

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SUBPOENA DUCES TECUM TO KIRO  
TV, INC.; TEGNA, INC.; SINCLAIR  
MEDIA OF SEATTLE LLC; TRIBUNE  
BROADCASTING SEATTLE LLC;  
SEATTLE TIMES COMPANY  
PURSUANT TO CrR 2.3(f) AND  
10.79.015(3)

SW No. 20-0-616926

AMICUS CURIAE BRIEF OF THE  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

**I. INTEREST OF AMICUS CURIAE**

Amicus Curiae the Reporters Committee for Freedom of the Press (“Reporters Committee”) is an unincorporated nonprofit association of reporters and editors dedicated to defending the First Amendment and newsgathering rights of journalists. As an organization that advocates on behalf of the news media, the Reporters Committee has a strong interest in ensuring that courts apply the qualified privilege for journalistic work product set forth in Washington’s reporter shield statute (the “Shield Law”), RCW 5.68.010, as well as the qualified reporter’s privilege based in the First Amendment, in a manner that fully protects journalists’ ability to gather and disseminate news.

1 Since the enactment of the Shield Law, there have been no published decisions  
2 interpreting the statute in the context of a criminal matter or investigation. *See Republic of*  
3 *Kazakhstan v. Does 1–100*, 192 Wn. App. 773, 781, 368 P.3d 524, 528 (2016) (interpreting  
4 the statute in context of a civil suit and noting that, at that time, no prior court had interpreted  
5 the Shield Law). Thus, the matter before this Court is one of first impression. The Reporters  
6 Committee has significant experience with legal issues relating to the reporter’s privilege and  
7 shield laws and can aide the Court in its interpretation of the Shield Law in this case. For the  
8 reasons set forth below, the Reporters Committee urges the Court to enter an order holding  
9 that the subpoena duces tecum issued on June 18, 2020, to non-parties the Seattle Times Co.,  
10 Sinclair Media of Seattle, LLC, KING Broadcasting Company, KIRO TV, Inc. and Fox  
11 Television Stations, LLC (collectively, the “News Media Companies”)<sup>1</sup> (the “Subpoena”) is  
12 unenforceable.

## 13 II. ARGUMENT

14 Washington courts have long recognized the importance of a journalist’s privilege.  
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16 *See, e.g., State v. Rinaldo*, 102 Wash.2d 749, 754, 689 P.2d 392, 395 (1984); *Senear v. Daily*  
17 *Journal-American*, 97 Wash.2d 148, 157, 641 P.2d 1180, 1184 (1982). With the enactment  
18 of the Shield Law in 2007, the Washington State Legislature not only codified the common  
19 law reporter’s privilege previously recognized by Washington courts, but also strengthened  
20 it. To overcome the privilege under the Shield Law, the party seeking disclosure must show  
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27 <sup>1</sup> The Reporters Committee understands that the Subpoena misidentifies the entities that  
28 operate KING-5 and KCPQ-13. The list of entities is based on that in the News Media  
Companies’ Objections and Request to Quash.

