

Emergency Evaluation of Gerrymandering

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

As the qualifying period for filing candidacy papers closed, a possible candidate and three voters filed a constitutional challenge to state legislative district lines. The plaintiffs sought an emergency hearing by a three-judge district court. The three-judge court extended the deadline and heard the case. The court ruled against the plaintiffs, finding the population deviations to be within constitutional limits.

Subject: District lines. *Topics:* Malapportionment; section 5 preclearance; three-judge court.

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 plaintiffs filed their complaint as a motion to intervene in a 2003 redistricting challenge that had closed in 2004.²

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

1. Intervention Motion, *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 she was elevated to the court of appeals on January 28, 2010. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges. Tim Reagan interviewed Judge Martin for this report by telephone on October 26, 2012. She retired on September 30, 2021. *Id.*

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

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),

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 May 5.¹² At the end of the day, the three-judge court also held a thirty-five-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 forty-six-page opinion followed two weeks later.¹⁸ The court held that the populations of the three senate districts at issue deviated from the average district population by 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.

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; *Kidd* Transcript, *supra* note 6, at 38.

11. *Kidd* Transcript, *supra* note 6, at 4.

12. Order, *Kidd*, No. 1:06-cv-997 (N.D. Ga. Apr. 27, 2006), D.E. 14; see Nancy Bardscher & 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 Bardscher, *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, 2006 WL 1341302.

19. *Id.* at 16–31.

20. *Id.* at 32–45.

21. Notice of Appeal, *id.* (May 30, 2006), D.E. 38.