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7 **SUPERIOR COURT OF KING COUNTY**

8 TEN INJURED WORKERS,

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10 Plaintiffs,

11 vs.

12 THE STATE OF WASHINGTON; JOEL SACKS,  
13 in his official capacity as Director for the  
14 Department of Labor and Industries; and ROBERT  
15 W. FERGUSON, in his official capacity as  
16 Attorney General for the State of Washington,

17 Defendants.

Cause No. 23-2-13455-9

**ORDER ON MOTION FOR  
SUMMARY JUDGMENT,  
PERMANENT INJUNCTION,  
AND STAY**

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19 THIS MATTER having come before the Court on the State's motion for Summary  
20 Judgment to find RCW 51.36.070(4)(g) constitutional as a matter of law, the Court having heard  
21 argument of the parties in open court on October 27, 2023, and having reviewed the following:

- 22 1. Defendants' Motion for Summary Judgment;  
23 2. Declaration of Nancy Adams in Support of Defendants' Motion;  
24 3. Declaration of Lewis Almaraz, MD in Support of Defendants' Motion;  
25 4. Declaration of David Badger, MD in Support of Defendants' Motion;  
26 5. Declaration of Nicole Kellan Behnke, MD in Support of Defendants' Motion;  
6. Declaration of Bradley J. Bergquist, MD in Support of Defendants' Motion;  
7. Declaration of Craig Bone, MD in Support of Defendants' Motion;

ORDER ON MOTION FOR SUMMARY JUDGMENT

8. Declaration of Mary Highley Carbone, MD in Support of Defendants' Motion;
9. Declaration of Dennis Chong, MD in Support of Defendants' Motion;
10. Declaration of Daniel L. Christensen, MD in Support of Defendants' Motion;
11. Declaration of Aleksandar Curcin, MD in Support of Defendants' Motion;
12. Declaration of Kate Deisseroth, MD in Support of Defendants' Motion;
13. Declaration of Matthew Lee Drake, MD in Support of Defendants' Motion;
14. Declaration of Azadeh Farokhi, MD in Support of Defendants' Motion;
15. Declaration of Brian Ferris, MD in Support of Defendants' Motion;
16. Declaration of David Fillippone in Support of Defendants' Motion;
17. Declaration of Martin Hehn, DC in Support of Defendants' Motion;
18. Declaration of Scott B. Hutson, MD in Support of Defendants' Motion;
19. Declaration of Michael Johnson, MD in Support of Defendants' Motion;
20. Declaration of Reynold M. Karr, Jr., MD in Support of Defendants' Motion;
21. Declaration of Melissa Kinder, MD in Support of Defendants' Motion;
22. Declaration of Scott Kitchel, MD in Support of Defendants' Motion;
23. Declaration of Kal Klass, DDS in Support of Defendants' Motion;
24. Declaration of Diana Kraemer, MD in Support of Defendants' Motion;
25. Declaration of Roman Kutsy, MD in Support of Defendants' Motion;
26. Declaration of Christine Lloyd, MD in Support of Defendants' Motion;
27. Declaration of Richard Marks, MD in Support of Defendants' Motion;
28. Declaration of Anne P. McCormack, MD in Support of Defendants' Motion;
29. Declaration of Theresa McFarland, MD in Support of Defendants' Motion;
30. Declaration of Venkatachala Mohan, MD in Support of Defendants' Motion;
31. Declaration of James Myers, DC in Support of Defendants' Motion;
32. Declaration of Kenneth M. Oates, MD in Support of Defendants' Motion;
33. Declaration of Jennifer Piel, MD, JD in Support of Defendants' Motion;
34. Declaration of Mario E. Porras, MD in Support of Defendants' Motion;
35. Declaration of Anastasia Sandstrom in Support of Defendants' Motion;
36. Declaration of James R. Snyder in Support of Defendants' Motion;
37. Declaration of Steven D. Sun, MD in Support of Defendants' Motion;
38. Declaration of Irene Suver in Support of Defendants' Motion;
39. Declaration of Paul L. Tesar, MD in Support of Defendants' Motion;
40. Declaration of John I. Thayer in Support of Defendants' Motion;
41. Declaration of Stephen Thielke, MD in Support of Defendants' Motion;
42. Declaration of Thomas Trumble, MD in Support of Defendants' Motion;
43. Declaration of Michael Upton, DC in Support of Defendants' Motion;
44. Declaration of William Vasek, FCAS, PhD in Support of Defendants' Motion;
45. Declaration of Angel A. Vega, DDS in Support of Defendants' Motion;
46. Declaration of Dr. Meed West in Support of Defendants' Motion;
47. Declaration of Linda M. Wray, MD in Support of Defendants' Motion;
48. Declaration of Laurretta Young, MD in Support of Defendants' Motion;
49. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment;



