

School Vaping Litigation: Northeastern Utah School District Presentation, August 2021

1. What is vaping?
 - a. Use of heat to vaporize a liquid to inhale
 - b. Such liquid typically contains nicotine, or marijuana, allowing someone to get a “high” from such substances
 - c. The company called “Juul” vastly improved and perfected vaping devices between 2012 and 2018, which created an experience that was comparable, or even superior to cigarette smoking. Juul now owns approximately 63% of the vaping market.¹
 - d. Juul devices can look like flash cartridges, and many people don’t recognize them.
2. Is vaping bad for you?²
 - a. Youth brains (nicotine rewires brain between 11 and 25, creating potential addict/customer for life)
 - b. Nicotine Addiction (hard to focus or function without it, also highly irritable without it)
 - c. Gateway to use of other addictive substances
 - d. Limited long-term data on the use of vaping
3. Is vaping an issue of concern in your School District?³
 - a. According to the Sharp Survey done by the State of Utah, approximately 37.1% of 12th graders in Utah’s Northeastern District (Dagget, Duchesne, Carbon, Emery and Uintah Counties) reported vaping, with approximately 14.1% of 12th graders reporting vaping in the last 30 days (a more serious sign of addiction).
 - b. In sharp contrast, cigarette use is much lower, and is declining. Approximately 17.8% of 12th graders report using cigarettes, and such rate has fallen from 22.4% in 2015. In addition, the use of cigarettes in the last 30 days (a more serious sign of addiction) is only 3.5% in 12th graders. *In other words, a 12th grader in the Northeastern District is over four times more likely to have vaped than smoked in the last 30 days.*
 - c. You can interpret this data in many ways, but one way to interpret it is that the concerted efforts to prevent and educate students about cigarettes have been successful, and an equal effort over a five year or longer period is now needed to educate students and their guardians about vaping. Page 11 from the Sharp Survey with this data is attached.
4. What can be done?
 - a. Prevention: It is very difficult for teachers and administrators to prevent vaping. Vaping detectors cost up to \$4,000 each, but have been effective in decreasing vaping, including in Wasatch School District which recently installed 19 such detectors.⁴ Canyons School District recently decided to install vape detectors throughout all their high schools.
 - b. Education: Many children and adults know the consequences of smoking, and the use of cigarettes by both has declined substantially in the last 30 years. We need to do the same with vaping, since many children and adults do not understand the consequences.
 - c. Resources: Both prevention and education require resources. The Utah State Legislature passed several bills to fund education on underage vaping, and they have raised less revenue than anticipated, according to my conversations with state legislators. In addition, the vaping lobby is strong at both the federal and state levels, and has effectively diluted or eliminated many proposed restrictions and resources to educate and prevent vaping.
5. Class Action Lawsuit by School Districts against Juul and Altria
 - a. Over 450 school districts have joined nationwide, including Provo and Ogden in June, and Canyons, Jordan and Tooele have voted to join in August.

¹ <https://www.statista.com/statistics/1096995/vaping-market-share-us-by-brand/>

² <https://seethroughthevape.org/dangers-of-vaping/>

³ <https://dsamh.utah.gov/sharp-survey>

⁴ <https://kslnnewsradio.com/1912044/vaping-technology-helps-schools-track-vapes/>

- b. Seeks damages for illegally targeting underage children, can be used how you choose
- c. No cost for joining beyond approximately 5 hours of staff time, contingency fee
- d. Juul tried to dismiss the lawsuit, and prevent RICO claim, both efforts failed
- e. Scheduled to go to trial in approximately March 2022, if no settlement
- f. Any award or settlement should not have restrictions on it, allowing the district to use any funds as they see best, with no required reporting on how funds are used
- g. Both the Utah PTA and Utah School Boards Association issued letters in August 2021 encouraging Utah's school districts to consider joining the litigation (letters are attached)
- h. North Carolina recently settled for \$40 million with Juul for deceptive marketing practices that contributed to a wave of nicotine addiction in teens, see:
<https://www.nytimes.com/2021/06/28/health/juul-vaping-settlement-north-carolina.html>

Sources for further research and study on vaping in Utah's schools

Documentary:

- 1. Big Vape, from the "Broken" series (released in 2019), 61 minutes, available on Netflix here:
<https://www.netflix.com/title/81002391>

News:

