DATE: **11 MAY 2021**

TO: **FACULTY SENATORS:** please read, at least, the yellow segments to your divisions

FROM: **KATHERINE SCHMIDT, FACULTY MEMBER IN THE HUMANITIES DIVISION & MEMBER OF WOUFT**

RE: **AN ALTERNATE VIEWPOINT ON MANDATES FOR EXPERIMENTAL COVID VACCINE**

I am a faculty member writing to provide a rebuttal to the call for WOU to join the fewer than 4% of US colleges and universities that have announced COVID-19 injections as a condition of attendance and employment. While I presume the request is made with the best of intentions, I implore caution over mandating these injections as they unnecessarily expose students and staff to unknown short-term and long-term risks. COVID-19 injections should remain a choice.

COVID-19 vaccinations are currently permitted for use under the Pandemic Readiness Emergency Program (PREP Act). This is an Emergency Use Authorization (EUA) and not the same as FDA approval. Mandates appear to be unlawful under federal law 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) as it would force enrollment of students into a clinical experiment in exchange for their right to an education. The mandate would also force enrollment of staff into a clinical experiment in exchange for gainful employment.

Vaccine manufacturers cannot ensure the safety of any COVID vaccine; the products have had months of clinical observation, yet it takes years to prove safety and efficacy through postmarketing surveillance. First-generation pharmaceutical products are also notorious for unintended side effects. An example includes the antibody-dependent enhancement seen with the dengue vaccine. Antibody-dependent enhancement is a phenomenon where subjects who receive a vaccine for a virus become significantly more ill when they are exposed to that virus in the wild. In other words, rather than the vaccine offering protection, it actually causes subjects to experience severe illness or die.

Under current U.S. Supreme Court law, in order to mandate a medical intervention, there must be an epidemic that imperils the entire population. According to the CDC's own data, most people have more than a 97 percent chance of surviving COVID-19 without the vaccine. In fact, for people under the age of 70, the survivability rate ranges from 99.5 percent to 99.99 percent.

Considering these factors, vaccination mandates that are tied to university enrollment and/or gainful employment are not medically justifiable and are based entirely on coercion:

- Requiring individuals to use a pharmaceutical product—regardless of how healthy they are or their risk factor for COVID-19—is unethical and coercive.

- Requiring individuals to use a pharmaceutical product to receive certain privileges or basic necessities is a form of coercion and, thus, is unethical.

- Requiring individuals to use an experimental, fast-tracked vaccine with (1) known safety concerns, (2) no long-term safety and efficacy studies available, and (3) no recourse for injury or death is unethical and illegal.

To be more specific, in the non-toxicology section of the fact sheet specific to each authorized Covid-19 injection, the manufacturer states that the vaccine has "not been evaluated for its carcinogenic and mutagenic potential or impairment of fertility." What researchers have discovered, however, is that the injection causes RNA to be transported out of the cell's nucleus where it can no longer function as a tumor suppressor, and there is no research to show what happens once this process is set in motion and how long it will continue. Over time, this MRNA technology could prove to be dangerous to humans, especially concerning proteins that fuel cancer tumors and their growth, and that may be only the start. We just don't know.

Additionally, the injections do not interrupt the transmission of the virus from person to person (*BMJ*; 371 doi: https://doi.org/10.1136/bmj.m4037). The Occupational Safety and Health Administration (OSHA), explicitly states the following to employers: "Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person" (https://www.osha.gov/coronavirus/safework 2021).

Health care decisions should be made between patients and their doctors. What works to keep one person healthy may very well make another person sick, which is why vaccination decisions are an important part of individualized health care; university administrators have no business mandating a one-size-fits-all experimental health policy for all students and staff.

Daryl Lowe, a lawyer and the associate vice president for student affairs at Spelman College, even goes so far as to question whether it is "within the scope of any institution to incentivize or encourage vaccinations. Especially if a student were to have an adverse reaction, how far could liability potentially extend to the institution?" According to the CDC's Vaccine Adverse Event Reporting System (VAERS), as of 19 March 2021, the number of injury reports exceeded 205,000 events, with 2,216 reported deaths. Furthermore, 205,000 is most likely a fraction of the actual incidence, as a Harvard Pilgrim Health study found that most adverse events remain unreported. The study determined that approximately 1 percent of injuries and deaths are reported to VAERS.

