

How Judges Look at Redistricting Cases:

1. In a broad sense, "the Equal Protection Clause requires every State to govern impartially." *Karcher v. Daggett*, 462 U.S. 725, 748, 77 L. Ed. 2d 133, 103 S. Ct. 2653 (1983) [****23**] (Stevens, J., concurring). The Clause "does not take from the States all power of classification." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 271, 60 L.Ed.2d 870, 99 S.Ct. 2282 (1979). Instead, "it simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Nordlinger v. Hahn*, 120 L. Ed. 2d 1, 60 U.S.L.W. 4563, 4566, 112 S. Ct. 2326 (U.S. June 18, 1992). Consequently, to comport with the Equal Protection Clause, classifications must relate to a proper governmental purpose and may not rest upon impermissible criteria. *Cf. id.* (noting that different treatment of newer and older homeowners under state acquisition-value assessment scheme for property taxes does not qualify for heightened review and must only rationally relate to a legitimate state interest); *Feeney*, 442 U.S. at 272 (noting that classifications based on race are presumptively invalid). In the context of voting rights, the Clause guarantees the electorate equality of participation in the political process by prohibiting barriers to exercise of the franchise and restrictions on access to the ballot and by ensuring the equality of votes through the forbiddance of vote dilution and unequal weighing of votes. See J. Harvie Wilkinson III, *The Supreme Court, the Equal Protection Clause, and the Three Faces of Constitutional Equality*, 61 Va. L. Rev. 945, 958-59 (1975). *Republican Party v. Martin*, 980 F.2d 943,952 (4th Cir. 1992)

2. Churchill on elements of constitutional democracy.

- Is there the right to free expression of opinion and of opposition and criticism of the government of the day?
- Have the people the right to turn out a government of which they disapprove?**
- Are constitutional means provided by which they can make their will apparent?**
- Are there courts of Justice free from interference by the Executive and from threats of mob violence? Are they free of all association with particular political parties?**
- Will these courts administer open and well-established laws which are associated in the human mind with the broad principles of decency and justice?**
- Will there be fair play for poor as well as rich, for private persons as well as government officials?**
- Will the rights of the individual, subject to his duties to the State, be maintained and asserted and exalted?
- Is an ordinary workman, who is earning a living by daily toil and striving to bring up a family, free from fear that some grim police organization under the control of a single party, like the Gestapo started by the Nazi and Fascist parties, will tap him on the shoulder and pack him off without fair or open trial to bondage or ill-treatment?

(Winston S. Churchill, Encouragement for the Italians: A Message Issued by the Prime Minister at the End of His Visit to Italy (August 28, 1944, in *The Dawn of Liberation: Winston Churchill's Complete War Speeches*, Vol. V, p 170, London: Cassel & Co, LTD.)