

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

SUSAN SOTO PALMER, et. al.,  
*Plaintiffs,*  
v.  
STEVEN HOBBS, et. al.,  
*Defendants,*  
and  
JOSE TREVINO, ISMAEL CAMPOS,  
and ALEX YBARRA,  
*Intervenor-Defendants.*

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**REPLY IN SUPPORT OF  
PLAINTIFFS’ MOTION TO  
ENFORCE SUBPOENA OF JIM  
TROYER OR  
ALTERNATIVELY TO  
EXTEND DISCOVERY  
DEADLINE FOR  
COMPLIANCE AND PERMIT  
DEPOSITION**

NOTE FOR MOTION  
CALENDAR: January 27, 2023

The tail end of discovery in this case has revealed that James Troyer was responsible for recruiting the individual intervenors to participate in this lawsuit and recruiting candidates to run in District 15 (after this suit was filed). The Intervenor whom Mr. Troyer recruited have made that election the centerpiece of their defense against Plaintiffs’ Section 2 claim.

To reduce the burden on third parties, Plaintiffs initially avoided subpoenaing Mr. Troyer because, prior to December, it did not appear he played a central role in this matter. Plaintiffs have also refrained from subpoenaing other witnesses for the same reason. But once it became clear Mr. Troyer played a larger role than previously understood, Plaintiffs issued a subpoena—prior to the

1 initial close of discovery—that provided 19 days for compliance and requested dates for his  
2 availability for deposition. *See* Mot. to Enforce Ex. A at 3. His counsel, Ms. Goldman, replied “I  
3 am authorized to receive a subpoena duces tecum for him” and offered deposition dates. *Id.* Now,  
4 Mr. Troyer objects that he should have been immediately subpoenaed months ago (when his  
5 importance was not yet known) and that a superseded discovery deadline—since replaced by a  
6 date that is still ten days away—has passed.  
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8 Mr. Troyer has been in possession of Plaintiffs’ subpoena since December 14, 2022—44  
9 days (and counting). Discovery does not close in this case until Monday, February 6, 2023—ten  
10 days from today.<sup>1</sup> That is 54 days in which Mr. Troyer could be producing responsive documents—  
11 nearly four times the amount (14 days) that courts routinely recognize as reasonable under Rule  
12 45. Yet rather than take that time to comply with the subpoena—substantively the same as the  
13 other subpoenas his counsel has aided witnesses in responding to without complaint—Mr. Troyer  
14 has filed multiple declarations, dozens of exhibits, and submitted a response in which the  
15 Argument section is just three of twelve pages, and in which he details his meal, sleep, and exercise  
16 schedule on the opening day of the legislative session as a basis not to comply. Nothing in the  
17 nine-page Fact section of Mr. Troyer’s response bears on the central question—whether Plaintiffs’  
18 subpoena provided a reasonable time to comply. The subpoena on its face provided a reasonable  
19 time for compliance and is not unduly burdensome or overbroad.  
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25 <sup>1</sup> Because the discovery cutoff of February 5 falls on a weekend, the deadline extends to the next  
26 business day (Monday, February 6) per the Court’s scheduling order, ECF No. 137 at 2.

**ARGUMENT****I. Mr. Troyer has had a reasonable time to comply with the subpoena.**

Mr. Troyer has had a reasonable time to comply with the subpoena. The original subpoena had a compliance date prior to the then-scheduled close of discovery and provided 19 days to comply. When his counsel sought an additional four days to turn over the documents, Plaintiffs agreed. In the time since, the discovery deadline has been extended twice, and now ends ten days from now, on February 6, 2023—fully 54 days since Mr. Troyer received the subpoena. As a matter of law Mr. Troyer has had a reasonable period of time to comply—whether the initial 19 days or at any time in the 44 days since the subpoena was issued (or in the 10 days that remain). *See, e.g., Anstead v. Va. Mason Med. Ctr.*, No. 2:21-cv-00447-JCC-JRC, 2023 WL 34505, at \*2 (W.D. Wash. Jan. 4, 2023) (explaining that more than 10 days is reasonable).

Mr. Troyer does not contend that either 19 or 44 days is an unreasonable time period. Instead, he focuses on the amount of time that elapsed *before* he was served a subpoena. But there is no rule making the last weeks of a discovery period somehow illegitimate. And Mr. Troyer's demand that Plaintiffs immediately subpoena every conceivable witness upon the opening of discovery is a peculiar one for a third party to advance. Plaintiffs have staggered their third-party subpoenas in order to limit the burden of that discovery and to seek information from those with particular relevance. Once it became clear that Mr. Troyer was a central player pulling the strings behind the legal maneuvering of intervenors and the recruitment of candidates in light of the lawsuit, he was subpoenaed. His objection to being served at the end of discovery is wholly irrelevant. He was provided 19 days to comply—well beyond what is reasonable as a matter of

1 law. Reasonableness is judged by the amount of time provided to comply, not the amount of time  
2 that predates the subpoena.

