

## Massachusetts Cases To Watch In 2022

By **Brian Dowling**

*Law360 (January 3, 2022, 12:02 PM EST)* -- The Massachusetts legal landscape might still be waiting for its return to normal after two years of pandemic isolation, but next year is shaping up to keep counsel on their toes with a bustling court calendar of high-profile cases.

Legal watchers are eyeing a variety of cases in the new year, including a busy docket for Massachusetts Attorney General Maura Healey as she pursues climate change litigation against ExxonMobil and a suit seeking to enforce sick time rules against airlines.

There are also new chapters ahead in familiar stories, including the "Varsity Blues" college admissions scandal and the ongoing legal saga over Harvard University's race-conscious admissions policy.

Here's what to watch for in 2022.

### **Crunch Time for "Varsity Blues"**

Most of the 57 defendants ensnared in the bombshell 2019 "Varsity Blues" case have resolved the charges against them through guilty pleas or at trial, but some significant loose ends remain to be tied up in 2022.

The First Circuit already has one appeal on its plate, filed in June by private equity investor William McGlashan, who pled guilty but is aiming to undermine the government's legal case that hit his alleged test-cheating with wire fraud charges. Three other defendants — Amy and Gregory Colburn and I-Hsin Chen — plan similar appeals.

Private equity founder John B. Wilson and casino executive Gamal Abdelaziz — who went to trial before U.S. District Judge Nathaniel M. Gorton and were convicted in a clean sweep by a federal jury in October — are scheduled to be sentenced in mid-February, with appeals expected to launch soon afterward.

And heading to trial are parent Amin Khoury and former University of Southern California water polo coach Jovan Vavic. Vavic is scheduled to face a jury on March 8 before U.S. District Judge Indira Talwani, and Khoury is set for a May 10 trial before U.S. District Judge Patti B. Saris.

Once the Vavic trial is out of the way, the scheme's ringleader and government cooperator in the case, William "Rick" Singer, is expected to be sentenced.

The cases are U.S. v. McGlashan, case number 21-1421, in the U.S. Court of Appeals for the First Circuit; U.S. v. Khoury, case number 1:20-cr-10177, in the U.S. District Court for the District of Massachusetts; and U.S. v. Vavic, case number 1:19-cr-10081, in the U.S. District Court for the District of Massachusetts.

### **The Commonwealth's Long Arm**

The attorney general's lawsuit involving ExxonMobil, currently before the Supreme Judicial Court on appeal, and federal court litigation with a regional airline consortium will test how far the commonwealth's top legal office can push major industries to comply with state law.

Choate Hall & Stewart LLP's complex trial and appellate lead Joan Lukey said that Healey's defense to the lawsuit brought by Air Transport Association of America Inc. zeroes in on whether airlines are bound by state labor laws, like sick time requirements, that are more generous than what's provided by federal law.

"That is somewhat of an open question, but one or two courts in the last couple years have found in favor of other states that did that," Lukey said.

A two-week trial in the airline's case is planned for late September.

Healey is also pursuing claims that Exxon orchestrated a misinformation campaign about the dangers of climate change, which it allegedly knew could lead to "catastrophic" effects. Massachusetts' high court is due to hear oral arguments in March, when the oil giant will seek to persuade the justices that its lobbying is free speech protected by a state law protecting petitioning activity.

The case has the potential to expand a theory that public nuisances can snowball into the type of massive litigation that's been fought against opioid companies, according to Ropes & Gray LLP global litigation chief John Bueker.

"You can see the theory applied to fast-food. You can see it applied to a lot of different other societal problems," Bueker said. "To me, it's fascinating to think about where does public nuisance as a mass-tort theory go."

The new year should also bring a decision in an auto industry lawsuit against the state, defended by Healey's office, challenging the Right to Repair law, which gives independent auto mechanics access to a vehicle's telematics system. A judge agreed to reopen evidence following a bench trial over whether the law conflicts with federal safety regulations, citing a new Subaru model that Healey says proves compliance is within reach.

The cases are Commonwealth v. Exxon Mobil Corp., case number SJC-13211, in the Supreme Judicial Court of Massachusetts; Air Transport Association of America Inc. v. Healey, case number 1:18-cv-10651, in the U.S. District Court for the District of Massachusetts; and Alliance for Automotive Innovation v. Healey, case number 1:20-cv-12090, in the U.S. District Court for the District of Massachusetts.