- 1. Tooele County schools join vape lawsuit; Tooele Transcript Bulletin, August 12, 2021; <http://tooeleonline.com/tooele-county-schools-join-vape-lawsuit/> (article attached)
- 2. Provo, Ogden school districts join lawsuit against Juul; Daily Herald, July 22, 2021; <https://bit.ly/2VcL87K> (article attached)
- 3. How Juul Got Vaporized; Time Magazine; May 17, 2021; <https://time.com/6048234/juul-downfall/>
- 4. Education Week; February 27, 2020; School Districts Are Suing JUUL Over Youth Vaping. Do They Stand a Chance? <https://www.edweek.org/policy-politics/school-districts-are-suing-juul-over-youth-vaping-do-they-stand-a-chance/2020/02>
- 5. The school districts recently brought a RICO claim for treble damages against Juul, and the Judge upheld that additional claim as well. See: <https://www.courthousenews.com/juul-cannot-duck-racketeering-claims-in-sprawling-e-cig-suit/> and the Judge's most recent order can be found here: <https://www.courthousenews.com/wp-content/uploads/2021/04/Juul-mtdRULING.pdf>

Books:

- 1. Big Vape: The Incendiary Rise of Juul (released May 25, 2021)
- 2. The Devil's Playbook: Big Tobacco, Juul, and the Addiction of a New Generation (released May 25, 2021)

Sources (I have spoken with these individuals. I believe they understand vaping in Utah's schools at a deep level. All of them would welcome a chance to discuss further with you):

- 1. Susan Pulsipher, current State Representative; 801-860-1670
- 2. Allen Christensen; former State Senator; 801-710-0315
- 3. Kathleen Riebe, current State Senator; 801-599-5753
- 4. Richard Stowell; USBA Executive Director; 801-878-0680
- 5. Clarissa Stebbing; Utah State Office of Education Prevention Specialist; 801-538-7821
- 6. Art Brown; Utah President of Mothers Against Drunk Driving Utah President; 801-694-0219
- 7. Todd Hougaard; Utah PTA; 385-234-8989
- 8. Liban Mohammed; President of American Heart Association in Utah; 801-648-0225
- 9. Marc Watterson, Public Relations Officer for Utah Department of Health; 385-321-6473
- 10. Joel Wright (myself) at 801-368-5385 or jwright@kmclaw.com

Bipartisan support for stopping underage vaping through prevention and education

Federal Level

1. Senator Mitt Romney (R-Utah)

“Our kids are getting addicted to nicotine through flavored vaping products—nearly 1/4 of high schoolers are vaping regularly. We’ve got to get flavored vaping products off of the market and implement a robust public education campaign to warn kids about the dangers of vaping.” Senate Hearing, February 25, 2021 (source: <https://twitter.com/SenatorRomney/status/1365071902511927298>)

2. Former First Lady, Melania Trump

“I am deeply concerned about the growing epidemic of e-cigarette use in our children. We need to do all we can to protect the public from tobacco-related disease and death, and prevent e-cigarettes from becoming an on-ramp to nicotine addiction for a generation of youth.” – Twitter, September 9, 2019 (source: <https://mobile.twitter.com/FLOTUS45/status/1171095740510277632>)

3. Former President, Donald Trump

“We have a problem in our country. It's a new problem. It's a problem nobody really thought about too much a few years ago and it's called vaping, especially vaping as it pertains to innocent children. And they're coming home, and they're saying: 'Mom, I want to vape!' And the parents don't know too much about it. And nobody knows too much about it. But they do know it's causing a lot of problems. And we're going to have to do something about it...People think [vaping is] an easy solution to cigarettes, but turns out it has its own difficulties.” Press Conference on September 11, 2019 (source: <https://twitter.com/cspan/status/1171835268451770375>)

4. President Joe Biden

“I don't care what [vaping] does to a small business person who's selling this stuff. If it is damaging lungs, if it's causing the kind of damage that is said and that studies not been fully done yet. If it turns out that it is then I would eliminate it.” Responding to a question on the campaign trail in Iowa, January 6, 2020 (source: <https://www.atr.org/joe-biden-suggests-he-would-eliminate-vaping-if-elected>)

5. Centers for Disease Control and Prevention, or CDC

“The use of e-cigarettes is unsafe for kids, teens, and young adults.

Most e-cigarettes contain nicotine. Nicotine is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s.

E-cigarettes can contain other harmful substances besides nicotine.