1 that the information sought is both “highly material and relevant,” and “critical or necessary  
2 to the maintenance of a party’s claim, defense, or proof of an issue material thereto.” RCW  
3 5.68.010(2)(b)(i)–(ii). In addition, the party seeking disclosure must demonstrate that it has  
4 “exhausted all reasonable and available means to obtain [the desired information] from  
5 alternative sources.” RCW 5.68.010(2)(b)(iii). Finally, the party seeking disclosure must  
6 show a “compelling public interest in the disclosure.” RCW 5.68.010(2)(b)(iv).  
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8 The First Amendment also affords a qualified privilege against compelled disclosure  
9 of “facts acquired by a journalist in the course of gathering the news.” *Shoen v. Shoen*, 5  
10 F.3d 1289, 1292 (9th Cir. 1993). To determine whether that constitutional privilege is  
11 overcome, courts weigh “the claimed First Amendment privilege and the opposing need for  
12 disclosure . . . in light of the surrounding facts . . . to determine where lies the paramount  
13 interest.” *Id.* (quoting *Farr v. Pitchess*, 522 F.2d 464, 468 (9th Cir. 1975)).  
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15 The Reporters Committee agrees with the News Media Companies that the Subpoena  
16 is unenforceable under the Shield Law and the First Amendment for the reasons set forth in  
17 the News Media Companies’ Objections and Request to Quash. *See News Media Obj. &*  
18 *Req. to Quash Purported Subpoena for Protected Newsgathering Material* at 7–13. The  
19 Reporters Committee separately writes to emphasize for the Court the effect that enforcement  
20 of the Subpoena would have on all journalists and news media organizations in Washington,  
21 especially those engaged in covering protests and other demonstrations.  
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23 Requiring members of the news media to assist law enforcement officers in an  
24 ongoing investigation by turning over their journalistic work product increases the likelihood  
25 that members of the public will incorrectly perceive journalists to be an extension of law  
26 enforcement, rather than independent press. *See Gonzales v. Nat’l Broad. Co.*, 194 F.3d 29,  
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1 35 (2d Cir. 1999) (noting that “permitting litigants unrestricted, court-enforced access to  
2 journalistic resources would risk the symbolic harm of making journalists appear to be an  
3 investigative arm of . . . the government”; emphasizing “paramount public interest in the  
4 maintenance of a vigorous, aggressive and independent press capable of participating in  
5 robust, unfettered debate over controversial matters”); *Shoen*, 5 F.3d at 1295 (finding  
6 persuasive concerns about “the disadvantage of a journalist appearing to be . . . a research  
7 tool of government” (quoting *United States v. La Rouche Campaign*, 841 F.2d 1176, 1182  
8 (1st Cir. 1988)); *La Rouche Campaign*, 841 F.2d at 1182 (“observing Justice Powell’s  
9 essential concurring opinion in *Branzburg*, ‘certainly, we do not hold . . . that state and  
10 federal authorities are free to annex the news media as an investigative arm of government’”  
11 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 709, 92 S. Ct. 2646, 2671 (1972) (Powell, J.,  
12 concurring)); *cf.* Leslie A. Warren, *A Critique of an Illegal Conduct Limitation on the*  
13 *Reporters’ Privilege Not to Testify*, 46 Fed. Comm. L.J. 549, 557 (1994) (noting that if the  
14 reporter’s privilege were weakened, “the press would face the possible image of being an  
15 arm of law enforcement, rather than a neutral observer”). Undermining the public’s  
16 perception of journalists as independent of government entities, including and especially law  
17 enforcement, is particularly problematic in the context of protests, where reporters may be  
18 exposed to risk of physical harassment and harm.

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23 As the U.S. Court of Appeals for the Ninth Circuit has explained:

24 If perceived as an adjunct of the police or of the courts, journalists might well be  
25 shunned by persons who might otherwise give them information without a promise of  
26 confidentiality, barred from meetings which they would otherwise be free to attend  
27 and to describe, or even physically harassed if, for example, observed taking notes or  
28 photographs at a public rally.

1 *Shoen*, 5 F.3d at 1295 (9th Cir. 1993) (quoting Duane D. Morse & John W. Zucker, *The*  
2 *Journalist’s Privilege, in Testimonial Privileges* 474–75 (Scott N. Stone & Ronald S.  
3 Liebman eds., 1983)).