With regard to employees, OSHA released the new guidance for COVID-19 safety compliance on 20 April 2021. OSHA states that if a vaccine is mandated by the employer, then any adverse reaction is considered work-related and therefore it must be recorded. Under OSHA rules, employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. Therefore, if WOU *requires* employees to be vaccinated as a condition of employment (i.e., for work-related reasons), then any adverse reaction to the COVID-19 vaccine is work-related. The adverse reaction is recordable, if it is a new case under 29 CFR 1904.6 and meets one or more of the general recording criteria in 29 CFR 1904.7.

Because adverse reactions from employer-mandated COVID vaccinations are considered work-related, then WOU may find itself liable for injuries and deaths from the vaccine. Injured employees and students, or the families of those who die as a result of the vaccine, may sue WOU, particularly since the vaccine makers are protected from liability by the government.

Thus, it is vital that WOU either provides (1) evidence of having set aside financial reserves that will enable the university to cover medical expenses related to any COVID-19 vaccine injuries or a family's claims in the case of death as a result of the vaccine or (2) written proof that Workers'

Comp will cover expenses for injury or a family's claims in the case of death as a result of the vaccine.

While Pfizer and Moderna injections are only in phase III of clinical trials and not estimated for completion until 2022 and 2023, respectively, I feel compelled to overcommunicate the fact that current research shows that the injections do not interrupt the transmission of the virus from person to person.

These injections are experimental, federally unapproved, and synthetic; they have documented safety concerns; and there is no recourse with the pharmaceutical companies in the event of injury or death.

Where there is a risk of this magnitude, there must be a choice.

Included with this memo:

1. characteristics of ongoing phase III covid-19 vaccine trials in a table from the *British Medical Journal*
2. numbers of university and college cases by state and by Oregon institution
3. "Open Letter from Physicians to Universities: Allow Students Back Without COVID Vaccine Mandate" from the Association of American Physicians and Surgeons (published 24 April 2021)
4. two versions of liability forms in the case of WOU mandating EUA experimental vaccinations: student form and employee form (posted alongside this rebuttal)
5. Link to US Department of Labor recommendations for employers: OSHA's "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace" (2021) and OSHA's https://www.osha.gov/coronavirus/faqs#vaccine (2021).
6. OSHA's statement on "Protections from Retaliation and Setting up an Anonymous Process for Workers to Voice Concerns about COVID-19-related Hazards," which is a subsection under "What Workers Need To Know about COVID-19 Protections in the Workplace" in "Protecting Workers," which is linked above (2021).

1. Characteristics of ongoing phase III covid-19 vaccine trials in *British Medical Journal* 2020; 371 doi: https://doi.org/10.1136/bmj.m4037 (Published 21 October 2020)

Table 1 Characteristics of ongoing phase III covid-19 vaccine trials

	Moderna	Pfizer	AstraZeneca (US)	AstraZeneca (UK)	Janssen	Sinopharm*	Sinovac
Vaccine name	mRNA-1273	BNT162	AZD1222	AZD1222	Ad26.COV2.S	Sinopharm vaccine	Sinovac CoronaVac
Registration No	NCT04470427	NCT04368728	NCT04516746	NCT04400838 (UK), NCT04536051 (Brazil), NCT04444674 (South Africa)	NCT04505722	NCT04510207	NCT04456595
Target enrolment	30 000	43 998	30 000	19 330	60 000	45 000	8870
Ages eligible	18+	12+	18+	5-12, 18+	18+	18+	18+
Protocol publicly available	Y	Y	Y	N†	Y	N	N
Notable excluded populations:							
Children and adolescents	Excluded	Many excluded	Excluded	13-17 excluded	Excluded	Excluded	Excluded
Immunocompromised patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Pregnant or breastfeeding women	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Endpoints undergoing formal study‡:							
Prevention of symptomatic disease in vaccine recipient	Y	Y	Y	Y	Y	Presumably§	Y
Reduction in severe covid-19 (hospital admission, ICU, or death)	N	N	N	N¶	N	N	N
Interruption of transmission (person to person spread)	N	N	N	N	N	N	N

* This trial is separately randomising an inactivated SARS-CoV-2 vaccine (Vero cell) manufactured by Wuhan Institute of Biological Products Co and Beijing Institute of Biological Products Co.

