

Emergency Evaluation of Gerrymandering

Kidd v. Cox (Beverly B. Martin, N.D. Ga. 1:06-cv-997)

On April 20, 2006, a few days before the weeklong qualifying period for filing candidacy papers for election to Georgia's legislature, a member of the assembly and possible candidate for the senate, filed a constitutional challenge, with three voters as the other plaintiffs, to new state senate district lines for three districts, including the district in which the candidate intended to run.¹ The candidate filed her complaint as a motion to intervene in a 2003 redistricting challenge that had closed in 2004.²

Five days later, the candidate adopted the alternative strategy of initiating a new case.³ With their complaint, the plaintiffs filed a motion for an emergency hearing by a three-judge court, noting that the new district lines were only pre-cleared on April 20.⁴

The court assigned the case to Judge Beverly B. Martin.⁵ She had not yet had a three-judge case,⁶ so she conferred with the circuit's Chief Judge J.L. Edmondson.⁷ They both agreed that a three-judge court probably was required.⁸ Judge Martin ordered a response from the state filed by 3:00 p.m. on April 27.⁹

On the case's third day, Judge Martin held a telephone conference with the parties, and the state informed her that the absolute deadline for certification of candidates for the July 18 primary election was May 5.¹⁰ April 28 was the deadline to qualify with the individual parties.¹¹ So that it would have additional time to consider the case, the three-judge court extended the qualification deadline to

1. [Motion to Intervene](#), *Larios v. Cox*, No. 1:03-cv-693 (N.D. Ga. Apr. 20, 2006), D.E. 278; see Tom Baxter, *Athens' New State Senate Lines OK'd*, Atlanta J. & Const., Apr. 21, 2006, at D3 (reporting that the candidate was the primary target of 2006 redistricting).

2. *Cox v. Larios*, 542 U.S. 947 (summarily affirming a district court judgment that the redistricting plan violated equal protection), *aff'g* 300 F. Supp. 2d 1320 (N.D. Ga. 2004).

3. [Complaint](#), *Kidd v. Cox*, No. 1:06-cv-997 (N.D. Ga. Apr. 25, 2006), D.E. 1; see [Withdrawal of Motion](#), *Larios*, No. 1:03-cv-693 (N.D. Ga. Apr. 20, 2006), D.E. 279.

4. [Motion for Emergency Hearing](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 25, 2006), D.E. 2.

5. [Docket Sheet](#), *id.* (Apr. 20, 2006).

Judge Martin joined the Northern District of Georgia's bench on August 3, 2000, and was elevated to the court of appeals on January 28, 2010. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>. Tim Reagan interviewed Judge Martin for this report by telephone on October 26, 2012.

6. Transcript at 3, *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 27, 2006, filed Apr. 27, 2006), D.E. 15.

7. Interview with Hon. Beverly B. Martin, Oct. 26, 2012.

8. [Designation of Three-Judge Court](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 26, 2006), D.E. 5; [Order](#), *id.* (Apr. 26, 2006), D.E. 4.

9. [Order](#), *id.* (Apr. 26, 2006), D.E. 6.

10. [Minutes](#), *id.* (Apr. 27, 2006), D.E. 10; Transcript, *supra* note 6, at 38.

11. Transcript, *supra* note 9, at 4.

May 5.¹² At the end of the day, the three-judge court also held a 35-minute telephone conference with the parties.¹³

The three-judge court held another teleconference on May 1¹⁴ and a hearing on May 2.¹⁵ District Judge Orinda D. Evans was in the same building as Judge Martin; Circuit Judge Susan H. Black came in from Jacksonville, Florida, for the hearing.¹⁶

After the hearing, the court ruled against the plaintiffs.¹⁷ A 46-page opinion followed two weeks later.¹⁸ The court held that the population deviations of the three senate districts at issue deviated from the average district population by from 0.51% to 0.89%, and these deviations were not unconstitutional for state legislative districts.¹⁹ Nor were the plaintiffs able to establish a claim of unconstitutional political gerrymandering.²⁰

The plaintiffs filed a notice of appeal,²¹ but it does not appear that an appeal was ever docketed with the Supreme Court.

12. [Order](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 27, 2006), D.E. 14; *see* Nancy Badertscher & Sonji Jacobs, *Qualifying Ends for Most Offices Up for Election*, *Atlanta J. & Const.*, Apr. 29, 2006, at E3.

13. [Minutes](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 27, 2006), D.E. 19.

14. [Minutes](#), *id.* (May 1, 2006), D.E. 28.

15. [Minutes](#), *id.* (May 2, 2006), D.E. 34.

16. Interview with Hon. Beverly B. Martin, Oct. 26, 2012.

17. [Order](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. May 2, 2006), D.E. 35; *see* Nancy Badertscher, *Judges Back GOP Redistrict of Athens Seat*, *Atlanta J. & Const.*, May 3, 2006, at B2.

18. [Opinion](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. May 16, 2006), D.E. 36, *available at* [2006 WL 1341302](#).

19. *Id.* at 16–31.

20. *Id.* at 32–45.

21. [Notice of Appeal](#), *Kidd*, No. 1:06-cv-997 (N.D. Ga. May 30, 2006), D.E. 38.