4  
5 Recent examples of violence against journalists covering protests demonstrate that  
6 these concerns are well-founded. Protests have consistently been the most dangerous place  
7 for working journalists in the United States in recent years. See Sarah Matthews, *Press*  
8 *Freedoms in the United States 2019*, 8 (2020), [https://www.rcfp.org/wp-](https://www.rcfp.org/wp-content/uploads/2020/03/2020-Press-Freedom-Tracker-Report.pdf)  
9 [content/uploads/2020/03/2020-Press-Freedom-Tracker-Report.pdf](https://www.rcfp.org/wp-content/uploads/2020/03/2020-Press-Freedom-Tracker-Report.pdf) (nine of 34 physical  
10 attacks on journalists in 2019 occurred at protests); Sarah Matthews, *Press Freedoms in the*  
11 *United States 2018*, 11 (2019), [https://www.rcfp.org/wp-content/uploads/2019/05/2018-US-](https://www.rcfp.org/wp-content/uploads/2019/05/2018-US-Press-Freedom-Report.pdf)  
12 [Press-Freedom-Report.pdf](https://www.rcfp.org/wp-content/uploads/2019/05/2018-US-Press-Freedom-Report.pdf) (13 of 35 physical attacks on journalists in 2018 occurred at  
13 protests); Sarah Matthews, *Press Freedoms in the United States 2017*, 10 (2018),  
14 [https://www.rcfp.org/wp-content/uploads/imported/20180403\\_100407\\_press\\_freedoms\\_](https://www.rcfp.org/wp-content/uploads/imported/20180403_100407_press_freedoms_in_the_us_2017.pdf)  
15 [in\\_the\\_us\\_2017.pdf](https://www.rcfp.org/wp-content/uploads/imported/20180403_100407_press_freedoms_in_the_us_2017.pdf) (31 of 45 physical attacks on journalists in 2017 occurred at protests).  
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17 Amidst the wave of physical assaults on journalists covering the recent nationwide protests  
18 sparked by the killings of George Floyd, Breonna Taylor, and other Black Americans, some  
19 assailants have made clear that they view journalists as an unwelcome extension of law  
20 enforcement. For example, a journalist covering protests in Tucson, Arizona, with his press  
21 credentials clearly visible was punched, pushed, and kicked by protestors, who stated he was  
22 “with the police.” *Individuals at Protest in Tucson Target Journalist with Repeated Physical*  
23 *Attacks*, U.S. Press Freedom Tracker (May 29, 2020), <https://perma.cc/3N7Q-PVNU>. His  
24 assailants stated, “This is a protest and we’re protesting you, [expletive].” *Id.* Protestors hit  
25 another journalist covering protests in Tucson in the arm and made statements including  
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1 “[w]hen you put our faces on TV, it gets us killed,” and “[i]f you use our faces, we’re going  
2 to come find you.” *Individuals in Crowd Accost Newspaper Reporter Covering Protests in*  
3 *Tucson*, U.S. Press Freedom Tracker (May 29, 2020), <https://perma.cc/N2T6-2EC8>.

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5 As these recent examples show, journalists covering protests are already at  
6 heightened risk. Compelling them to turn over to the police unaired video footage and  
7 photographs gathered to report the news will sharply increase that risk. Enforcement of the  
8 Subpoena could mislead the public into perceiving reporters at protests as a mere arm of law  
9 enforcement, thus eroding public trust in the news media and increasing the already-  
10 significant risk of physical harm that journalists face when covering protests. Accordingly,  
11 the Subpoena is contrary to the public interest, and the Court should not enforce it.  
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### 13 III. CONCLUSION

14 For the reasons set forth above, the Reporters Committee respectfully urges the Court  
15 to enter an order holding that the Subpoena is unenforceable.  
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17 Dated this 29th day of June, 2020.

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27 *Attorney for Amicus Curiae the Reporters*  
28 *Committee for Freedom of the Press*

1 **CERTIFICATE OF SERVICE**

2 I, Madeline Lamo, declare that I am employed by the Reporters Committee for Freedom  
3 of the Press, a citizen of the United States of America, a resident of Arlington, Virginia, over the  
4 age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness  
5 herein.  
6

7 On June 29, 2020, I caused a true and correct copy of the foregoing document to be  
8 served on the persons listed below in the manner indicated:


9 Via Email:

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26 I declare under penalty of perjury under the laws of the state of Washington that the  
27 foregoing is true and correct.

28 DATED this 29th day of June, 2020 at Arlington, Virginia.

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30 \_\_\_\_\_  
31 Madeline Lamo, WSBA #55021