Young people who use e-cigarettes may be more likely to smoke cigarettes in the future.” (posted on their web site here: https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html?s_cid=OSH_emg_GL0001)

State Level

1. Utah PTA school district vaping litigation support letter dated August 12, 2021 (attached)
2. Utah School Boards Association vaping litigation support letter dated August 12, 2021 (attached)
3. Utah Eagle Forum

From a June 22, 2021 email encouraging support for a 3% nicotine limit in vaping devices in Utah:

“A manufacturer sealed electronic cigarette product is an electronic cigarette that is sold prefilled with an electronic cigarette substance, such as nicotine in Juul type pods. One small 5% Juul pod contains the nicotine equivalent of one pack of cigarettes (20 cigarettes)!

- Nearly 31,000 (12.4%) of Utah youth ages 13 to 18 use vaping products on a regular basis.
- JUUL with high nicotine levels is the e-cigarette brand preferred by 25.4% of middle and high school students.
- The rise in e-cigarette use by adolescents is attributed to JUUL and products like JUUL because they can be used discreetly and have a high nicotine content.
- An electronic cigarette with a higher concentration of nicotine has a greater likelihood of being more addictive.
- Youth who are addicted to nicotine because of vaping are four times more likely to use lit tobacco than non-vapers.
- Nearly 30% of all youth e-cigarette users ages 13-18 who were never-users of marijuana prior to taking-up e-cigarettes report heavy use of marijuana within one year after initiating e-cigarette use. Possible talking points and corresponding sources (Provided by Practical Solutions - Utah)”



everychild.one voice.

August 12, 2021

To the Superintendent and Members of the Board of Education,

Thank you for your service to the children of Utah. Utah PTA recognizes that the past year has been difficult and you have taken on many challenges throughout this worldwide pandemic. We appreciate the time and attention you have taken to move the best practices forward to keep our students safe and healthy. **As we continue to focus on the health of our youth, we respectfully request that you add a presentation and discussion to your agenda regarding "School District v. Juul Labs, Inc., et. al."**

Utah PTA requests that by December, your School Board take the opportunity to discuss whether or not it would consider joining with over 450 districts nationwide, including Ogden, Provo, Tooele, and Weber in Utah in the "School District v. Juul Labs, Inc., et. al." litigation efforts as a potential opportunity to receive additional resources for education and prevention. This could also be a critical discussion on what the district is already doing to help fight the vaping epidemic.

Utah PTA takes positions on policy and legislation based on resolutions voted on by local members of Utah PTA. Utah PTA is directed in our work on e-cigarettes and youth usage by Utah PTA Health Resolution 2015-2 "Electronic Cigarettes And Utah's Youth" which states, "Utah PTA work in collaboration with state and local health departments, school boards, school districts, and other agencies to educate youth, parents, communities, and local elected officials on the dangers of ENDS products..."

Utah PTA has worked tirelessly in its advocacy efforts to stop vaping usage of students. It is discouraging to know that the 2019 Sharp Survey shows that 31.5% of 12th graders self-reported having vaped at least once. In addition, Utah's 12th graders were approximately 3 times more likely to have tried vaping than smoking, and almost 7 times more likely to have vaped in the past 30-days than they were to have smoked. There is still work to be done.

Regards,

A handwritten signature in cursive script that reads "Stacey Mollinet".

Stacey Mollinet, Utah PTA President
on behalf of the Utah PTA Board of Directors

[View this email in your browser](#)



**UTAH SCHOOL BOARDS
ASSOCIATION**

Building Better Boards

All School Board Members, Superintendents, and Business Administrators:

We wanted to inform you of a vaping lawsuit that school districts may join against the vaping manufacturer JUUL. Many districts across the country have joined the lawsuit as well as a few districts in our state. We all know vaping is a prevalent problem in our schools. If your district has questions or wants further information you should contact Richard Stowell at 801-878-0680.

Thanks always,

Utah School Boards Association

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Article in both Daily Herald and Standard Examiner; July 22, 2021, by Harrison Epstein

Title: Provo, Ogden School Districts Join Lawsuit Against Juul

Source: https://www.heraldextra.com/news/state-and-regional/provo-ogden-school-districts-join-lawsuit-against-juul/article_0d86aaf9-82d9-52ee-b20c-52b38980ab70.html

On June 17, the Ogden School District joined over 300 others across the country to become part of a class-action lawsuit against e-cigarette maker Juul Labs.

