did nothing.
76. Removal of the “deeply repugnant and ethically unjustifiable” language from the website also indicates that the Harvard Management Company acted at the direction of the Harvard Corporation. This suggests that the Harvard Corporation was on notice that the prison-industrial complex possibly violated the standard of “deeply repugnant and ethically unjustifiable[.]”
77. The Harvard Charter requires that the Defendant President and Fellows meet and discuss profits and revenues according to the will of the donors.

78. Plaintiff Harvard Prison Divestment Campaign asked Defendant Senior Fellow Lee for documentation of the process between the President and Fellows in deciding to refuse to consider divestment from the prison-industrial complex. They refused to provide any documentation of evidence of their decision-making process. Neither defendant Senior Fellow William Lee nor Defendant President Bacow have provided any evidence to suggest that they have “met” and “discuss[ed]” the will of the donors in deciding whether to divest from the prison-industrial complex, in violation of their duties under the Charter.
79. Therefore, Defendant Harvard Corporation’s investment in the prison-industrial complex is a violation of the Harvard Charter of 1650 and a violation of M.G.L. c. 180A.

COUNT 2

§91: Untrue and Misleading Advertising

80. Plaintiffs reassert paragraphs 32–50 of this Complaint and incorporate them herein by reference.
81. Plaintiffs bring a claim of untrue and misleading advertisements against Defendant Harvard Corporation, Defendant Larry Bacow, and Defendant Senior Fellow Lee.
82. Under M.G.L. c. 266 § 91 it is a violation for “any person who, with intent to sell or in any way dispose of...services, or anything offered by such person, directly or indirectly, to the public for sale...or who, with intent to increase the consumption of or demand for such merchandise, securities, service or other thing, or to induce the public in any manner to enter into any obligation relating thereto... makes, publishes, disseminates, circulates

or places before the public...any assertion, representation, or statement of fact which is untrue, deceptive or misleading, and which such person knew, or might on reasonable investigation have ascertained to be untrue, deceptive or misleading, shall be punished by a fine of not less than one thousand nor more than two thousand dollars...”

83. Although M.G.L. c. 266 § 91 does not allow for a private right of action for damages, a person who has been injured by untrue or misleading statements may petition for an injunction. *Thornton v. Harvard Univ.*, 2 F. Supp. 2d 89 (D.Mass. 1998).

84. To state a claim under M.G.L. c. 266 § 91, the plaintiff must show that she was injured by the untrue, deceptive, or misleading advertisement.

85. On March 30, 2016 then-Harvard President Drew Faust published an op-ed in *The Crimson*, Harvard’s student newspaper, titled “Recognizing Slavery at Harvard.”

86. The Faust Statement said that Harvard “was directly complicit in American’s system of racial bondage from the College’s earliest days in the 17th century until slavery in Massachusetts ended in 1783, and Harvard continued to be indirectly involved through extensive financial and other ties to the slave South up to the time of emancipation.” See Exhibit J.

87. The Faust Statement said, “this is our history and our legacy, one we must fully acknowledge and understand in order to truly move beyond the painful injustices at its core.” See Exhibit J.

88. The Faust Statement said that Harvard must “fully acknowledge and understand” its associations with slavery in order to “understand the attitudes and assumptions that made

the oppressions of slavery possible in order to overcome their vestiges in our own time.”

See Exhibit J.

89. The Faust Statement continues, “If we can better understand how oppression and exploitation could seem commonplace to so many of those who built Harvard, we may better equip ourselves to combat our own shortcomings and to advance justice and equality in our own time.” See Exhibit J.

90. The Faust Statement concludes, “At its heart, this endeavor must be about ‘Veritas’.” Veritas means truth. See Exhibit J.

91. The “veritas” is that at the time that President Drew Faust publicly promised to understand and address Harvard’s complicity with slavery, Defendant Harvard Corporation was invested in and profiting off of the continued enslavement of mostly Black and brown peoples in prison.

92. Plaintiffs thought, based on Faust’s statements, that when they entered Harvard University they were joining a community whose leadership was dedicated to disentangling the institution from the legacy of slavery and was serious about addressing slavery in all its forms.