3 Mr. Troyer also objects that he was on vacation in December. But his counsel indicated  
4 that only 4 additional days—until January 6—were desired to gather and produce the responsive  
5 documents in light of his vacation. The vacation cannot plausibly be a barrier to producing the  
6 documents *now*—22 days *after* the date *he offered* as a convenient time to comply. Nor, for that  
7 matter, can Mr. Troyer’s supposed 24-hour-a-day job pose any barrier. His counsel was ready to  
8 produce the documents 22 days ago (before he purportedly gave up sleeping). Mr. Troyer’s  
9 subsequent work, eating, sleeping, and exercise schedule is irrelevant.<sup>2</sup> It appears the documents  
10 are ready to be produced, yet for some reason a subpoena substantively similar to those other  
11 legislative witnesses have responded to without objection has generated perhaps hundreds of pages  
12 of briefing and exhibits in opposition. For some reason, Mr. Troyer strongly wishes to avoid  
13 complying with the same subpoena that everyone else has responded to. Mr. Troyer’s misdirected  
14 objections should be rejected; the subpoena provided adequate time to comply. And the time since  
15 (while discovery remains ongoing) has certainly been sufficient.

18 **II. The Court should enforce the subpoena because it seeks relevant information.**

19 As Plaintiffs explained in their motion, the subpoena seeks relevant information. In  
20 particular, Mr. Troyer’s role in recruiting candidates to run in District 15 is relevant to the argument  
21 that Intervenors (whom Mr. Troyer likewise recruited) have advanced—that the election of Senator  
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24 <sup>2</sup> His work schedule is likewise of little relevance because the task of identifying and producing  
25 responsive documents has apparently been outsourced to his counsel, given the number of attorney  
26 and paralegal hours they claim to have incurred.

1 Torres somehow defeats Plaintiffs’ Section 2 claim. Although the premise of this contention is  
2 factually and legally wrong,<sup>3</sup> Mr. Troyer may have been involved in recruiting Ms. Torres—which  
3 his documents and testimony would shed light on—and the facts underlying that candidate  
4 recruitment are relevant to whether the election features special circumstances that bear on  
5 Plaintiffs’ Section 2 claim.

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7 **III. The subpoena has been properly served.**

8 The subpoena has been properly served. When asked, Ms. Goldman responded “I am  
9 authorized to receive a subpoena duces tecum.” Mot. to Enforce, Ex. A at 3. Mr. Troyer’s  
10 subsequent attempt to undo that admission by tying acceptance of service to the compliance date  
11 on the subpoena makes no sense. To the extent the Court concludes that service has not been  
12 perfected because Mr. Troyer has subsequently sought to undo his counsel’s acceptance of service,  
13 Plaintiffs should be granted leave to physically serve a new subpoena on him. Mr. Troyer should  
14 not be permitted to evade service in this manner.

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16 **IV. The court should grant leave to issue a deposition subpoena.**

17 Plaintiffs asked for deposition dates for Mr. Troyer on December 7, and his counsel offered  
18 four dates in January. *Id.* But shortly thereafter Mr. Troyer began backpedaling his intent to comply  
19 with the subpoena. Plaintiffs have not issued a deposition subpoena at this point because he has  
20 refused to produce documents, and the deposition cannot proceed until the documents are received.

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23 <sup>3</sup> At the Court’s January 13 hearing, counsel for Intervenors argued that Ms. Torres won 50% of  
24 the Latino vote in the November 22 election in District 15, based upon their proffered expert’s  
25 estimation that she received 48% of the Latino vote. But as Plaintiffs’ expert will show at trial,  
26 that is not true; Intervenors’ expert inflated Ms. Torres’s Latino support by 12-20 points by failing  
to account for the turnout differential between white and Latino voters.

1 Plaintiffs thus request that the Court grant leave for his deposition to be conducted after responsive  
2 documents are produced.

3 **V. Mr. Troyer should not be granted attorneys' fees for his responding to Plaintiffs'**  
4 **motion.**

5 Even if the Court denies Plaintiffs motion, the Court should not grant Mr. Troyer's request  
6 for attorneys' fees. Plaintiffs have not acted unreasonably by serving substantively the same  
7 subpoena upon Mr. Troyer that his counsel has responded to without objection for all the other  
8 legislative third-party witnesses. Nor have they acted unreasonably by providing 19 days for  
9 compliance, agreeing to additional time to comply, and seeking to enforce the subpoena. To the  
10 contrary, Mr. Troyer's response—and the ream of paper attached to it by way of extraneous  
11 exhibits and declarations—is unreasonable and unwarranted.  
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13 **CONCLUSION**

14 For the foregoing reasons, Plaintiffs' motion should be granted.

15 Dated: January 27, 2023

16 By: /s/ Edwardo Morfin

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**CERTIFICATE OF SERVICE**

I certify that all counsel of record were served a copy of the foregoing this 27th day of January, 2023 via the Court’s CM/ECF system. In addition, a copy of the foregoing was served by electronic mail to the following counsel for Mr. Troyer:

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