Provo City School District also joined the case in its board's meeting on June 22. Both districts voted unanimously to enter the suit.

Currently, they are the only two districts in Utah signed on to the national suit — though an attorney with law firm Kirton McConkie said in a written statement on July 13 that they expected other school districts in the state to join as well.

"The goal of vaping and Juul, the stated goal, was to help people transition from cigarettes to something less harmful. But in the state of Utah, twice as many children under 18 are vaping as adults. It has been, unfortunately, a huge hit with the illegal, underage crowd," said Kirton McConkie's Joel Wright in his presentation to the Ogden School Board.

The case was filed in the U.S. District Court of the Northern District of California and is presided over by federal Judge William H. Orrick, and the trial is scheduled to begin in March 2022. Juul previously requested that the case be dismissed, which was denied by the judge in October 2020.

The lawsuit is run through Frantz Law Group in California, though the Utah districts are also represented in the case by Kirton McConkie, of Salt Lake City. According to William Shinoff of Frantz Law Group, joining the lawsuit comes at no financial risk to the school districts.

When asked by Provo School Board member Jennifer Partridge if there are any potential risks to joining the suit, Shinoff called the three to five hours it would take to fill out the questionnaire as a potential downside — noting that the time is also an opportunity for members of the school district to get better informed about Juul and the case.

According to OSD Business Administrator Zane Woolstenhume, the decision to enter into the lawsuit was straightforward.

"The board of education of Ogden School District joined in this class action suit because vaping (is) an increasing problem and concern in the district," he wrote in an email. "By joining in the class action, we hope to draw greater public awareness to the problem and, assuming the action is successful, use any proceeds therefrom to install more vaping detection systems in the schools (then) provide other supports to mitigate the problems associated."

At the June 3 Ogden School Board meeting where the lawsuit was discussed, then-Executive Director of Secondary Schools and current Superintendent Luke Rasmussen updated the board on the status of vaping in Ogden schools and the effort administrators put in to halt the practice in schools. Rasmussen called it "a constant issue the administrators are dealing with."

Board member Arlene Anderson asked the rest of the board if there needs to be a district policy on what to do when students are found to have vaping devices on school grounds. Wright replied that, in accordance with state law, the devices can be confiscated by teachers and administrators.

Juul, recognizable for its sleek designs, became the fastest company to ever reach a valuation of \$10 billion, according to Wright. He added that the company holds over 60% of the market and that 97% of the vaping done by underage people is with flavored pods like mango or creme brûlée.

Joining the class action was discussed for Provo School District at its board meeting on June 8. The hearing included an explainer on vaping presented to the board and information about its specific health risks. Shinoff, the attorney leading the class action, told board members that Juul does not fully inform customers about its products' nicotine content. He alleges that each Juul pod is the equivalent of two packs of cigarettes.

"This is a \$10 billion-plus company that's not paying for the harm that it causes. This is a chance for this school district, and the others, to get the resources they need to have vaping detectors, to have counselors and to have other resources to help slow down and — as much as possible — stop this growing epidemic," said Rod Andreason, an attorney with Kirton McConkie, in his presentation to the school board.

The vaping detectors were specifically mentioned by Shinoff to the Provo School Board. The goal would be to get the \$3,000-\$5,000 devices in classrooms, bathrooms and hallways. They work by detecting chemical changes in the air. School districts across the country have used vaping detectors with varying degrees of success, according to Wired.

In the 2019 SHARP survey done by the Utah Department of Human Services, around 16% of Utah 12th graders self-reported that they engaged in vaping within the previous 30 days. Approximately 2.3% of students in the same class reported smoking cigarettes.

Attorneys in the case for the prosecution will be paid on a contingency fee. According to Andreason, payment would be made to Frantz Law Group and other attorneys out of any potential recovery. "If nothing is recovered then nothing is paid," he said.

In April, Judge Orrick allowed for the addition of RICO claims in the present-day lawsuit against Juul. RICO, the Racketeer Influenced and Corrupt Organizations Act, has been used in criminal and civil trials to increase penalties on defendants. Juul is partially owned by Altria Group, the parent company of Philip Morris USA, which was found liable under the RICO Act in 2006 for hiding the health risks of smoking.

The company did not respond to a request for specific comment but includes a statement regarding underage use of the products on its website.