93. Defendant’s investment in and refusal to divest from the prison-industrial complex demonstrates that its statements promising to address its legacy of slavery were untrue and misleading.

94. The prison-industrial complex is a direct continuation of the institution of slavery. The 13th Amendment outlawed slavery except as punishment for a crime.

95. At the time when Defendant made its statement promising to address its legacy of slavery it was actively profiting off of the direct continuation of that institution.
96. When the Plaintiff Harvard Prison Divestment Campaign asked Defendant Harvard Corporation to divest from the prison-industrial complex because it is a direct continuation of the institution of slavery, Defendants Senior Fellow Lee, President Bacow, and Harvard Corporation refused. This demonstrates that such persons knew that its statements were misleading, or “might on reasonable investigation have ascertained to be untrue, deceptive or misleading[.]”
97. As a result of Defendant’s misleading and untrue statements, the Plaintiffs are unable to enjoy their lives as students around Harvard in classes and in leisure time, knowing that the luxurious lifestyle and abundance of resources available to them are paid for in part by the mass systemic exploitation, torture, abuse, and caging of Black and brown people.
98. Defendant Harvard Corporation, while attempting to sell itself to prospective students and collect their lucrative tuition money, made false and misleading statements about its commitment to detangling its legacy from slavery. Plaintiffs Mx. Alvarez, Mr. Buffins, Ms. Nathanson, and Ms. Chan knew of the Faust Statement before they enrolled as students at Harvard University. They are unable to dedicate themselves fully to their studies and activities at Harvard University as long as the endowment is still invested in the prison-industrial complex.
99. Harvard falsely advertises a willingness to research, engage, and act on redressing the harms that have come from its ties to slavery. On March 30th, 2016, Drew Faust wrote to Harvard affiliates that “Harvard must do its part to undermine the legacies of race and

slavery that continue to divide our nation.” Yet, as clearly demonstrated in Harvard’s response to Ms. Tamara Lanier’s case, the University is indubitably uninterested in honestly engaging the descendants of the very enslaved people Harvard has harmed. This false advertising also extends to Harvard’s continuing investments in the prison-industrial complex.

100. Therefore, Harvard’s investment in the prison-industrial complex is a violation of M.G.L. c. 266 § 91.

PRAYER FOR RELIEF

101. WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

102. As relief from Defendants’ violation of Counts 1 and 2, Plaintiffs pray for an injunction ordering Defendants to immediately withdraw Defendant Harvard Corporation’s and HMC’s direct and indirect holdings in the prison-industrial complex, within a reasonable period of time to be determined by the court.

103. As relief from Defendants’ violation of Counts 1 and 2, Plaintiffs pray for an injunction ordering Defendant Harvard Corporation to instruct the Harvard Management Company to produce a report outlining the endowment’s investments in the prison-industrial complex and the riskiness of such investments.




104. As relief from Defendants’ violation of Counts 1 and 2, Plaintiffs pray for a declaration that Defendant Harvard Corporation and HMC’s investments in the prison-industrial complex is in breach of Massachusetts law.

105. As relief from Defendants' violation of Count 1, Plaintiffs pray for a declaration that Defendant Harvard Corporation, Senior Fellow Lee, President Bacow, and HMC's refusal to issue an exposure assessment of the University endowment's investments in the prison-industrial complex is in breach of Massachusetts law.
106. As relief from Defendants' violation of Count 1, Plaintiffs pray for an injunction ordering Defendant Harvard Corporation to produce a report which outlines the will of the donors in the endowment's investments in the prison-industrial complex.
107. As relief from Defendants' violation of Count 1, Plaintiffs pray for a declaration that Defendant Harvard Corporation, Senior Fellow Lee, President Bacow, and HMC's refusal to consider the will of the donors is in breach of the Harvard Charter.
108. As relief from Defendants' violation of Count 1, Plaintiffs pray for a declaration that Defendant Harvard Corporation, Senior Fellow Lee, President Bacow, and HMC's refusal to consider the the charitable purposes of Harvard University in relation to its investments in the prison-industrial complex is in breach of applicable Massachusetts law.

JURY DEMAND

109. Plaintiffs demand trial by jury on all issues properly so tried.

Signatures

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