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SERIES I: Subject File

§ 173. Display and use of flag by civilians; codification of rules and customs; definition

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to sections 1 and 2 of Title 4 and Executive Order 10834 issued pursuant thereto.

As amended July 7, 1976, Pub.L. 94-344, § 1(1), 90 Stat. 810.

**References in Text.** This chapter, referred to in text, probably means chapter 435 of Act June 22, 1942, 58 Stat. 380, which comprises sections 171 to 178 of this title.

**Executive Order 10834,** referred to in text, is set out as a note under section 1 of Title 4, Flag and Seal, Seat of Government, and the States.

**1976 Amendment.** Pub.L. 94-344 added provisions defining "flag of the United States" for purposes of this chapter according to sections 1 and 2 of Title 4 and Executive Order 10834.

**Legislative History.** For legislative history and purpose of Pub.L. 94-344, see 1976 U.S.Code Cong. and Adm.News, p. 1515.

Index to Notes

Generally  $\frac{3}{4}$   
 Power of states 1  
 Purpose  $\frac{1}{2}$   
 Schools 2

$\frac{1}{2}$ . **Purpose**  
 Federal flag code is not intended to prescribe behavior but is fashioned as expression of prevalent custom and usage

regarding display of American flag. *Lapolla v. Dullaghan*, 1970, 311 N.Y.S.2d 435, 63 Misc.2d 157.

$\frac{3}{4}$ . **Generally**  
 Federal flag code provisions are not to be accorded full weight of statutory prescription but are an expression of custom and usage which is designed for, and should be used by civilian authorities, including school districts. *Lapolla v. Dullaghan*, 1970, 311 N.Y.S.2d 435, 63 Misc.2d 157.

1. **Power of States**  
 Flag regulations of State Commission of Education determining material and size of flag, manner and place of display, care of flag and pledge to the flag are constitutional and do not contravene either United States Constitution or New York State Constitution. *Lapolla v. Dullaghan*, 1970, 311 N.Y.S.2d 435, 63 Misc.2d 157.

2. **Schools**  
 Flag must be flown at full mast on every day that school is in session pursuant to local regulation, subject to specifically enumerated exceptions in federal code, state law and Commissioner of Education regulations or local regulations or consistent with established local custom and practice. *Lapolla v. Dullaghan*, 1970, 311 N.Y.S.2d 435, 63 Misc.2d 157.

§ 174. Same; time and occasions for display; hoisting and lowering

(a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaves in the open. However, when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness.

(b) The flag should be hoisted briskly and lowered ceremoniously.

(c) The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.

(d) The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, second Monday in October; Navy Day, October 27; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and such other days as may be proclaimed by the President of the United States; the birthdays of States (date of admission); and on State holidays.

(e) The flag should be displayed daily on or near the main administration building of every public institution.

(f) The flag should be displayed in or near every polling place on election days.

(g) The flag should be displayed during school days in or near every schoolhouse.

As amended July 7, 1976, Pub.L. 94-344, § 1(2)-(5), 90 Stat. 810.

1976 Amendment. Subsec. (a). Pub.L. 94-344, § 1(2), substituted provision permitting display of the flag for 24 hours a day to produce a patriotic effect if flag is properly illuminated during the hours of darkness, for provision permitting night display of the flag upon special occasions when it is desired to produce a patriotic effect.

Subsec. (c). Pub.L. 94-344, § 1(3), added provision excepting display of all weather flag.

Subsec. (d). Pub.L. 94-344, § 1(4), eliminated references to "when the weather permits" following "displayed on all days" and "Army Day, April 6" preceding "Easter Sunday", added reference to "Armed Forces Day, third Saturday in May", and substituted "third Monday in February" for "February 22", "the last Monday in May" for "May 30", and "second Monday in October" for "October 12".

Subsec. (e). Pub.L. 94-344, § 1(5), struck out "weather permitting," following "displayed daily".

Valley Forge State Park, Pennsylvania Display of Flag. Pub.L. 94-53, July 4, 1975, 89 Stat. 259, provided: "That, notwithstanding the rule or custom pertaining to the display of the flag of the United States of America between sunrise and sunset, as set forth in section 2(a) of the joint resolution, entitled, 'Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America', approved June 22, 1942 (36 U.S.C. 174(a)) [subsec. (a) of this section], the flag of the United States of America may be flown for twenty-four hours of each day on the grounds of the National Memorial Arch in Valley Forge State Park, Valley Forge, Pennsylvania. The flag may not be flown pursuant to the authority contained in this Act [this note] during the hours from sunset to sunrise unless it is illuminated."