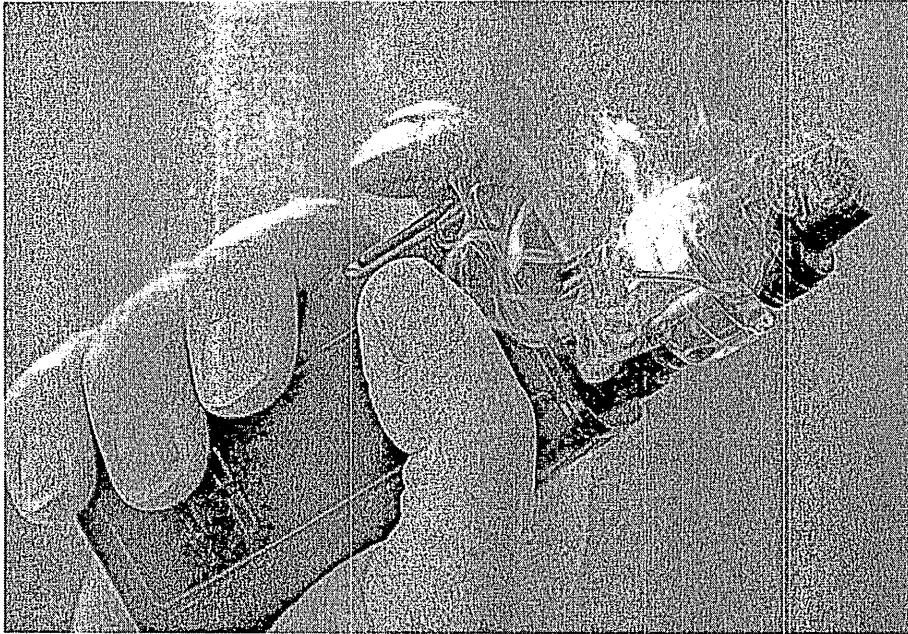
"No one underage should use JUUL products or nicotine in any form. Data in the U.S. show rates of underage use of our products that are unacceptable. We are working to reverse this trend by focusing on restricting access to our products and limiting appeal of our products."

Shinoff told the Ogden School Board he expects the class to nearly quadruple by the end of the summer.

Toward the end of the attorneys' presentation, Ogden School Board member Nancy Blair told her colleagues of discussions with her granddaughters about the lengths students go to vape in class — everything from concealing vape pens in their sleeves to pushing the vapor clouds underneath their desks.

"I was just dumbfounded. They said, 'No it's going on every day, every class,'" she said. "We do have a problem."

END



Tooele County School District will join with other schools districts across the country in a lawsuit against Juul Labs.

AUGUST 12, 2021

Tooele County schools join vape lawsuit

Vaping is on the rise among students across the country and the Tooele County School District has decided to jump onboard a lawsuit against one of the vape industries largest marketers.

The Tooele County School Board voted during their meeting on Tuesday night to engage the Salt Lake City-based law firm of Kirton McConkie and the San Diego-based Frantz Law Group in a mass action lawsuit against Juul Labs.

According to William Shinoff of the Frantz Law Group, the lawsuit claims that Juul Labs targeted children and didn't advise the public about the harm of their product which contains refined nicotine designed to create addiction.

"It's the tobacco lawsuit 2.0," he said.

He went on to explain that many people now addicted to nicotine through vaping started vaping as children and didn't know it contained nicotine.

According to the results of the 2019 SHARP survey, 23.2% of Tooele County School District students surveyed reported that they had tried vaping at least once, up from 18.8% in 2015.

A total of 12.7% of the students surveyed in 2019 reported that they had vaped in the last 30-days.

Vaping is replacing cigarettes and other forms of tobacco among students. Only 1.4% of students surveyed reported that they had smoked a cigarette in the last 30-days. 70.6% of surveyed students that reported that they had tried tobacco said that their first use of tobacco product was a vape product.

The lawsuit contends that vaping is a public nuisance and seeks a monetary award for school districts to use for fighting vaping, including installing vape detectors in restrooms, increasing staff supervision, counselors trained in addiction to work with students and education efforts.