† AstraZeneca has released the protocol for its stalled US trial but not its trial in UK, Brazil, and South Africa.

‡ Endpoints "undergoing formal study" include those listed as primary outcomes in ClinicalTrials.gov, publicly available study protocols, or those not listed as primary outcomes, but the company has confirmed that the study is powered sufficiently to find an effect (if one exists).

§ Sinopharm lists "incidence of COVID-19 cases" as a primary efficacy endpoint in its ClinicalTrials.gov entry.

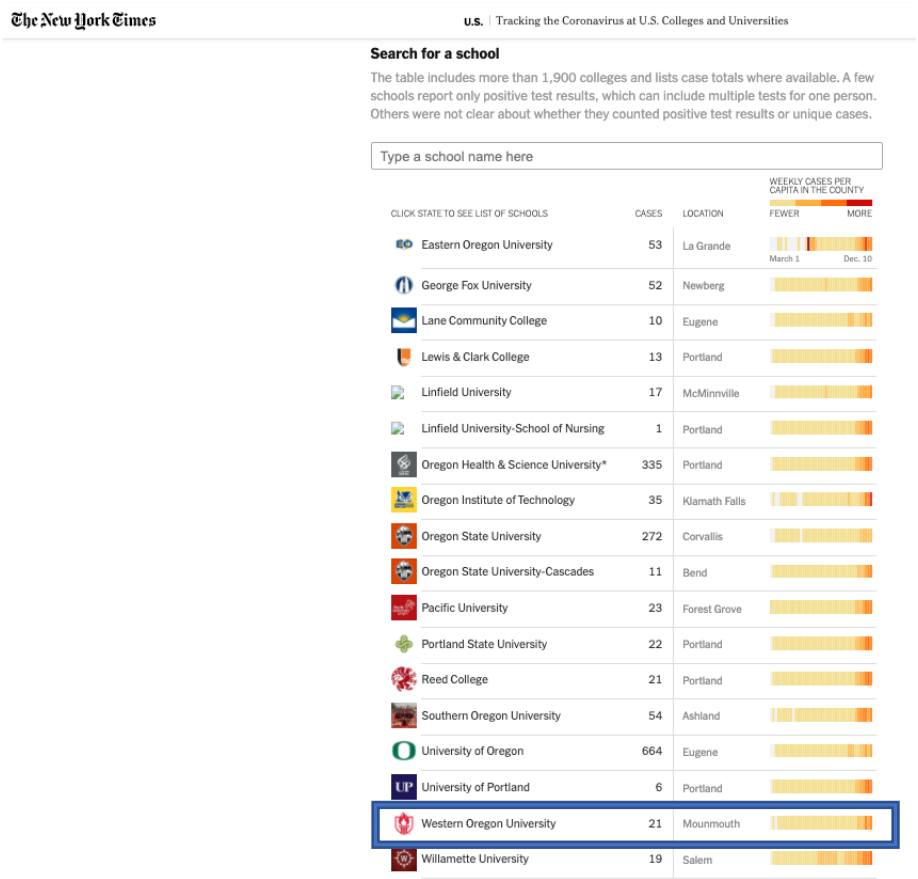
¶ Trial registration (NCT04444674) lists the following primary endpoint: "Determine if there is a reduction of severe and non-severe COVID-19 disease in HIV-negative adults." This suggests a composite outcome that includes non-severe disease.

