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THE FLAGS AND SEALS OF TEXAS

A SILVER ANNIVERSARY REVISION

Charles A. Spain

I. Introduction

"The flag is the embodiment, not of sentiment, but of history. It represents the experiences made by men and women, the experiences of those who do and live under that flag."

Woodrow Wilson¹

"FLAG, n. A colored rag borne above troops and hoisted on forts and ships. It appears to serve the same purpose as certain signs that one sees on vacant lots in London—'Rubbish may be shot here.'"

Ambrose Bierce²

The power of the flag as a national symbol was all too evident in the 1990s: the constitutional debate over flag burning in the United States; the violent removal of the communist seal from the Romanian flag; and the adoption of the former czarist flag by the Russian Federation. In the United States, Texas alone possesses a flag and seal directly descended from revolution and nationhood. The distinctive feature of both the state flag and seal, the Lone Star, is famous worldwide because of the brief existence of the Republic of Texas (March 2, 1836, to December 29, 1845).³ For all the Lone Star's fame, however, there is much misinformation about it.

Historians and political scientists have written about the Lone Star, but rarely has their work reflected a legal perspective focused on the available congressional and legislative documents. This article, originally published in the *South Texas Law Review* in 1992, centers on the legal basis for the creation and evolution of the de jure, or official, flags and seals of Texas and the laws that govern their use.^{3a}

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Editor's Note / Note de la rédaction

Once again it is an honour to guest edit an issue of the *Flag Research Quarterly*, one of NAVA's more colorful vexillological publications. (Except for its covers, *Raven* is black and white in the print version. As *Raven*'s editor, I'm just a bit jealous.) The ability to print flag imagery in colour is one of the great assets of a format like *FRQ*'s, in that it adds to the ability of the authors to present their case, as it were, through proper representations of the material they are describing in words.

This double issue of *FRQ* consists of a paper which highlights both the scholarly possibilities and the utility of colour presentation found in this journal. Following an opening commentary by former NAVA President Scot Guenter, Charles A. Spain provides a "silver anniversary revision" of his 1992 article on the flags and seals of Texas, originally published in the *South Texas Law Review*. The revisions made are limited—as much of the original article being untouched as possible—but significant given the changes made within the subject since then, partly through the efforts of the author himself. At first glance, the narrative does not seem overly lengthy in terms of the number of pages in this issue. However, the number of and details contained in the endnotes are a stark reminder of the depth of scholarship and research involved in piecing the article together. Several of the endnotes also provide further details and are well worth reading in and of themselves.

As this publication goes to print, the preparations for NAVA 50—this year's annual meeting—in San José, California, continue to unfold. By attending the Association's annual meetings, you enjoy the scholarship and camaraderie of your fellow members, and the chance to explore a new city or revisit an old favorite.

Kenneth W. Reynolds, Ph.D.
Guest Editor, *FRQ*

Solid Vexillology

Scot M. Guenter

Lately I've been encountering a lot of confusion disseminated via popular media as to what vexillology is about, what its purpose is. For instance, I was invited to participate on a public radio program dealing with the topic of vexillology, and the host and the other two guests were all under the impression that vexillologists had a shared sense of aesthetics, and they believed our purpose was to rate flags numerically (give them a sort of seal of approval or thumbs down with a grimace) based on how pretty they were. Part of the procedure was to make fun of what we considered ugly ones, in a condescending manner, because they don't pass our beauty test.

I tried to explain, politely, that this is not what true vexillology is about at all.¹ As far as I am concerned, Whitney Smith summed it up well in a brief statement thirty-two years ago: "The vexillologist studies the phenomena of flags rather than making or promoting flags."² If you want to design new flags, that's fine, call yourself a vexillographer. If someone wants to promote a flag for political reasons, or aesthetic reasons, if they want to set up a system where they can oversee how others design or promote flags, these are all activities a vexillologist can and should study. But to suggest because one day you decided to do any of these things yourself that you are now the model for what the field of study in its totality is or should be—this does