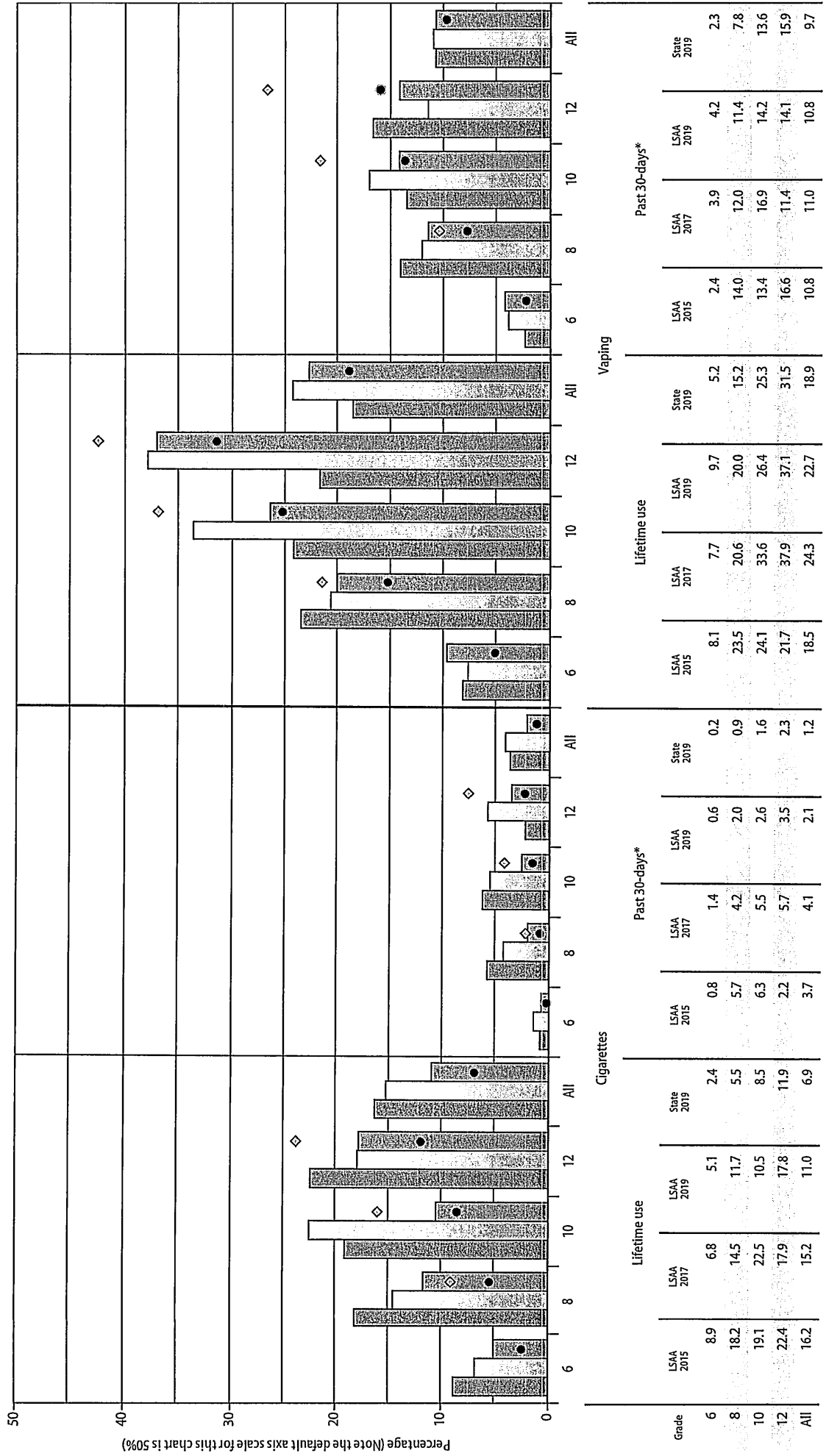
So far 450 schools in 41 states have joined the mass action lawsuit, according to the attorneys.

The attorneys will be paid on a contingency fee basis, getting 23% of the award if successful and nothing if they don't win the case.

"There is no risk to you," Shinoff said. "If we don't win, all you have lost is the time it will take a staff member to fill out a court ordered questionnaire with around 35 questions."

The trial is scheduled for March 2022 in the U.S. District Court in San Francisco.

State-identified priority substance use - Cigarettes and vaping products
 Northeastern District LSAA 2019 Student Survey



* Since not all students answer all questions, the percentage of students reporting use in the past 30 days may be greater than the percentage reporting lifetime use.
 ** National comparison data are available for 8th, 10th, and 12th grade only. Monitoring the Future does not survey 6th graders.