1 P.2d 154, 943 P.2d 1358 (1997). Article I, section 5 of the Washington Constitution  
2 “categorically rules out prior restraints on constitutionally protected speech under any  
3 circumstances.” *O'Day v. King Cnty.*, 109 Wn.2d 796, 804, 749 P.2d 142, 147 (1988); *see*  
4 *also Ino Ino*, 132 Wash.2d at 117, 937 P.2d 154. “A prior restraint is an administrative or  
5 judicial order *forbidding* communications prior to their occurrence. Simply stated, a prior  
6 restraint *prohibits* future speech, as opposed to punishing past speech.” *Soundgarden v.*  
7 *Eikenberry*, 123 Wash.2d 750, 764, 871 P.2d 1050 (1994)).  
8

9         The State first argues that the act of uploading a video is not an expressive act at all,  
10 analogizing to other cases involving non-expressive conduct. *See, e.g., Rumsfeld v. Forum for*  
11 *Academic & Institutional Rights, Inc.*, 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156  
12 (2006) (denying military recruiters access to school facilities); *Clark v. Cmty. for Creative*  
13 *Non-Violence*, 468 U.S. 288, 294, 104 S. Ct. 3065, 3069, 82 L. Ed. 2d 221 (1984) (camping  
14 on federal property); *The Bail Project, Inc. v. Commissioner*, 76 F.4th 569, 577 (7th Cir.  
15 2023) (posting bail for indigent defendants); *State v. Arlene's Flowers, Inc.*, 193 Wn.2d 469,  
16 512, 441 P.3d 1203 (2019) (arranging flowers); *Clancy v. Off. of Foreign Assets Control of*  
17 *U.S. Dep't of Treasury*, 559 F.3d 595, 605 (7th Cir. 2009) (travel to a foreign war zone). The  
18 State further argues that although speech concerning an IME video is protected, because the  
19 statute restricts only (in their view) a non-expressive act, the statute is a permissible content-  
20 neutral restriction on the time, place and manner of speech. The State points to its interests in  
21 preserving a robust supply of IME doctors, and to the risks of reputational harm to those  
22 doctors from potentially altered videos being shared to social media.  
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1 The Court cannot agree with the State that posting on social media is not speech. First,  
2 the United States Supreme Court has recognized the importance of the internet and social  
3 media as the primary forum for exchanging views in modern life:

4 While in the past there may have been difficulty in identifying the most  
5 important places (in a spatial sense) for the exchange of views, today the  
6 answer is clear. It is cyberspace—the “vast democratic forums of the Internet”  
7 in general, and social media in particular. Seven in ten American adults use at  
8 least one Internet social networking service... In short, social media users  
9 employ these websites to engage in a wide array of protected First  
10 Amendment activity on topics as diverse as human thought.

11 *Packingham v. North Carolina*, 582 U.S. 98, 104–05, 137 S. Ct. 1730, 1735–36, 198 L. Ed.  
12 2d 273 (2017) (internal citations and quotations omitted). Certain circuits have found that  
13 even the act of “liking” a post on social media is speech. *See Bland v. Roberts*, 730 F.3d 368,  
14 386 (4th Cir. 2013), *as amended* (Sept. 23, 2013) (holding that the act of liking a political  
15 page on social media is equivalent to the protected speech of placing a campaign sign in one’s  
16 yard). The act of posting on social media, in our connected modern world, is fundamentally  
17 different from the non-expressive acts performed in cases the State relies on. The act of  
18 posting even a video, without more, on social media is fundamentally an act of speaking to  
19 one’s community and holding up to light actions deserving of either praise or condemnation.  
20 A statute that criminalized a private citizen posting a video of police officers on social media  
21 would clearly be a prior restraint on speech. So too here. The distinction is immaterial to the  
22 constitutional analysis. This statute literally regulates the content of a private citizen’s social  
23 media posts and forbids posting a video to which an injured worker otherwise has a right to  
24 possess or disseminate in any other way. This is a prior restraint.

25 The State further argues, that even if the act of posting the IME video is expressive,  
26 that RCW 51.36.070(g) is a valid, content-neutral, time, place and manner restriction. Content