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a serious disservice to the discipline. Vexillology is descriptive, not prescriptive, and the description of a flag is only the first step, understanding its role and significance in the ongoing complexity of human experience is the higher goal.³ Furthermore, connecting information we obtain as vexillologists to other information garnered from the social sciences primarily, but also certainly from other fields of study, sharing with and learning from other scholars as we all go forward intellectually, accumulating data then analyzing it—that is taking the usefulness and purpose one step higher again.⁴

It is in this context that I find it a pleasure to return to a classic work like Charles A. Spain's "The Flags and Seals of Texas." This is a good example of what I might call "solid vexillology." Spain spent many, many hours poring over primary documents, reading and researching the history of laws and statutes of one particular state with regard to its flags and seals. In his own words, this is "grunt work,"⁵ and I realize this aspect of scholarship is increasingly hard to get people to engage in, for we live in a society clamoring for instant gratification, arguments reduced to tweets, and finding the answer with a quick press of an app button. Still, Spain indicates the rewards possible for any would-be vexillologist committed to learning more about a particular flag in a thoroughly and carefully researched manner. Not only has he now become the go-to authority for legal issues and aspects related to the flags and seals of Texas, but he has put forward a model which vexillologists in other states or provinces could follow in becoming an authority on their own flags and seals.

I find the work on the flags and seals of Texas also interesting because, in the later section on seals, he reports from inside the process as a member of the 1991 Secretary of State's Texas State Seal Advisory Committee (indeed, although he does not emphasize the point, he was the chair). Understanding the role of a vexillologist in preparing his essay, he offers the benefits of an insider's understanding of how the seal advisory process unfolded historically, yet he does not use the opportunity to take sides in any internal disputes or turn the account from historical summation to some sort of self-advocacy. In this regard I am reminded of the fine job Fred Brownell did last year in walking a similar path in his doctoral thesis "Convergence and Unification: A History of the National Flag of South Africa, 1994," when he himself was so integrally involved in the process and was in fact the ultimate designer of the warmly received and globally recognized new South African flag.⁶ Both Brownell and Spain show that one can participate in flag or seal design and still do a superior job as a flag historian reporting on the same, as long as one is self-aware of the important differences between the two.

I also am intrigued by what this history can tell me because it is, after all, the flags and seals of Texas. Texas, California,

and Hawaii are all states that started out as separate entities, with national identities and representative symbols they considered distinctive and special to themselves. Thus, I would expect to find, both historically and even now in the twenty-first century, a greater role for the flags and seals in the identity reinforcement for citizens of those respective states than say comparatively for the state flags and seals' influence for residents of states such as Iowa or South Dakota, for example. Perhaps down the road, if and when solid vexillological studies of flags and seals of several other states have been completed and widely shared, some insights might be garnered from comparative analysis across these political systems, or even across to provincial systems in Canada or states in Mexico as well. And I am certain that paying careful attention to the causation and reaction to some particularly fascinating laws, like the 1955 Texas state flag law, will help reflect this special category of self-identification for the flags of former independent nations that are now states. Spain sees the same potential I do, as he comments in endnote 63. (I also think comparing and contrasting Hawaii and Texas state flag cultures and usage would be intriguing in this regard.)

Solid vexillology lays a necessary, integral foundation. It is important and we need to support its continuing and sustaining contributions to our field of study. And when such a foundation is well established, as it is here, I would like to encourage this be followed up by further research in the distinctive ways the flags and seals of Texas have been involved in flag events that challenge perceived ideas of Texans or others about Texan identity, and all that entails as a social construct that is fluid, not fixed. How have different factions or forces inside or outside of Texas used the flags and seals we learn about here? What was the genesis of the 1955 flag law and how has that etiquette system, jarring as it does with federal practice, played out over time in struggles, some overt some more subtle, over appropriate Texas behavior in hosting foreigners? These are items for a research agenda for another day, and perhaps I will read some such works done by Spain, by you, gentle reader, or by others in the future. But before we even begin to go there, I want to say thank you to Spain and to all scholars who do the work of solid vexillology, for without that foundation, there is nothing to build upon.

Notes

¹ Betsy Kaplan, "The Flap over Flags," *The Colin McEnroe Show*, WNPR Radio, Hartford, Conn., 22 July 2015, <https://perma.cc/2ZV6-PLRV>.

