

Exhibit 3

Moon Duchin , PhD
The South Carolina State Confvs.McMaster/Alexander

July 14, 2022

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 COLUMBIA DIVISION
4 THE SOUTH CAROLINA STATE
5 CONFERENCE OF THE NAACP

6 and

7 TAIWAN SCOTT, ON BEHALF OF HIMSELF
8 AND ALL OTHER SIMILARLY SITUATED
9 PERSONS,

10 Plaintiffs,

11 vs.

12 Case No. 3:21-CV-03302-JMC-TJH-RMG

13 THOMAS C. ALEXANDER, IN HIS OFFICIAL
14 CAPACITY AS PRESIDENT OF THE SENATE;
15 LUKE A. RANKIN, IN HIS OFFICIAL CAPACITY
16 AS CHAIRMAN OF THE SENATE JUDICIARY
17 COMMITTEE; MURRELL SMITH, IN HIS OFFICIAL
18 CAPACITY AS SPEAKER OF THE HOUSE OF
19 REPRESENTATIVES; CHRIS MURPHY, IN HIS
20 OFFICIAL CAPACITY AS CHAIRMAN OF THE HOUSE
21 OF REPRESENTATIVES JUDICIARY COMMITTEE;
22 WALLACE H. JORDAN, IN HIS OFFICIAL CAPACITY
23 AS CHAIRMAN OF THE HOUSE OF REPRESENTATIVES
24 ELECTIONS LAW SUBCOMMITTEE; HOWARD KNAPP,
25 IN HIS OFFICIAL CAPACITY AS INTERIM
EXECUTIVE DIRECTOR OF THE SOUTH CAROLINA
STATE ELECTION COMMISSION; JOHN WELLS,
JOANNE DAY, CLIFFORD J. EDLER, LINDA MCCALL,
AND SCOTT MOSELEY, IN THEIR OFFICIAL
CAPACITIES AS MEMBERS OF THE SOUTH CAROLINA
STATE ELECTION COMMISSION,

Defendants.

DEPOSITION OF: MOON DUCHIN, PHD
(Via Videoconference)

DATE: Tuesday, July 14, 2022

TIME: 10:13 a.m.

