



April 6, 2021

**NBC News**  
In a Beaver County  
town, a Facebook

Justice Clarence Thomas suggested Monday that tech platforms could be regulated like utilities in what would be a major shift for services such as [Facebook](#), [Google](#) and [Twitter](#). Thomas, one of the Supreme Court's most

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conservative voices, made his point in a concurrence submitted alongside a [decision to vacate a lower court's ruling involving former President Donald Trump's Twitter account](#). "There is a fair argument that some digital platforms are sufficiently akin to common carriers or places of accommodation to be regulated in this manner," Thomas wrote.

Regulating online platforms like utilities would require fundamental changes to how tech platforms operate. Depending on the specific contours of such regulation, social media sites could be forced to alter or do away with many of the moderation standards they use to keep harassment, hate speech and nudity off their platforms. That's the opposite of what many Democrats have been fighting for, which is more liability for platforms that host certain types of objectionable or illegal content.

The decision erased a federal appeals court ruling that Trump had violated the Constitution by blocking his critics from his Twitter account. The lower court had said Trump's move effectively excluded citizens from viewing a public forum, in violation of their First Amendment rights. The Supreme Court ordered the lower court to dismiss the case as moot now that Trump is no longer president. The action prevents the federal appeals court decision from serving as precedent for future cases.

Thomas' concurrence signals the justice would be open to arguments that could require a fundamental change to how tech platforms function. While he agreed that Trump's Twitter account did "resemble a constitutionally protected public forum" in some respects, "it seems rather odd to say that something is a government forum when a private company has unrestricted authority to do away with it," he said, referencing Twitter's decision to remove Trump's account from the platform following the Jan. 6 insurrection at the U.S. Capitol. "Any control Mr. Trump exercised over the account greatly paled in comparison to Twitter's authority, dictated in its terms of service, to remove the account 'at any time for any or no reason,'" Thomas wrote.

Thomas said the solution to the unprecedented issues presented by the tech platforms could lie "in doctrines that limit the right of a private company to exclude." It's not the first time he's indicated openness to the idea of upending the status quo of tech regulation. In an [October filing](#), Thomas wrote that it "behooves" the court to determine the "correct interpretation" of Section 230, the law that protects tech platforms from being held liable for their users' posts or for how they choose to moderate and remove content. Thomas suggested the law had been too widely interpreted and that there is reason to reconsider its application.

Trump's Federal Communications Commission chair pointed to Thomas' statement in his [decision to move to "clarify" the law](#), but that did not happen before the administration changed hands. Democrats hold a far different view on how the law should be revised, though they too are seeking changes. Thomas' concurrence Monday was the only one submitted alongside the action, which did not include an explanation from the majority. That could be an indication that Thomas' colleagues don't share his reasoning, especially since Thomas is known for holding views that deviate from the rest of the court.

Thomas also discussed in his statement the vast reach of several large tech platforms over the flow of information and even books. He argued it doesn't necessarily matter if platforms like Amazon, Facebook and Twitter are not the only means to distribute speech, so long as their relative power to do so is unmatched. "A person always could choose to avoid the toll bridge or train and instead swim the Charles River or hike the Oregon Trail," he wrote. "But in assessing whether a company exercises substantial market power, what matters is whether the alternatives are comparable. For many of today's digital platforms, nothing is." — **CNBC**

Liz Forrest doesn't think four of Pennsylvania's most powerful lawmakers will pick her — a semiretired technology consultant and failed state legislative candidate from Pike County — to be the potentially deciding vote in how they redraw their political districts this year.

Past chairs of the Capitol's redistricting commission have included Ivy League law professors and retired judges. Beyond settling politically charged disputes, the chair is in a position to cast the tie-breaking vote on state House and Senate maps that determine which voters go where, which communities are split apart, and which lawmakers have a shot at getting reelected. "I doubt seriously they really are looking for 'somebody like me,'" Forrest said. "I'm just going to put my name in, and it either works or it doesn't."