1 neutral time place and manner restrictions are fundamentally different than prior restraints.  
2 They restrict things like the location of speech, or its volume, without targeting its content.  
3 *See Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 764 (1994) (treating limited buffer  
4 zones around private property as content neutral restricting on time, place and manner of  
5 speech); *Frisby v. Schultz*, 487 U.S. 474 (1988) (treating a blanket ban on residential  
6 picketing as content-neutral); *Foti v. City of Menlo Park*, 146 F.3d 629, 640–42 (9th Cir.  
7 1998) (upholding as content-neutral an ordinance limiting each protester to one sign that is at  
8 most three square feet in area); *World Wide Street Preachers' Fellowship v. Town of*  
9 *Columbia*, 411 F. Supp. 2d 671, 677 (W.D. La. 2006) (concluding that a content-neutral ban  
10 on standing in the street could be applied to protesters displaying pictures of aborted fetuses);  
11 *Showing Animals Respect & Kindness v. City of W. Hollywood*, 83 Cal. Rptr. 3d 134, 137 (Ct.  
12 App. 2008) (upholding a content-neutral ban on all mobile billboards). Notably, none of these  
13 permissible restrictions regulated the content (even non-verbal photo or video content) being  
14 displayed. The statute at issue here is the opposite of content neutral—it directly targets only  
15 social media posts that contain an injured worker's lawfully obtained IME video.  
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18 In sum, this case is most similar to *State v. Coe*, 101 Wn.2d 364, 373, 679 P.2d 353,  
19 359 (1984). There, the Court examined a trial court order that “held a radio and television  
20 station in contempt for violating a court order prohibiting the broadcast of accurate, lawfully  
21 obtained copies of tape recordings that had been played in open court.” *Id.* at 364. There, as  
22 here, there was a record made of the harms that could result if the material was published—  
23 trial counsel argued that publication of the tapes could cause great harm to the defendant's  
24 mental state. *Id.* at 367. There, as here, the order did not restrict all forms of dissemination,  
25 just video broadcasts, leaving open other means for the media to share their contents. *Id.* at  
26

1 368. The Supreme Court rejected all of these arguments in defense of the order, holding that it  
2 was a “classic prior restraint,” not content neutral, and therefore unconstitutional. *Id.* at 373.  
3 So too here. Accordingly, the State’s Motion for Summary Judgment is herewith denied, and  
4 at the urging of the State to provide summary judgment relief to the non-moving party the  
5 following Findings of Fact, Conclusions of Law, and Permanent Injunction are issued:  
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7 **Findings of Fact**

- 8 1. This court has jurisdiction over parties and subject matter. The Attorney  
9 General has been properly served under RCW 7.24.110.  
10 2. RCW 51.36.070(4)(a) provides that an injured worker may audio and/or video  
11 record an IME exam.  
12 3. RCW 51.36.070(4)(g) provides that an injured worker may not post an audio  
13 and/or video recording of their IME exam to social media.  
14 4. Wash. Const. art. I, § 5 states, “[e]very person may freely speak, write and  
15 publish on all subjects, being responsible for the abuse of that right.”  
16 5. U.S. Const. amend. I states, “Congress shall make no law abridging the  
17 freedom of speech, or of the press.”  
18 6. RCW 51.36.070(4)(g) permits the State to impose fines on members of the  
19 public based purely on the content of their social media posts.  
20 7. RCW 51.36.070(4)(g) is a prior restraint against both free speech and free  
21 publication under both the Wash. Const. art. I, § 5 and U.S. Const. amend. I.  
22 8. RCW 51.98.030 is a savings clause that provides, “[i]f any provision of this  
23 title . . . is held invalid, the remainder of the title . . . is not affected.  
24 9. RCW 51.36.070(4)(g) can be cleanly excised from the Industrial Insurance Act  
25 without impairing any fundamental purpose or collateral provision of said Act.  
26

**Conclusions of Law**

1. RCW 51.36.070(4)(g) is not a content-neutral “time, place, and manner” restriction on speech.
2. RCW 51.36.070(4)(g) is a prior restraint on protected speech.
3. RCW 51.36.070(4)(g) is unconstitutional under U.S. Const. amend. I.
4. RCW 51.36.070(4)(g) is unconstitutional under State Const., art. I, § 5.
5. The remainder of RCW 51.36.070 continues in operation but subsection (4)(g) must be stricken as unconstitutional and unenforceable against injured workers.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the State’s Motion is denied,

1. The State is permanently enjoined from enforcing RCW 51.36.070(4)(g) against injured workers who post recordings of their IMEs to social media, and
2. The permanent injunction is STAYED pending review by the Washington Supreme Court.

Dated this 15th day of November 2023.

*electronic signature attached*  
THE HONORABLE JOE CAMPAGNA

Presented by:

WASHINGTON LAW CENTER



1 /s/ Scott F. Goodrich

2 SPENCER D. PARR, WSBA No. 42704  
3 SCOTT F. GOODRICH, WSBA No. 41431  
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5 Approved for Form, Notice of Presentation Waived:

6 ROBERT W. FERGUSON  
7 Attorney General

8 /s/Anastasia Sandstrom

9  
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King County Superior Court  
Judicial Electronic Signature Page

Case Number: 23-2-13455-9  
Case Title: TEN INJURED WORKERS VS STATE OF WASHINGTON ET AL  
Document Title: ORDER RE SUMMARY JUDGMENT  
  
Signed By: Joe Campagna  
Date: November 15, 2023



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Judge: Joe Campagna

This document is signed in accordance with the provisions in GR 30.

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