² Whitney Smith, "Vexillology and Patriotism," *The Flag Bulletin* 23.3/105 (May-June 1984): 104.

³ Whitney Smith, "Fundamental Theses of Vexillology," *The Flag Bulletin* 21.1/92 (Jan.-Feb. 1982): 33–34.

⁴ *Ibid.*, 34.

⁵ E-mail, Charles A. Spain to the author, 20 July 2016.

⁶ Frederick Gordon Brownell, "Convergence and Unification: A History of the National Flag of South Africa, 1994," DPhil thesis, University of Pretoria, South Africa, 2015. The author was lucky to sit as an external

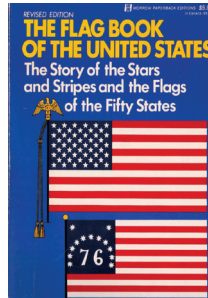
reviewer on this review committee, and wishes again to thank Professors Alois Miambo and Karen Harris in the Department of History at Pretoria for the opportunity to work with them in this regard.

PREFACE

Charles A. Spain

It's been a quarter century since I presented my article *The Flags and Seals of Texas* at the Association's 1991 annual meeting in Minneapolis. It was published the next year. So why was it written, and why revise and republish it?

In February 1988, I graduated from law school. Before my judicial clerkship began, I worked for six months at a law firm. The firm's law library was on the top floor of a skyscraper, and it was a great place to hang out while I avoided rush hour traffic. Considering that I love flags, Texas history, and libraries, it was inevitable that I would find Gammel's ten-volume *The Laws of Texas 1822–1897*, turn to the index, and look for "flag." Having read Whitney Smith's *The Flag Book of the United States*, I was eager to find the laws creating the Zavala flag, which Dr. Smith identified as the first national flag of Texas, and possibly find facts corroborating the story that Charles Stewart designed the Lone Star Flag.

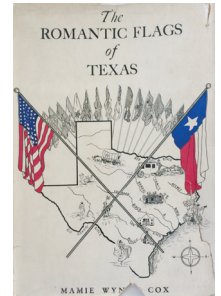


Well . . . no. At that time I had neither met Dr. Smith, nor attended an Association meeting, but I had joined NAVA in 1985. That qualified me to be a vexillologist! On June 17, 1988, I wrote Dr. Smith a nine-page single-spaced letter detailing why the evidence did not support what he wrote about the Zavala flag and Charles Stewart. Honestly, I did not expect a kind response.

What arrived in the mail was prompt and surprising. In the Texas section of *The Flag Book of the United States*, Dr. Smith writes about a flag with the words *fiat justitia ruat caelum* (let justice be done though the heavens fall). He embodied that Latin maxim as he admitted that he might well be wrong by enthusiastically encouraging me to continue my research. He also later encouraged me to attend the Association's 1989 annual meeting in Dallas. I did, and so began a beautiful relationship with him and the Association.

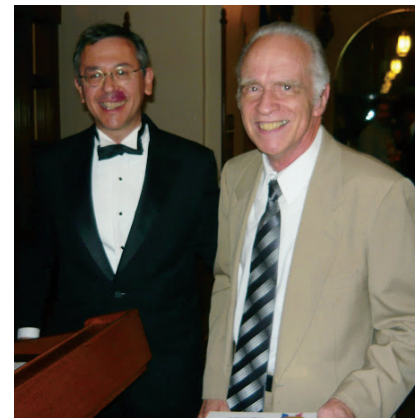
Over the next three years, the research ballooned. I abandoned a comprehensive analysis on Texas flags and seals, deciding

instead to document all of the laws relating to them, to build a case for statutory revision, and to challenge the misinformation about the Zavala flag and the design of the Lone Star Flag that flowed from Mamie Wynne Cox's 1936 book, *The Romantic Flags of Texas*. There were many long hours spent reading at the State Law Library and examining original documents at the Texas State Library and Archives Commission. The article was published by the *South Texas Law Review* in 1992, and it succeeded in meeting those three goals, including comprehensive statutory revision in the 1993 legislative session.