Legislative History. For legislative history and purpose of Pub.L. 94-344, see 1976 U.S. Code Cong. and Adm. News, p. 1515.

#### PROCLAMATION NO. 4064

July 8, 1971, 36 F.R. 12967

##### DISPLAY OF FLAGS AT THE WASHINGTON MONUMENT

The Washington Monument stands day and night as America's tribute to our first President. The fifty American flags that encircle the base of the Monument represent our fifty States and, at the same time, symbolize our enduring Federal Union.

As this Nation's 200th year approaches, I believe that it would do all Americans well to remember the years of our first President and to recall the enduring ideals of our Nation.

As an expression of our rededication to the ideals of America and in accordance with the joint resolution of Congress of June 22, 1942 (56 Stat. 377), as amended by the joint resolution of December 22, 1942, (56 Stat. 1074) [this section], which permits the flag to be displayed at night "upon special occasions when it is desired to produce a patriotic effect," it is appropriate that our national colors henceforth be displayed day and night at the Washington Monument.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim that, effective July 4, 1971 the fifty flags of the United States of America displayed at the Washington Monument in the District of Columbia be flown at all times during the day and night, except when the weather is inclement.

The rules and customs pertaining to the display of the flag as set forth in the joint resolution of June 22, 1942, as amended [section 173 et seq. of this title], are hereby modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of July, in the year of our Lord nineteen hundred seventy-one, and of the Independence of the United States of America the one hundred ninety-sixth.

RICHARD NIXON

#### PROCLAMATION NO. 4181

May 5, 1972, 37 F.R. 9311

##### DISPLAY OF FLAG AT UNITED STATES CUSTOMS PORTS OF ENTRY

The flag of the United States should be one of the first things seen at our Customs ports of entry, both by American citizens returning from abroad and by travelers from other countries.

As the symbol of our country and our freedoms, the national colors of the United States provide a welcome greeting of warm promise.

Many people, however, enter our country at night when the flag is not flown, because of the nearly universal custom of displaying it only from sunrise to sunset.

Authority exists to amend that custom. A Congressional joint resolution of June 22, 1942 (56 Stat. 377), as amended (36 U.S.C. 173-178), permits the flag to be displayed at night "upon special occasions when it is desired to produce a patriotic effect."

I believe it is appropriate that returning citizens and visitors from other coun-

tries be welcomed by our flag whether they arrive at their ports of entry by night or by day.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim that the flag of the United States of America shall hereafter be displayed at all times during the day and night, except when the weather is inclement, at United States Customs ports of entry which are continually open.

The rules and customs pertaining to the display of the flag, as set forth in the joint resolution of June 22, 1942, as amended, are hereby modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-sixth.

RICHARD NIXON

**§ 175. Same; position and manner of display**

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

*[See main volume for text of (c) to (e)]*

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

*[See main volume for text of (g) and (h)]*

(i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff. The flag shall be flown at half-staff thirty days from the death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or pos-

session; and on the day of death and the following day for a Member of Congress. As used in this subsection—

- (1) the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;
- (2) the term "executive or military department" means any agency listed under sections 101 and 102 of Title 5; and
- (3) the term "Member of Congress" means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.
- (n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.
- (o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions the union should be to the east.

As amended July 7, 1976, Pub.L. 94-344, § 1(6)-(11), 90 Stat. 810, 811

1976 Amendment. Subsec. (b). Pub.L. 94-344, § 1(6) substituted "right fender" for "radiator cap".

Subsec. (f). Pub.L. 94-344, § 1(7), substituted "to the United States flag's right" for "to the right of the flag of the United States".

Subsec. (i). Pub.L. 94-344, § 1(8), substituted requirement that when the flag is displayed horizontally or vertical against a wall or in a window, the union should be uppermost and to the flag's own right for requirement that when the flag is displayed otherwise than from a staff, it should be displayed flat, whether indoors or out, or so suspended that it falls as free as though it were staffed.

Subsec. (k). Pub.L. 94-344, § 1(9), eliminated provisions relating to flag po-

sition when displayed on a staff in the chancel of a church or speaker's platform of an auditorium.