2. Numbers of university and college cases by state and by Oregon institution

The New York Times

U.S. | Tracking the Coronavirus at U.S. Colleges and Universities

+ Delaware	1,160 cases at	6 schools
+ Florida	18,810 cases at	129 schools
+ Georgia	14,131 cases at	37 schools
+ Guam	10 cases at	1 school
+ Hawaii	59 cases at	9 schools
+ Idaho	4,852 cases at	9 schools
+ Illinois	15,148 cases at	50 schools
+ Indiana	16,505 cases at	35 schools
+ Iowa	9,031 cases at	27 schools
+ Kansas	5,533 cases at	25 schools
+ Kentucky	9,749 cases at	54 schools
+ Louisiana	7,427 cases at	41 schools
+ Maine	484 cases at	15 schools
+ Maryland	3,750 cases at	20 schools
+ Massachusetts	5,034 cases at	57 schools
+ Michigan	14,631 cases at	52 schools
+ Minnesota	9,128 cases at	60 schools
+ Mississippi	4,235 cases at	15 schools
+ Missouri	12,768 cases at	37 schools
+ Montana	2,528 cases at	16 schools
+ Nebraska	5,757 cases at	14 schools
+ Nevada	2,112 cases at	7 schools
+ New Hampshire	947 cases at	14 schools
+ New Jersey	3,660 cases at	28 schools
+ New Mexico	1,024 cases at	12 schools
+ New York	14,364 cases at	192 schools
+ North Carolina	13,658 cases at	50 schools
+ North Dakota	4,640 cases at	13 schools
+ Ohio	19,842 cases at	62 schools
+ Oklahoma	5,924 cases at	21 schools
+ Oregon	1,629 cases at	18 schools
+ Pennsylvania	17,369 cases at	113 schools



The New York Times

U.S. | Tracking the Coronavirus at U.S. Colleges and Universities

Search for a school

The table includes more than 1,900 colleges and lists case totals where available. A few schools report only positive test results, which can include multiple tests for one person. Others were not clear about whether they counted positive test results or unique cases.

Type a school name here

CLICK STATE TO SEE LIST OF SCHOOLS	CASES	LOCATION	WEEKLY CASES PER CAPITA IN THE COUNTY (FEWER – MORE)
Eastern Oregon University	53	La Grande	March 1 – Dec. 10
George Fox University	52	Newberg	
Lane Community College	10	Eugene	
Lewis & Clark College	13	Portland	
Linfield University	17	McMinnville	
Linfield University-School of Nursing	1	Portland	
Oregon Health & Science University*	335	Portland	
Oregon Institute of Technology	35	Klamath Falls	
Oregon State University	272	Corvallis	
Oregon State University-Cascades	11	Bend	
Pacific University	23	Forest Grove	
Portland State University	22	Portland	
Reed College	21	Portland	
Southern Oregon University	54	Ashland	
University of Oregon	664	Eugene	
University of Portland	6	Portland	
Western Oregon University	21	Mounmouth	
Willamette University	19	Salem	

6. OSHA's statement on "Protections from Retaliation and Setting up an Anonymous Process for Workers to Voice Concerns about COVID-19-related Hazards," which is a subsection under "What Workers Need to Know about COVID-19 Protections in the Workplace" in "Protecting Workers" (2021)

DIRECTLY EXCERPTED:

13. Implementing protections from retaliation and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards: Section 11(c) of the OSH Act prohibits discharging or in any other way discriminating against an employee for engaging in various occupational safety and health activities. For example, employers may not discriminate against employees for raising a reasonable concern about infection control related to COVID-19 to the employer, the employer's agent, other employees, a government agency, or to the public, such as through print, online, social, or any other media; or against an employee for voluntarily providing and wearing their own personal protective equipment, such as a respirator, face shield, gloves, or surgical mask.

In addition to notifying workers of their rights to a safe and healthful work environment, ensure that workers know whom to contact with questions or concerns about workplace safety and health, and that there are prohibitions against retaliation for raising workplace safety and health concerns or engaging in other protected occupational safety and health activities (see educating and training workers about COVID-19 policies and procedures, above); also consider using a hotline or other method for workers to voice concerns anonymously.