The once-a-decade [process to draw new political maps](#) — normally done in secret with little public input — is officially underway in Harrisburg, and the General Assembly's Democratic and Republican caucus leaders are accepting applications from members of the public to chair the powerful Legislative Reapportionment Commission. It's only the second time in the commission's five-decade history that lawmakers have done so. But it remains to be seen whether this year's open application process would lead to selecting someone like Forrest, or a seasoned political insider once again.

While they've [stressed the importance](#) of having a fair and transparent redistricting process, most of the commission's members told Spotlight PA and Votebeat it's too soon to elaborate on what they're looking for in a chairperson. They have less than a month to name someone or cede that responsibility to the majority-Democrat state Supreme Court. That's what has happened during nearly every redistricting cycle since 1971. Now, with Harrisburg at peak levels of partisanship, advocates pushing for more public involvement and transparency are hoping history doesn't repeat itself and commissioners choose an independent chair.

Despite the pressure that comes with the job — specifically, the charge of casting the crucial swing vote on maps that can ultimately determine control of the legislature — almost anyone can qualify, even those who are eyeing a run for public office, are related to politicians, or work as lobbyists or for campaigns. Past chairs have included Republican Stephen McEwen, a retired Superior Court judge from Delaware County; former U.S. District Judge Robert Cindrich; and James Freedman, a former dean of the University of Pennsylvania Law School. "I think [lawmakers] understand that we're in a new political era where Republicans and Democrats, right and left, there's a real interest in transparency and openness," said David Thornburgh, managing director of the anti-gerrymandering organization Draw the Lines. "I think the leadership is much more interested in recognizing that than pushing back."

Draw the Lines and other advocacy groups focused on removing politics from the redistricting process, like Fair Districts PA and Common Cause PA, are encouraged by state Sen. David Argall's bill that [puts guardrails on who can serve as chair](#). The measure, which passed unanimously out of a Senate committee in March, prohibits a person from holding the role if they or their spouse were registered lobbyists or political candidates in the past five years, or worked for a political campaign or public official in the past five years. The full Senate won't return to Harrisburg until April 17, leaving little time for it to be considered in that chamber and the House before the commission's April 30 deadline. "I saw this bill as at least one small step in the right direction trying to make it a little less cutthroat partisan," said Argall (R., Schuylkill), who's served as a lawmaker through three previous redistricting cycles.

Argall said he's had brief conversations with the four members of the Legislative Reapportionment Commission, but that it was "too soon to tell" if they would agree to pick a chair with his additional criteria in mind. A spokesperson for Senate Majority Leader Kim Ward (R., Westmoreland), Erica Clayton Wright, said a reporter's questions about commission members pledging to follow Argall's criteria were "a bit leaning implying we have preconceived notions about a fifth member. "The reality is a request for

nomination was just issued [March 26]," Wright said. "We are looking forward to evaluating and reviewing the qualifications and credentials of the individual candidates based on merit."

Through a spokesperson, House Majority Leader Kerry Benninghoff (R., Centre) said he was looking for someone who could be "a neutral arbiter who shares our commitment to a fair, open, and legal redistricting process." He said the public application process would ensure — "assuming we can agree to a candidate" — that the person is "best qualified and not the outgrowth of political favoritism or nepotism." Senate Minority Leader Jay Costa (D., Allegheny), the only current commissioner who also served on the 2011 commission, said the panel should adopt Argall's criteria and that he's personally committed to applying the criteria to his search.

Costa is also looking for someone who is "going to be committed to working for the right outcome, in terms of a fair outcome, an equitable outcome." Scholars and redistricting experts have found that the party in control of redistricting often has a partisan advantage in the resulting maps. But determining whether a map has been purposefully drawn for that reason — referred to as gerrymandering — is much more complicated. For one, Democrats tend to cluster in urban environments, while Republicans are spread out across the state, resulting in some naturally uneven districts.

Argall hopes his bill will reduce distrust in state government, which he said reached an "all-time low" in the past year thanks to misinformation surrounding the 2020 election and the government's role in dealing with the coronavirus pandemic. "I feel sometimes as if I'm working in a room full of gasoline fumes and people are flicking their lighters," he said.