Subsec. (m). Pub.L. 94-344, § 1(10) added provisions relating to half-staff display of the flag on Memorial Day and upon the death of principal figures of the United States government and State governments and definitions of terms therein and eliminated provisions relating to the affixing of crepe streamers to spearheads and flagstaves in a parade only on the order of the President.

Subsec. (o). Pub.L. 94-344, § 1(11) added subsec. (o).

Legislative History. For legislative history and purpose of Pub.L. 94-344, see 1976 U.S.Code Cong. and Adm.News, p. 1515.

#### PROCLAMATION NO. 3044

Mar. 1, 1954, 19 F.R. 1235, as amended by Proc.No. 3948, Dec. 12, 1969, 34 F.R. 19699.

#### DISPLAY OF FLAG AT HALF-STAFF UPON DEATH OF CERTAIN OFFICIALS AND FORMER OFFICIALS

1. The flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the District of Columbia and throughout the United States and

its Territories and possessions for the period indicated upon the death of any of the following-designated officials or former officials of the United States:

(c) An Associate Justice of the Supreme Court, a member of the Cabinet, a former Vice President, the President pro tempore of the Senate, the Majority Leader of the Senate, the Minority Lead-

er of the Senate, the Majority Leader of the House of Representatives, or the Minority Leader of the House of Representatives: from the day of death until interment.

#### Supplementary Index to Notes

Purpose  $\frac{1}{2}$

$\frac{1}{2}$ . Purpose

This section relating to proper manner of display of national flag are not intended to proscribe conduct but are merely declaratory or advisory; recurrent use of word "should" throughout such provisions is indicative of lack of penal purpose. *Holmes v. Wallace*, D.C. Ala.1976, 407 F.Supp. 493, affirmed 540 F.2d 1083.

Congress, in enacting amendatory provision of this section prohibiting displaying of flags of international organizations or other nations in equal or superi-

or prominence or honor to the flag of the United States, did not intend to prohibit state sponsored display of Confederate flag on dome of state capitol; provision of Flag Code was manifestly directed at other practices. *Id.*

2. Height of flag

Provision of this code prohibiting display of flags of international organizations or other nations in equal or superior prominence or honor to flag of United States does not create any rights in private individuals and could not form basis for civil rights action alleging deprivation of rights, privileges, or immunities secured by constitution and laws. *Holmes v. Wallace*, D.C. Ala.1976, 407 F. Supp. 493, affirmed 540 F.2d 1083.

§ 176. Same; respect for flag

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of the platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.

(k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

As amended July 7, 1976, Pub.L. 94-344, § 1(12)-(16), 90 Stat. 812.

1976 Amendment. Par. (a). Pub.L. 94-344, § 1(12), inserted reference to instances of extreme danger to life or property.

Par. (d). Pub.L. 94-344, § 1(13), added requirement that a flag should never be used as wearing apparel or bedding.

Par. (e). Pub.L. 94-344, § 1(14), substituted "to permit" for "will permit".

Par. (l). Pub.L. 94-344, § 1(15), eliminated provision that the flag should not be used on a costume or athletic uniform.

Par. (j). Pub.L. 94-344, § 1(16), added par. (j). Former par. (j) was redesignated as (k).

Par. (k). Pub.L. 94-344, § 1(16), redesignated former par. (j) as (k).

Legislative History. For legislative history and purpose of Pub.L. 94-344, see 1976 U.S. Code Cong. and Adm. News, p. 1515.

§ 177. Same; conduct during hoisting, lowering or passing of flag

During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present except those in uniform should face the flag and stand at attention with the right hand over the heart. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress

## 36 § 177

## PATRIOTIC SOCIETIES

with their right hand and hold it at the left shoulder, the hand being over the heart. Aliens should stand at attention. The salute to the flag in a moving column should be rendered at the moment the flag passes.

As amended July 7, 1976, Pub.L. 94-344, § 1(17), 90 Stat. 812.

1976 Amendment. Pub.L. 94-344 substituted in first sentence "with right hand over the heart" for ", and salute" and struck out "Men without hats should salute in the same manner." preceding "Aliens should" and "Women should salute by placing right hand over the heart." preceding "The salute to the flag".  
Legislative History. For legislative history and purpose of Pub.L. 94-344, see 1976 U.S. Code Cong. and Adm. News, p. 1515.

### § 178. Same; modification of rules and customs by President

Any rule or custom pertaining to the display of the flag of the United States of America, set forth in sections 171 to 178 of this title, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

As amended July 7, 1976, Pub.L. 94-344, § 1(20), 90 Stat. 813.