### **Boston, Christians and Prayerful Satanists**

Boston, represented by Ropes & Gray's lead appellate attorney, will go before the U.S. Supreme Court in January to argue that it didn't violate a group's free speech rights when it denied a request to fly a Christian emblem on a city flagpole.

Civil rights organizations, a group of states and the U.S. solicitor general have urged the high court to overturn the First Circuit's decision siding with Boston on the grounds that the pole is government speech, not private speech in a public forum where municipal control is improper.

That high court appeal is playing out as the city is roped into a federal court case brought by The Satanic Temple, claiming the City Council violated the establishment clause by denying its request to give an invocation at one of the legislative body's regular meetings.

The group pushed to have then-Boston mayoral frontrunner Michelle Wu sit for an Election Day deposition, sparking an emergency bid by the city to avoid the questioning. U.S. District Judge Angel Kelley granted the city's request, and the fight over now-Mayor Wu's deposition is ongoing.

The cases are *Shurtleff et al. v. City of Boston*, case number 20-1800, in the U.S. Supreme Court and *The Satanic Temple Inc. v. City of Boston, MA*, case number 1:21-cv-10102, in the U.S. District Court for the District of Massachusetts.

### **At Last, U.S. Attorney Rachael Rollins**

White-collar attorneys say they'll be monitoring for any changes in enforcement priorities following a changing of the guard at the U.S. attorney's office in Boston, with former Suffolk County District Attorney Rachael Rollins taking over for acting top prosecutor Nathaniel R. Mendell.

Mintz Levin Cohn Ferris Glovsky and Popeo PC's litigation chair Scott Ford said he'd be eyeing whether Rollins continues the reformist streak she started after being elected to her current state role.

"She has always been a trailblazer in everything she has done, and she is not afraid to make change," Ford said. "Even if it's not entirely consistent with what Main Justice does, she is going to do what she wants to do. She was very proactive as a DA. I imagine she will be very proactive as a U.S. attorney."

While most of President Joe Biden's U.S. attorney nominations received little opposition, Rollins took a particularly bumpy path to the seat.

Republicans in the Senate Judiciary Committee attempted to block her nomination, including Arkansas Sen. Tom Cotton, who sharply criticized her policy as district attorney of not always prosecuting low-level offenses. Such reforms "have left a trail of death, pain, suffering and misery in their wake," Cotton said during the confirmation process.

But the sharp increases in violent crime seen nationally have not happened in Boston. After a double-digit increase in homicides in 2020, the murder rate has declined sharply in 2021, according to Boston Police Department data.

Rollins is set to inherit a full docket of cases from her predecessors. Among them are "Varsity Blues" cases, a controversial prosecution of a sitting Massachusetts state judge for allegedly allowing an undocumented immigrant to evade authorities, and cases claiming a researcher at the Massachusetts Institute of Technology **hid ties** to Chinese research institutions when applying for federal grants in the U.S.

### **High Court and Harvard**

Challengers to Harvard's racially conscious admissions policy have been waiting since February 2021 for the high court to announce whether it will review the First Circuit's decision in favor of the Ivy League school.

The justices are weighing whether to take up the high-profile challenge and a companion case against the University of North Carolina at Chapel Hill. As the suit played out in Massachusetts federal court, the Trump administration backed Students for Fair Admissions, the group suing Harvard alleging discrimination against Asian American applicants.

The U.S. has since "reexamined the case," according to a brief from the Biden administration urging the justices not to review the outcome of U.S. District Judge Allison D. Burroughs' bench trial or the subsequent affirming First Circuit ruling.

Students for Fair Admissions sued both Harvard and UNC in 2014. A federal judge sided with UNC in October, finding, as Judge Burroughs did in the Massachusetts case, that the school's use of race in the admissions process was narrowly tailored and in line with Supreme Court precedent.

Legal experts have said the Harvard and UNC cases could give the top court's conservative majority a chance to end affirmative action in higher education.

The cases are Students for Fair Admissions v. President & Fellows of Harvard, case number 20-1199, and Students for Fair Admissions Inc. v. University of North Carolina et al., case number 21-707, in the U.S. Supreme Court.

--Additional reporting by Chris Villani. Editing by Nicole Bleier and Alyssa Miller.