The Republican-controlled General Assembly has in the past failed to advance efforts to create an independent redistricting commission without lawmakers, or at least rein in their power. Courts and scholars have found that when left up to their own devices, lawmakers in charge of the redistricting process will gerrymander maps, or draw them in ways that help them win as many votes as possible while minimizing the voting power of their adversary.

Pennsylvania's 2011 congressional map — drawn largely in secret by the GOP lawmakers and approved by a Republican governor — was considered one of the most gerrymandered of the time, and in 2018, the state Supreme Court threw it out, saying Republicans gave themselves an unfair advantage. Argall will play a powerful role in that process this year as chair of the Senate State Government Committee, which considers the map, and he said he's planning a round of public hearings. While the congressional map-drawing will still be led by Republicans, they'll have to work with Democratic Gov. Tom Wolf — who must give his stamp of approval — if they want to avoid the map being challenged in court. "Will that lead to bipartisanship?" Argall said. "I hope so."  
— **Spotlight PA**

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If the recent proposal to reduce the size of Pennsylvania's Legislature has a familiar ring to it, that's because it's the same plan that died a political death three years ago, and there's plenty of reason for skepticism about any success this time around. That doesn't make it any less worthy of passage. Rep. Valerie Gaydos, R-Aleppo, introduced a bill that would reduce the number of state House seats from 203 to 151, citing a need to reduce costs and bring the ratio of lawmakers to residents more in line with other states.

Ms. Gaydos estimates that the reduction would save Pennsylvania \$4.7 million in salaries alone, and about \$15 million total when benefits and perks are added. Reducing the cost of the nation's largest full-time lawmaking body likely would draw overwhelming support from voters, but lawmakers have repeatedly denied their constituents the opportunity to vote on such a plan. Because it would require an amendment to the state constitution, a proposal must be approved in two consecutive legislative sessions before it can be placed on the ballot. That means the earliest it could go to the voters this time around is



2023. And the bill stipulates it would not take effect until after the 2030 reapportionment.

Pennsylvania came close to doing the responsible thing a few years ago. The reduction to 151 state House seats was approved overwhelmingly in the 2015-2016 session and seemed headed for a second approval in 2018. At the last minute, former Rep. Gene DiGirolamo, R-Bensalem, introduced an amendment to also cut the size of the Senate from 50 seats to 38 seats. Senate leaders made it clear there would be no support for such a move, and the bill died -- along with any hope of giving voters a chance to weigh in.

So here we are again. Pennsylvania has the the second-largest legislature in the country at 253 members and is one of 10 classified as full-time. It trails only New Hampshire, which has 400 state House members, but that can be a bit misleading — the members meet for six months a year and are paid \$100 each plus mileage, but no per diem. By contrast, Pennsylvania's lawmakers have a base pay of \$90,335 per year — third-highest in the country — and an available per diem of \$178 per day when in session.

And in comparison to other states, Pennsylvania's Legislature is overstaffed for a state with 12.8 million residents. California, with a population of more than 40 million, gets by with 80 House members and 40 in the Senate; Florida, with nearly 22 million residents, has 120 in its House and 40 in the Senate. In states with comparable populations, Illinois (population 12.67 million) has 118 in the House and 59 in the Senate; neighboring Ohio (11.7 million residents) has 99 House members and 33 in the Senate; and Michigan (10 million residents) operates with 110 in the House and 38 in the Senate.

One of the arguments against reducing the size of the Legislature has been that larger districts would make it harder for constituents to connect with their representatives, but technology has made it easier for elected officials to respond quickly and efficiently, regardless of physical distance. The examples of other states show clearly that Pennsylvania's Legislature can function with fewer members. The question is whether lawmakers will give voters a chance to make that choice. The last time voters had that opportunity was in 1968 when the current size of the Legislature was approved. A half-century later, it seems another ballot question is long overdue. — ***Pittsburgh Post-Gazette* editorial**