1976 Amendment. Pub.L. 94-344 substituted "Armed Forces" for "Army and Navy".  
Legislative History. For legislative history and purpose of Pub.L. 94-344, see 1976 U.S. Code Cong. and Adm. News, p. 1515.

### PROCLAMATION NO. 4000

Sept. 4, 1970, 35 F.R. 14187

#### DISPLAY OF FLAG AT WHITE HOUSE

WHEREAS the joint resolution of Congress of June 22, 1942, entitled "Joint Resolution to Codify and Emphasize Existing Rules and Customs Pertaining to the Display and Use of the Flag of the United States of America," as amended by the joint resolution of December 22, 1942, 56 Stat. 1074 [sections 173 to 178 of this title], contains the following provisions:

"Sec. 2. (a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flag-staffs in the open. However, the flag may be displayed at night upon special occasions when it is desired to produce a patriotic effect.

"Sec. 8. Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Army and Navy of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation."; and

WHEREAS the White House is a house that belongs to all the people; and

WHEREAS the White House, as the home of the President and his family, symbolizes the love of home and family which has long characterized our people; and

WHEREAS it is customary for many of our own citizens and many persons from other countries who visit our Nation's Capital to view the White House at night; and

WHEREAS it is thus appropriate that the flag be flown over the White House by night as well as by day;

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim that the flag of the United States of America shall hereafter be displayed at the White House at all times during the day and night, except when the weather is inclement.

The rules and customs pertaining to the display of the flag as set forth in the joint resolution of June 22, 1942, as amended, are hereby modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord nineteen hundred and seventy, and of the Independence of the United States of America the one hundred and ninety-fifth.

RICHARD NIXON

### § 185. Transferred

Codification. Section, Act Apr. 17, 1952, c. 216, 66 Stat. 64, which related to the

National Day of Prayer, is now classified to section 169h of this title.

### § 186. National motto

#### 1. Constitutionality

Section 324a of Title 31 and this section requiring that inscription "In God We Trust" appear on all United States currency and coins, and declaring national motto of the United States to be "In God We Trust," have nothing to do with the establishment of religion, and merits of claim of unconstitutionality were insubstantial. *Aronow v. U. S.*, C.A. Cal. 1970, 432 F.2d 242.

This section and sections 324 and 324a of Title 31 providing for national motto "In God We Trust" and use of that motto on national coin and currency did not violate U.S.C.A. Const. Amend. 1. *O'Hair v. Blumenthal*, D.C. Tex. 1978, 462 F.Supp. 19, affirmed 588 F.2d 1144, certiorari denied 99 S.Ct. 2862, 442 U.S. 930, 61 L.Ed.2d 298.



*file*

To John  
Date 2/1 Time 1:30

JENNIE

**WHILE YOU WERE OUT**

M. Brochu  
of McLean Com. Ctr.

Phone 790-9248  
Area Code Number Extension

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	<input checked="" type="checkbox"/>	WILL CALL AGAIN	<input checked="" type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	URGENT	<input type="checkbox"/>
RETURNED YOUR CALL		<input type="checkbox"/>	<input type="checkbox"/>

Message  
\_\_\_\_\_  
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*Qea*

Operator



NEED  
PREZ  
FLAG

May 7, 8

One EM Hall Harry

Mellem County Center

Non-profit  
county agency

Benefit - affair

Friends of Mellem County Center

donation - amount of \$25

\$16 for remainder of

balance in theatre

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*Flag file*

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 23, 1983

DEATH OF AMERICAN AND FRENCH MILITARY  
PERSONNEL IN BEIRUT, LEBANON

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

As a mark of respect for the American and French military personnel who died violently in the performance of their peacekeeping duties in the tragic bombings of October 23, 1983 in Beirut, Lebanon, I hereby order, by virtue of the authority vested in me as President of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions through Monday, October 31, 1983. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

RONALD REAGAN

#####

THE WHITE HOUSE

WASHINGTON

December 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Flag Code Request

The President has received two letters, essentially in haec verba, from Methodist ministers requesting that he amend the Flag Code to specify that "flags and insignia representing devotion to the Supreme Being" may be given prominence over the American Flag in religious sanctuaries and during religious ceremonies. Oddly enough, the Flag Code, 36 U.S.C. §§ 171-178, does purport to confer such authority on the President acting alone. Specifically, 36 U.S.C. § 178 provides:

Any rule or custom pertaining to the display of the flag of the United States of America, set forth in sections 171-178 of this title, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

By its terms the Flag Code does prohibit giving the place of highest prominence to a flag other than that of the United States. Pursuant to 36 U.S.C. § 175(c), "[n]o other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy." By the principle of expressio unius, exclusio alterius, the specific exception for naval church services at sea suggests other church services are not excepted.