Moon Duchin , PhD

July 14, 2022

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<p style="text-align: right;">Page 2</p> <p>1 LOCATION: Barnum Hall</p> <p>2 Packard Avenue</p> <p>3 Medford, Massachusetts</p> <p>4 TAKEN BY: Counsel for Thomas Alexander</p> <p>5 and Luke Rankin</p> <p>6</p> <p>7 REPORTED BY: Elaine L. Grove-DeFreitas,</p> <p>8 Independent Professional Reporter</p> <p>9 (Via Videoconference)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 ATTORNEYS FOR THE HOUSE DEFENDANTS:</p> <p>4</p> <p>5 NEXSEN PRUET, LLC</p> <p>6 BY: ANDREW MATHIAS</p> <p>7 104 South Main Street</p> <p>8 Suite 900</p> <p>9 Greenville, South Carolina 29601</p> <p>10 864-370-2211</p> <p>11 AMathias@nexsenpruet.com</p> <p>12 (Via Videoconference)</p> <p>13</p> <p>14 ATTORNEYS FOR ELECTION DEFENDANTS:</p> <p>15 BURR & FORMAN, LLP</p> <p>16 BY: JANE W. TRINKLEY</p> <p>17 1221 Main Street</p> <p>18 Suite 1800</p> <p>19 Columbia, South Carolina 29201</p> <p>20 803-799-9800</p> <p>21 jtrinkley@burr.com</p> <p>22 (Via Videoconference)</p> <p>23</p> <p>24 ALSO PRESENT: Cyndi Nygord (via videoconference)</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 ATTORNEYS FOR THE PLAINTIFFS</p> <p>4 THE SOUTH CAROLINA STATE CONFERENCE OF</p> <p>5 THE NAACP AND MOON DUCHIN, PHD:</p> <p>6</p> <p>7 NAACP LEGAL DEFENSE & EDUCATIONAL FUND,</p> <p>8 INC.</p> <p>9 BY: LEAH ADEN</p> <p>10 BY: JOHN CUSICK</p> <p>11 40 Rector Street</p> <p>12 Fifth Floor</p> <p>13 New York, New York 10006</p> <p>14 917-858-2870</p> <p>15 laden@naacpldf.org</p> <p>16 jcusick@naacpldf.org</p> <p>17 (Via Videoconference)</p> <p>18</p> <p>19 ATTORNEYS FOR THOMAS C. ALEXANDER AND</p> <p>20 LUKE A. RANKIN:</p> <p>21 JONES DAY</p> <p>22 BY: JOHN M. GORE</p> <p>23 51 Louisiana Avenue, N.W.</p> <p>24 Washington, D.C. 20001</p> <p>25 202-879-3930</p> <p>26 jmgore@jonesday.com</p> <p>27 (Via Videoconference)</p> <p>28</p> <p>29 ATTORNEYS FOR THE AMERICAN CIVIL LIBERTIES</p> <p>30 UNION:</p> <p>31</p> <p>32 AMERICAN CIVIL LIBERTIES UNION</p> <p>33 BY: ADRIEL I. CEPEDA DERIEUX</p> <p>34 125 Broad Street</p> <p>35 18th Floor</p> <p>36 New York, New York 10004</p> <p>37 212-549-2500</p> <p>38 ACepedaDerieux@aclu.org</p> <p>39 (Via Videoconference)</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X</p> <p>2 Page Line</p> <p>3 EXAMINATION</p> <p>4 BY MR. GORE..... 6/3</p> <p>5 BY MS. TRINKLEY..... 222/5</p> <p>6 BY MR. MATHIAS..... 222/23</p> <p>7 BY MS. ADEN..... 257/13</p> <p>8 BY MR. GORE..... 269/1</p> <p>9 CERTIFICATE OF REPORTER..... 270</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 Page Line</p> <p>13 EXHIBIT 1, Senate Defendants' Notice Of Taking</p> <p>14 Videoconference Deposition Of Dr. Moon Duchin.. 10/25</p> <p>15</p> <p>16 EXHIBIT 2, April 11, 2022 Report on South</p> <p>17 Carolina Congressional Districts..... 26/14</p> <p>18 EXHIBIT 3, 2021 Guidelines and Criteria for</p> <p>19 Congressional and Legislative Redistricting.... 41/23</p> <p>20</p> <p>21 EXHIBIT 4, 2021 Redistricting Guidelines..... 49/19</p> <p>22</p> <p>23 EXHIBIT 5, No Exhibit Introduced..... --</p> <p>24</p> <p>25 EXHIBIT 6, Curriculum Vitae of Moon Duchin, PhD 195/24</p> <p>26</p> <p>27 EXHIBIT 7, Expert Report of Sean P. Trende..... 196/16</p> <p>28</p> <p>29 EXHIBIT 8, May 4, 2022 Response to the Expert</p> <p>30 Report of Sean P. Trende dated April 18, 2022.. 197/17</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>

