

**SUPREME COURT OF STUDENT GOVERNMENT AT
TEXAS STATE UNIVERSITY**

No. 01-05

Cody DeSalvo, Senator

v.

Corey Benbow, Attorney General

Syllabus

Heard November 4th, 2020 – Decided November 4th, 2020

A Notice of Complaint was filed with the Supreme Court by Senator Cody DeSalvo concerning an accused violation of Student Government Constitution Article III, Section 3, and Student Government Constitution Article VI, Section 23. In a government guided by a constitution, the hierarchy of derived powers is an essential element to be defined. Senator DeSalvo argued that the Senate did not have legal and justified grounds to remove him from the position of Parliamentarian because the Vote of No confidence followed procedures set forth in Student Government Code of Laws Title VI, Chapter 200, Article V, Section 7 while the Constitution Article VI, Section 23 set a higher threshold of two-thirds vote.

The Notice of Complaint provided a clear citation of the violation and presented several questions for the Court. As a result, Chief Justice Frank Cadoree and Associate Justices Wosnig, Guilhas, and Malcom agreed to hear on the case. A hearing date was set for November 4th, and testimony was recorded by both the Complainant and Respondent.

Held: All laws must be subordinated to constitutional text. The Student Government Code of Laws Title VI, Chapter 200, Article V, Section 7 is unconstitutional and therefore void. The Vote of No Confidence Resolution declared passed by the Senate on October 26th did not meet the constitutional threshold required for passage and therefore failed. Senator DeSalvo is restored to the Office of Senate Parliamentarian with all the rights and responsibilities therein. (*See Court Order on page 3*).

Associate Justice GUILHAS delivered the Majority Opinion of the Court in which Chief Justice FRANK CADOREE, and Justices WOSNIG AND MALCOM joined.

Opinion

I. Supremacy Clause of the Constitution

During the arguments, both the Complainant, Senator Cody DeSalvo, and the Respondent, Attorney General Corey Benbow, agree that the Constitution needs a Supremacy doctrine. In a functioning democratic governing body, all laws must be subordinated to a founding document or idea as a check on the Governing body's power, especially from enacting laws or taking actions that violate the agreed-upon terms derived from the consent of the governed¹. In addition, the lack of a self-evident basis of government would prove disastrous, as United States Founding Father James Madison points out in Federalist No. 44 when speaking on a government without a supremacy doctrine: "In fine, the world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all government; it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members."² For these reasons, the U.S. Constitution has the Supremacy Clause. Drawing heavily from the U.S. Constitution, the Student Government Constitution speaks upon supremacy. In the Student Government Constitution, it is explicitly stated that "The constitution is the supreme law of Student Government and the basis for all statutes of Student Government. No member or component of Student Government may ever take any action to conflict with, or otherwise violate, this Constitution or Statutes."³

Based on the Supremacy Doctrine, this Court accepts and affirms that any law that comes into conflict with the Constitution is unconstitutional and must not be enforceable; any action taken in violation of the Constitution and

¹ (Limbach, Jutta. "The Concept of the Supremacy of the Constitution." *The Modern Law Review*, vol. 64, no. 1, 2001, pp. 1–10)

² https://avalon.law.yale.edu/18th_century/fed44.asp

³ SG Const. Article III, Section 3

constitutionally permissible statutes is considered null, void, and never had the force and effect of the law. Actions resulting from unconstitutional actions are justiciable, and this Court may provide relief and remedy against any such harm flowing from the unconstitutional act.

Order

It is the order of the Court that the Student Government Code of Laws Title VI, Chapter 200, Article V, Section 7, is unconstitutional and that it be struck from the Student Government Code of Laws as it is in direct conflict with the Student Government Constitution Article VI, Section 23. Under the Supremacy Doctrine adopted by this Court, actions taken due to unconstitutional statutes are null and void. As a result, while the Court finds the Resolution of No Confidence brought against Parliamentarian Cody DeSalvo was legally presented in its form, under Student Government Constitution Article VI, Section 23, the Senate failed to reach the two-thirds vote required for removal, which means the resolution failed.

In effect, Senator DeSalvo never ceased to be the Senate Parliamentarian. To avoid any future doubt as to his status, the Court restores Senator DeSalvo to the Office of Parliamentarian with all the rights and responsibilities therein. Lastly, the Court orders that Parliamentarian DeSalvo be granted access to all relevant communication mediums to perform his duties as Parliamentarian and Vice Chair of the Nominations and Appointment's Committee (i.e., GroupMe) as understood before the Vote of No Confidence.

It is so ordered...