More significantly, the question of the placement of the American flag during church services is explicitly addressed in 36 U.S.C. § 175(k), which provides:

When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position

of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

The legislative history of this provision, while scant, nonetheless indicates a decision by the legislators that the national flag take precedence over religious flags. See S. Rep. 94-797 ("Section 3(k) has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right.") A witness testifying in support of the provision stressed that it was important "...in a time when some religious leaders forget that their right to preach their religious views is guarded and protected only by the strength of Constitutional guarantee." Hearing on S. 340 and S.J. Res. 91 Before the Subcommittee on Federal Charters, Holidays, and Celebrations of the Senate Committee on the Judiciary, 93d Cong., 2d Sess. 16 (1974).

In light of the explicit Congressional decision to preserve the prominence of the national flag even with respect to church flags, I do not think it would be appropriate for the President to exercise his authority under 36 U.S.C. § 178 to establish a contrary rule. The statute does authorize the President to alter, modify, or repeal rules codified in the Flag Code, but § 178 is best understood as empowering the President to respond to unforeseen contingencies, not to reverse Congress' own rules promulgated in the Flag Code simply because he disagrees with them.

The important point, of course, is that the Flag Code is only hortatory, a compilation of customary usages to provide guidance, rather than a set of legal rules. Both Congress itself and the courts have recognized as much. See, e.g., Holmes v. Wallace, 407 F. Supp. 493 (M.D. Ala.), aff'd, 540 F.2d 1083 (5 Cir. 1976). It contains no penalties for violations. If some church gives its flag the place of prominence over the Stars and Stripes, the pastor is hardly going to be sent up the river. There is, of course, a federal criminal penalty for flag desecration, 18 U.S.C. § 700, but that would not be implicated. Each state and the District of Columbia also has a flag desecration statute, but again it seems unlikely that any of these would cover the respective placement of church flags and the American flag.

I think our reply should subtly point out that the Flag Code neither proscribes nor was intended to proscribe conduct, without explicitly inviting the pastors simply to ignore the "law" if they really feel that strongly about it. I also recommend taking the position that any change of the sort urged by the pastors should come from Congress. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

December 2, 1983

Dear Mr. Staples:

Thank you for your letter to the President concerning the National Flag Code. That letter has been referred to this office for consideration. In your letter you asked the President to add language to the Flag Code specifying that "within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor."

Congress did consider the question of the relative placement of the national flag and a church flag when it enacted the Flag Code. See 36 U.S.C. § 175(k). The pertinent House Report explained this provision thusly:

Section 3(k) [36 U.S.C. § 175(k)] has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

The Flag Code was not intended to proscribe conduct, and it imposes no penalties. The purpose of Congress in enacting the Flag Code was rather to codify customary practices and usages concerning the flag.

The provision of the Flag Code authorizing the President to prescribe additional rules concerning the flag was designed to permit a response to unforeseen contingencies. In our view it would not be desirable for the President to exercise independent authority under this provision to overturn an

explicit Congressional decision, reflected elsewhere in the Flag Code, at least without guidance from Congress. Since Congress has addressed in legislation the question of the placement of the national flag in a church, we think any reconsideration of this rule should come from Congress itself.

Thank you for raising this matter with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding  
Counsel to the President

The Reverend Lawrence S. Staples  
Pastor  
Hockanum United Methodist Church  
178 Main Street  
East Hartford, CT 06118

FFF:JGR:aea 12/2/83  
bcc: FFFielding/JGRoberts/Subj/Chron



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WASHINGTON

December 2, 1983

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Fred F. Fielding  
Counsel to the President

The Reverend Lawrence S. Staples  
Pastor  
Hockanum United Methodist Church  
178 Main Street  
East Hartford, CT 06118

FFF:JGR:aea 12/2/83  
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE  
WASHINGTON

December 2, 1983

Dear Mr. Zook:

Thank you for your letter to the President concerning the National Flag Code. That letter has been referred to this office for consideration. In your letter you asked the President to add language to the Flag Code specifying that "within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor."