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<p>1 MOON DUCHIN, PHD,</p> <p>2 being first duly sworn, testified as follows:</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. GORE:</p> <p>5 Q. Good morning, Dr. Duchin. My name is</p> <p>6 John Gore. I'm with the Law Firm of Jones Day. I</p> <p>7 represent the Senate Defendants, Thomas Alexander</p> <p>8 and Luke Rankin in connection with the redistricting</p> <p>9 challenge that has been brought in the United States</p> <p>10 District Court for the District of South Carolina.</p> <p>11 And you understand that you're appearing in</p> <p>12 connection with that case today. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And will you say and spell your first</p> <p>15 and last names for the record, please?</p> <p>16 A. Sure. It's Moon Duchin. That's</p> <p>17 M-O-O-N, D-U-C-H-I-N.</p> <p>18 Q. And you understand that you're under</p> <p>19 oath and have an obligation to tell the truth today.</p> <p>20 Correct?</p> <p>21 A. I do.</p> <p>22 Q. We have a court reporter here to take</p> <p>23 down your testimony. The court reporter does need</p> <p>24 verbal answers, so please give a verbal answer to</p> <p>25 each question, a yes or a no. The court reporter</p>	<p>1 answer the question before we go to the break. Is</p> <p>2 that fair?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Thank you. So Dr. Duchin, where</p> <p>5 are you today?</p> <p>6 A. I'm at Tufts University in</p> <p>7 Massachusetts.</p> <p>8 Q. And is anyone in the room with you?</p> <p>9 A. No.</p> <p>10 Q. And do you have any papers with you</p> <p>11 where you are?</p> <p>12 A. I do not.</p> <p>13 Q. What did you do to prepare for today's</p> <p>14 deposition?</p> <p>15 A. I did two preparation sessions with</p> <p>16 counsel in which we reviewed the materials and</p> <p>17 discussed some likely questions.</p> <p>18 Q. And when did the first of those two</p> <p>19 sessions take place?</p> <p>20 A. Late last week. I believe it was</p> <p>21 Friday.</p> <p>22 Q. And how long did it last?</p> <p>23 A. One to two hours.</p> <p>24 Q. Who was present?</p> <p>25 A. Leah Aden and John Cusick, both of whom</p>
Page 7	Page 9
<p>1 cannot record a nod or a headshake. Does that sound</p> <p>2 fair?</p> <p>3 A. Yes.</p> <p>4 Q. And you're being defended in this</p> <p>5 deposition today by Ms. Aden, I believe. Is that</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And Ms. Aden may object to a question</p> <p>9 that I pose, such as an objection to form or</p> <p>10 something like that. Unless you're instructed not</p> <p>11 to answer, you can go ahead and answer my question.</p> <p>12 Does that make sense?</p> <p>13 A. Yes.</p> <p>14 Q. And the most important rule here today</p> <p>15 is if you don't understand a question, will you ask</p> <p>16 me to clarify the question?</p> <p>17 A. Yes.</p> <p>18 Q. And if you do answer a question, I will</p> <p>19 assume that you understood it. Is that fair?</p> <p>20 A. Yes.</p> <p>21 Q. Also, this is not a marathon. It may</p> <p>22 feel a little bit like a slog at times, but if you</p> <p>23 need to take a break for any reason, at any time</p> <p>24 just let me know and we can do that. The only thing</p> <p>25 that I ask is that if a question is pending, you</p>	<p>1 are on the call today, and myself.</p> <p>2 Q. And when did the second preparation</p> <p>3 session take place?</p> <p>4 A. Tuesday, the day before yesterday.</p> <p>5 Q. And how long did that last?</p> <p>6 A. I would estimate that was about an hour.</p> <p>7 Q. Who was present?</p> <p>8 A. The same people.</p> <p>9 Q. And did you review any documents in</p> <p>10 preparation for today's deposition?</p> <p>11 A. Yes.</p> <p>12 Q. And which documents did you review?</p> <p>13 A. We reviewed my two reports that I</p> <p>14 believe are dated April 11th and May 4th. We may</p> <p>15 have briefly reviewed the House and the Senate</p> <p>16 Guidelines on redistricting. That is all that I</p> <p>17 recall.</p> <p>18 Q. Do you know why you were retained to</p> <p>19 provide a report in this case?</p> <p>20 A. Yes. I discussed the assignment with in</p> <p>21 my first report, but -- so can we pull that up?</p> <p>22 Q. We can. Just one second. Let me ask</p> <p>23 you a question, first, if that's okay.</p> <p>24 A. Sure.</p> <p>25 Q. Do you recall who first contacted you</p>

