

U.S. 38 (1985), in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words 'under God,' stated 'In my view, the words "under God" in the Pledge, as codified at (36 U.S.C. 172) [now 4 U.S.C. 4], serve as an acknowledgment of religion with "the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future."'

"(14) On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in *Sherman v. Community Consolidated School District 21*, 980 F.2d 437 (7th Cir. 1992), held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words 'under God' was constitutional.

"(15) The 9th Circuit Court of Appeals erroneously held, in *Newdow v. U.S. Congress* (9th Cir. June 26, 2002), that the Pledge of Allegiance's use of the express religious reference 'under God' violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

"(16) The erroneous rationale of the 9th Circuit Court of Appeals in *Newdow* would lead to the absurd result that the Constitution's use of the express religious reference 'Year of our Lord' in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional."

§ 5. 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 this title and Executive Order 10834 issued pursuant thereto.

(Added Pub. L. 105-225, §2(a), Aug. 12, 1998, 112 Stat. 1494.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5	36:173.	June 22, 1942, ch. 435, §1, 56 Stat. 377; Dec. 22, 1942, ch. 806, §1, 56 Stat. 1074; July 7, 1976, Pub. L. 94-344, (1), 90 Stat. 810.

REFERENCES IN TEXT

Executive Order 10834, referred to in text, is set out as a note under section 1 of this title.

§ 6. Time and occasions for display

(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 24 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; Martin Luther King Jr.'s birthday, third Monday in January; 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.

(Added Pub. L. 105-225, §2(a), Aug. 12, 1998, 112 Stat. 1494; amended Pub. L. 106-80, §1, Oct. 25, 1999, 113 Stat. 1285.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6	36:174.	June 22, 1942, ch. 435, §2, 56 Stat. 378; Dec. 22, 1942, ch. 806, §2, 56 Stat. 1074; July 7, 1976, Pub. L. 94-344, (2)-(5), 90 Stat. 810.

In subsection (d), the words "Veterans Day" are substituted for "Armistice Day" because of the Act of June 1, 1954 (ch. 250, 68 Stat. 168).

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-80 inserted "Martin Luther King Jr.'s birthday, third Monday in January;" after "January 20;".

§ 7. 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.

(c) No 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. No person shall dis-

play the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: *Provided*, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(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.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half-staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(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 30 days from the death of the President or a former President; 10 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 possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. 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, United States Code; 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.

(Added Pub. L. 105-225, §2(a), Aug. 12, 1998, 112 Stat. 1495.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7	36:175.	June 22, 1942, ch. 435, § 3, 56 Stat. 378; Dec. 22, 1942, ch. 806, § 3, 56 Stat. 1075; July 9, 1953, ch. 183, 67 Stat. 142; July 7, 1976, Pub. L. 94-344, (6)-(11), 90 Stat. 811; Sept. 13, 1994, Pub. L. 103-322, title XXXII, § 320922(b), 108 Stat. 2131.

PROC. NO. 3044. DISPLAY OF FLAG AT HALF-STAFF UPON DEATH OF CERTAIN OFFICIALS AND FORMER OFFICIALS

Proc. No. 3044, Mar. 1, 1954, 19 F.R. 1235, as amended by Proc. No. 3948, Dec. 12, 1969, 34 F.R. 19699, provided:

WHEREAS it is appropriate that the flag of the United States of America be flown at half-staff on Federal buildings, grounds, and facilities upon the death of principal officials and former officials of the Government of the United States and the Governors of the States, Territories, and possessions of the United States as a mark of respect to their memory; and

WHEREAS it is desirable that rules be prescribed for the uniform observance of this mark of respect by all executive departments and agencies of the Government, and as a guide to the people of the Nation generally on such occasions:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America and Commander in Chief of the armed forces of the United States, do hereby prescribe and proclaim the following rules with respect to the display of the flag of the United States of America at half-staff upon the death of the officials hereinafter designated:

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:

(a) The President or a former President: for thirty days from the day of death.

The flag shall also be flown at half-staff for such period at all United States embassies, legations, and other facilities abroad, including all military facilities and naval vessels and stations.

(b) The Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives: for ten days from the day of death.

(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 Leader 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.

2. 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 metropolitan area of the District of Columbia on the day of death and on the following day upon the death of a United States Senator, Representative, Territorial Delegate, or the Resident Commissioner from the Commonwealth of Puerto Rico, and it shall also be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the State, Congressional District, Territory, or Commonwealth of such Senator, Representative, Delegate, or Commissioner, respectively, from the day of death until interment.

3. The flag of the United States shall be flown at half-staff on all buildings and grounds of the Federal Government in a State, Territory, or possession of the United States upon the death of the Governor of such State, Territory, or possession from the day of death until interment.

4. In the event of the death of other officials, former officials, or foreign dignitaries, the flag of the United

States shall be displayed at half-staff in accordance with such orders or instructions as may be issued by or at the direction of the President, or in accordance with recognized customs or practices not inconsistent with law.

5. The heads of the several departments and agencies of the Government may direct that the flag of the United States be flown at half-staff on buildings, grounds, or naval vessels under their jurisdiction on occasions other than those specified herein which they consider proper, and that suitable military honors be rendered as appropriate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 1st day of March in the year of our Lord nineteen hundred and fifty-four, and of the Independence of the United States of America the one hundred and seventy-eighth.

[SEAL]

DWIGHT D. EISENHOWER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2249b; title 36 section 136.

§ 8. 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.