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Thank you for raising this matter with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding  
Counsel to the President

The Reverend Don Zook  
Pastor  
United Methodist Church  
Post Office Box 399  
Leoti, Kansas 67861

FFF:JGR:aea 12/2/83  
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 2, 1983

Dear Mr. Zook:

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Thank you for raising this matter with us.

Sincerely,

Fred F. Fielding  
Counsel to the President

The Reverend Don Zook  
Pastor  
United Methodist Church  
Post Office Box 399  
Leoti, Kansas 67861

FFF:JGR:aea 12/2/83  
bcc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

F9004

*John*

- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Lawrence S. Staples

MI Mail Report User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Proposes addition to National Flag Code incorporating suggestion that flags should be given a place of honor within religious sanctuaries and during ecclesiastical ceremonies

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>WVOW</u>	ORIGINATOR	<u>8311104</u>
<u>WAT 18</u>	Referral Note: <u>D</u>	<u>8311104</u>
	Referral Note:	
	Referral Note:	

RESPONSE:  
= Initials of Signer  
= "A"  
= Date of Outgoing

Comments:

**FLAGS BELONG TO GST they do the policy**  
*John*

Keep this work  
Send all routing updates to Central Reference (Room 75, OEOB).  
Always return completed correspondence record to Central Files.  
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



October 17, 1983

Jeanne Hyde:

The attached correspondence is being returned to the White House. It was originally sent to Department of Defense and now to GSA. I've checked with our General Counsel's office and GSA doesn't have anything to do with the policy concerning the National Flag Code. Maybe it is a White House matter I'm really not sure.

If you have any questions, please give me a call.

*Kathy Dendor*  
Kathy Dendor  
Correspondence Control Staff

Attachment





# Hockanum United Methodist Church

178 MAIN STREET  
EAST HARTFORD, CONNECTICUT 06118

LAWRENCE S. STAPLES, PASTOR  
172 MAIN STREET

CHURCH: 568-3948  
PARSONAGE: 568-3843

September 10, 1983

*W. Off / DOD*  
President Ronald W. Reagan  
The Whitehouse  
Washington, D.C. 20500

Dear President Reagan:

182927 *cu*

Please consider seriously adding the following paragraph to the National Flag Code (enacted December 22, 1942, Public Law 829):

"Within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor. Nothing in the National Flag Code is designed or intended to belittle or demean the flags or other symbols of things spiritual."

This would make clear to clergy, churches or other bodies of religious devotion that it is correct to place the Christian Flag in the place of honor. At present there is some confusion amongst churches and clergy.

As a former Chaplain, USA in WWII and Korea and now as a Pastor of a Christian Church I would appreciate this clarification. It would remove any disharmony between the Christian Flag Code and the National Flag Code.

Since desirable changes in the National Flag Code are provided for in the Code itself this change would be easily made by you as Commander in Chief.

Mr. President, your proclamation on this will give one more evidence to the world that this nation is "under God". This change would be timely. Please consider this prayerfully.

Sincerely yours,

*Lawrence S. Staples*  
(Rev.) Lawrence S. Staples





# United Methodist Church

LEOTI - PLEASANT VALLEY

184153 *cu*

DON ZOOK, PASTOR  
P. O. Box 399  
LEOTI, KANSAS 67861

TELEPHONES  
CHURCH: 316/375.4554  
PARSONAGE: 316/375.4471

*SR*  
*Lead Counsel*  
*GSA 1 flag 50 11/03*

October 3, 1983

President Ronald W. Reagan  
The Whitehouse  
Washington D. C., 20500

*simple to do, I guess!*

Dear President Reagan:

I am writing to you with a simple request. I respectfully suggest you add the following paragraph to the National Flag Code, (enacted December 22, 1942, Public Law 829):

"Within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor. Nothing in the National Flag Code is designed or intended to belittle or demean the flags or other symbols of things spiritual."

Desirable changes in the National Flag Code are provided for in the Code itself which expressly states:

"...additional rules...may be prescribed by the Commander in Chief of the Army and Navy of the United States whenever he deems it appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation."

Mr. President, your proclamation on this behalf will give one more proof to the world that this nation is "under God." It is a timely and Godly act. The two suggested sentences at the beginning of this letter are sufficient to do it all.