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<p style="text-align: right;">Page 102</p> <p>1 language minority group. That's just an example. 2 But -- 3 Q. Right. I'm sorry. Finish your answer. 4 A. Just that there are very few 5 restrictions of that kind in the law that I'm aware 6 of. 7 Q. But even in that example it's not the 8 fact that that criterion is private. 9 A. That's correct. 10 Q. It's that it's illegal. 11 A. That's correct. It's not the fact of 12 having been private, but in some possibilities the 13 nature of the private motivation. 14 Q. And so focusing just on the fact that 15 something is private, does the fact that a criterion 16 is private mean a map drawer or General Assembly is 17 prohibited from considering it? 18 A. I think -- just to answer the question 19 technically first, I think they can consider 20 anything at all. However, I do think that when 21 those considerations start to come at a cost to the 22 ones that are named in law, that that's where you 23 could run into trouble. But I truly -- in an honest 24 effort to address your question as you asked it, 25 anything can be considered. But if those</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. May I try to rephrase it, then? 2 A. Please. 3 Q. Would that be okay? 4 Are you aware of any prohibition on a 5 map drawer or General Assembly considering a legal 6 criterion that it has kept private and not disclosed 7 publicly? 8 A. Just to repeat, I think they are 9 allowed, legally, to consider anything that is 10 legally permissible. 11 Q. Okay. Thank you. And then my next 12 question on this is, are you aware of any 13 prohibition on a map drawer or General Assembly 14 prioritizing a legal criterion that it has kept 15 private over criteria it has made public? 16 A. Well -- 17 Q. It's a yes or no, if that's possible. 18 A. You're asking if I know of a law. 19 Right? 20 Q. Yes. 21 A. I do not know of such a law. 22 MR. GORE: Can we maybe take a minute to 23 go off the record for a second? 24 THE WITNESS: Fine with me. 25 (Discussion Off The Record)</p>
<p style="text-align: right;">Page 103</p> <p>1 considerations come at a cost to the traditional 2 principles, that might start to invite scrutiny. 3 Q. Well, it might invite scrutiny, but is 4 it illegal? 5 MS. ADEN: Objection. 6 THE WITNESS: I would say that, in my 7 understanding, that just really depends on the 8 nature of what is being prioritized. At a cost to 9 what? 10 BY MR. GORE: 11 Q. But that analysis, in your experience, 12 doesn't turn on whether the criterion is private or 13 public? 14 A. Okay. Let me -- let me disambiguate two 15 things. So one is whether something might be 16 legally suspect, and another is whether it might be 17 against the law. So I think there is a special role 18 in the law around redistricting related to -- I 19 think race, generally, is treated with a whole host 20 of special provisions in the law. In particular, 21 the role of intent versus results is special for 22 race in current law. 23 And so to your question about whether 24 private considerations are prohibited, I find that 25 question too general to answer.</p>	<p style="text-align: right;">Page 105</p> <p>1 (Break In Proceedings) 2 MR. GORE: Back on the record. 3 BY MR. GORE: 4 Q. Dr. Duchin, did you discuss this case 5 with anyone during your break? 6 A. No, I didn't talk to anyone during the 7 break. 8 Q. All right. Let's go back to your report 9 that I have pulled up here. Can you see this on 10 your screen? 11 A. Yes. 12 Q. Let's go to page 17, Figure 5. 13 A. Yes. 14 Q. Can you just tell me what these red and 15 black lines are? 16 A. Yes. The red lines are the municipal 17 boundaries of Charleston and North Charleston, and 18 the black ones are district boundaries. 19 Q. So these are not county boundaries, 20 then. Is that right? 21 A. That's right. They are municipal and 22 district boundaries. 23 Q. And I think you say here, in heading D, 24 "Charleston County split erratically." 25 A. That's right.</p>

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