Sincerely yours,

Don Zook, Pastor

THE WHITE HOUSE

WASHINGTON

December 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Casket Flag for Law Enforcement Officers

This item, forwarded by Correspondence on November 14, was attached to the same tracking sheet as the letter from Donald Zook concerning the respective placement of religious flags and the American flag. William G. King, Captain of the Louisburg, North Carolina Police Department, and Ralton J. Harris of the Auxiliary Force, have written the President to request that he issue a declaration that will allow deceased law enforcement officers who are not military veterans to be accorded the honor of having their caskets covered by the American flag.

There is no federal law governing the question of when the American flag may be used to cover a casket. The Flag Code specifies the proper manner of draping the flag over a casket, 36 U.S.C. § 175(n), but neither this provision nor its legislative history considers when the honor is appropriately conferred. Another provision, 38 U.S.C. § 901, prescribes when the Administrator of the Veterans Administration shall furnish a flag to drape the casket of a deceased veteran. This provision does not purport to limit the permissibility of the practice to those cases in which flags are furnished free of charge. The Veterans Administration advises that it is aware of no statute or regulation governing the use of flags to drape caskets.

Attachment

THE WHITE HOUSE

WASHINGTON

December 5, 1983

Dear Sirs:

Thank you for your letter of September 7 to the President, which was just recently referred to this office for consideration. Please excuse the tardiness of our response. In your letter you requested the President to issue a declaration that would allow law enforcement officers to be accorded the honor of having the American flag drape their caskets.

Federal law does not govern the question of when it is appropriate to drape a casket with the American flag. There is a statute indicating the proper manner of draping the flag over a casket, 36 U.S.C. § 175(n), and a statute specifying the circumstances under which the Administrator of the Veterans Administration shall furnish a flag for this purpose for deceased veterans, 38 U.S.C. § 901. This latter statute is addressed only to the narrow question of when free flags should be furnished by the Veterans Administration for draping over caskets, not the broader question of when the flag, however furnished, is appropriately used for that purpose. I have enclosed copies of both 36 U.S.C. § 175(n) and 38 U.S.C. § 901 for your information.

In short, we are aware of nothing in federal law that would prohibit use of the American flag to drape the caskets of deceased law enforcement officers, although you should be aware that there may be state laws addressed to this question. I hope this information is helpful. Thank you for writing.

Sincerely,

Orig. signed by FFE

Fred F. Fielding  
Counsel to the President

Mr. William G. King  
Mr. Ralton J. Harris  
122 Johnson Street  
Louisburg, NC 27549

Enclosures  
FFF:JGR:aea 12/5/83

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 5, 1983

Dear Sirs:

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Sincerely,

Fred F. Fielding  
Counsel to the President

Mr. William G. King  
Mr. Ralton J. Harris  
122 Johnson Street  
Louisburg, NC 27549

Enclosures  
FFF:JGR:aea 12/5/83

bcc: FFFielding/JGRoberts/Subj/Chron

5  
~~Legal Counsel~~  
SEP 13 1983 10  
TYPED  
APX  
REFG6

# LOUISBURG

September 7, 1983

The Honorable Ronald Reagan  
President of the United States  
1600 Pennsylvania Avenue  
Washington, D. C.

Dear Mr. President:

Each year funeral services are held for many law enforcement officers who are not military veterans, and as a result they are not entitled to the honor of having their caskets covered by our American flag. We feel that since these officers are under a sworn oath to defend the Constitution of the United States, they are as much servants of America as are military personnel. Having previously expressed this concern to Senators Jesse Helms and John East, we are hoping that you, Mr. President, can issue a declaration which will allow this honor to be accorded to future sworn officers who are released from duty under honorable conditions. For those individuals who have taken an oath to defend the Constitution, it seems only fitting that they should be covered by the symbol of freedom and unity which they have sworn to protect.

With your endorsement of this policy and declaration, we cannot help but believe that the local governing body under which each officer served would gladly provide a flag in recognition of the decedent's prior service.

Most sincerely,

*William G. King*  
William G. King, Captain  
Louisburg Police Department  
122 Johnson Street  
Louisburg, N. C. 27549

*Ralton J. Harris*  
Ralton J. Harris  
Louisburg Police Department  
Auxiliary Force

WGK/RJH/cp


cc: Senator Jesse Helms  
Senator John East

THE WHITE HOUSE

WASHINGTON

June 12, 1985

MEMORANDUM FOR DAVID L. CHEW  
STAFF SECRETARY

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Flag Day Event at Fort McHenry

I have advised Fred Ryan that this office has no objection to the President mentioning the Patriots of Fort McHenry in his Flag Day remarks at Fort McHenry. The Patriots of Fort McHenry, Inc., has a temporary 501(c)(3) ruling from the Internal Revenue Service, and there is no reason to suppose that a permanent ruling will not be issued upon expiration of the temporary ruling at the end of this year. The organization, which is devoted to restoration of Fort McHenry, also has been officially recognized by the Department of the Interior. Accordingly, we have no objection to the President applauding it as an example of a private sector initiative in his remarks.

As I have advised both Ryan and the Speechwriting Office, however, the President should not explicitly endorse the fundraising activities of the group. He can laud their goals and initiative without urging his listeners to support the group with donations.

cc: Frederick J. Ryan, Jr.  
Ben Elliott



## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
  - H - INTERNAL
  - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Dave Chew

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Flag Day Event at Fort MCHERRY

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>COHOL</u>	ORIGINATOR	<u>ES106112</u>
	Referral Note:	
<u>CLATIE</u>	<u>R</u>	<u>ES106112</u>
	Referral Note:	<u>S ES106112</u> <u>10 AM</u>
		<u>1/1</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	

- |   |   |   |
|---|---|---|
| <p><b>ACTION CODES</b></p> <ul style="list-style-type: none"> <li>A - Appropriate Action</li> <li>C - Comment/Recommendation</li> <li>D - Draft Response</li> <li>F - Furnish Fact Sheet to be used as Enclosure</li> </ul> | <ul style="list-style-type: none"> <li>I - Info Copy Only/No Action Necessary</li> <li>R - Direct Reply w/Copy</li> <li>S - For Signature</li> <li>X - Interim Reply</li> </ul> | <p><b>DISPOSITION CODES:</b></p> <ul style="list-style-type: none"> <li>A - Answered</li> <li>B - Non-Special Referral</li> <li>C - Completed</li> <li>S - Suspended</li> </ul> |
|---|---|---|
- FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Bill Henkel

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Patriots of East McHenry

ROUTE TO:	ACTION	Tracking Date	Disposition	Completion Date
Office/Agency (Staff Name)	Action Code	YY/MM/DD	Type of Response Code	YY/MM/DD
<u>CALL</u>	ORIGINATOR	<u>85106111</u>		<u>1 1</u>
	Referral Note:			
<u>CALLIE</u>	<u>R</u>	<u>85106111</u>	<u>S</u>	<u>85106111</u>
	Referral Note:		<u>ASAP</u>	
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			

**ACTION CODES:**

- A - Appropriate Action
  - I - Info Copy Only/No Action Necessary
  - C - Comment/Recommendation
  - R - Direct Reply w/Copy
  - D - Draft Response
  - S - For Signature
  - F - Furnish Fact Sheet
  - X - Interim Reply
- to be used as Enclosure

**DISPOSITION CODES:**

- A - Answered
- C - Completed
- B - Non-Special Referral
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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THE WHITE HOUSE

Office of the Press Secretary

FOR RELEASE AT 3:00 PM EDT  
FRIDAY, JUNE 14, 1985

FLAG DAY AND NATIONAL FLAG WEEK, 1985

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The history of the flag of the United States presents in capsule form the history of our Nation. Although there was a great variety of colorful and interesting flags during the Colonial period, it was not until June 14, 1777, two years after the Battle of Bunker Hill, that the delegates at the Continental Congress adopted the familiar design we know today. They voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

Since 1777, the flag of our Nation has been redesigned periodically to reflect the admission of new States. It has flown over our public buildings, our town squares, and many private homes. It has been carried proudly into battle, and our national anthem gives a dramatic account of the hope and inspiration it has given to many Americans. Today, it is the leading symbol of the Nation we love and an emblem recognized around the world as a sign of our unity and devotion to freedom.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and the display of the flag of the United States on all government buildings. The Congress also requested the President, by a joint resolution of June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 14, 1985, as Flag Day and the week beginning June 9, 1985, as National Flag Week, and I direct the appropriate officials of the government to display the flag on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by Congress as a time to honor America (89 Stat. 211), by having public gatherings and activities at which they can honor their country in an appropriate manner.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

RONALD REAGAN

# # # # #

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

June 20, 1985

The President today signed H.J. Res. 211 which recognizes the pause for the Pledge of Allegiance as part of National Flag Day on June 14, 1985. This resolution was passed by Congress on June 13 and was received at the White House on June 19, 1985.

# # #