So, why a revised edition of the article? First, Ken Reynolds, NAVA's publication committee chair, wanted to make it readily available to the flag world. Second, it gave me the opportunity to correct publication errors in the original, add a few things I missed before, and to use color photographs and art. But I think the most important reasons for the revision are to encourage vexillologists to (1) analyze the information and write further articles and (2) go do basic field research on other flags, i.e., the "grunt work." Vexillology as a social science is only as good as the underlying research we do. I won't minimize the effort required, but all NAVA members can do vexillology.

I want to close with a dedication: *For Whitney, the chief herald of vexillology in the modern world, and my dear friend.*



Fiat justitia ruat caelum

Dr. Whitney Smith receiving his Honorary Texan certificate from the author at NAVA 42 (Austin 2008). Photo courtesy of The John Purcell Collection.

Spain: The Flags and Seals of Texas *continued from page 1*

II. Texas Flags

Texas has had three official national or state flags during its existence: (1) the 1836 national standard; (2) the 1836 national flag for the naval service; and (3) the 1839 national flag that became the state flag. Some authorities erroneously claim that a Republic of Texas flag was designed by Lorenzo de Zavala. In addition, Texas has recognized five other de jure flags: (1) the 1835 flag for vessels sailing under letters of marque and reprisal; (2) the 1839 pilot flag; (3) the 1839 revenue service flag; (4) the 1839 coasting trader flag; and (5) the 1985 county sesquicentennial flag.



Figure 1. SO-CALLED “ZAVALA FLAG” White star and white letters on blue field; reconstruction and variant of designs proposed March 1836; never adopted. Glasshouse (user), commons.wikipedia.org

A. The “Zavala Flag”

The so-called “Zavala flag” (figure 1) is believed by some to be the first official flag of Texas and was allegedly adopted in March 1836 by the general convention at Washington-on-the-Brazos.⁴ This flag is usually portrayed as a blue field with a white star of five points central, with the letters T-E-X-A-S, one letter between each star point.⁵ This description, however, is inconsistent with the March 3, 1836, and March 12, 1836, journal entries of the general convention:

[Thursday, March 3, 1836]

On motion of Mr. Gazley,

Resolved, That a committee of five be appointed to devise & report to this Convention a suitable flag for the Republic of Texas.

And the question being taken thereon, was decided in the affirmative; whereupon the President appointed Messrs. Gazley, Scates, Zavala, Robertson, and Barnett of Austin, and

On motion of Mr. Houston, the President [Ellis] was added to said committee.

....

[Saturday, March 12, 1836]

....

On motion of Mr. Scates, the Rainbow and star of five points above the western horizon; and the star of six points sinking below, was added to the flag of Mr. Zavala accepted on Friday last.

Mr. Taylor introduced the following resolution: Resolved that the word “Texas” be placed, one letter between each point of the star on the national flag.⁶

A careful study of the convention journals suggests that the “Zavala flag” is not an official Texas flag. There are no references to the general convention’s acceptance of Zavala’s design in the journal entries for Friday, March 4, 1836, or Friday, March 11, 1836.⁷ In addition, the journal entry for Saturday, March 12, 1836, does not state that either the motion by Scates or the motion by Taylor was adopted.⁸ Even if the general convention adopted a flag and failed to record its actions, the flag adopted was the unstated Zavala design to which was added the “[r]ainbow and star of five points above the western horizon; and the star of six points sinking below.”⁹ In any event, the popular depictions of the “Zavala flag” are incorrect.

The chief source of the “Zavala flag” myth is Mamie Wynne Cox’s *The Romantic Flags of Texas*.¹⁰ While this is an important work on the flags of Texas, it is erroneous in many respects. In the book Cox states that, “[t]he *Journal* [of the general convention], however, proved without a doubt that Lorenza [sic] de Zavala designed the flag that was accepted, which gives him the distinction of designing the First Official National Lone Star Flag of the Republic of Texas.”¹¹ This statement, however, is not supported by the convention journal. First, Cox claims that Scates’s motion was not adopted and that “the flag remained as designed by Zavala.”¹² This is in direct opposition to the journal, which recounts that Scates’s rainbow and star *were* added to Zavala’s design.¹³ Furthermore, the journal states that Taylor, not Zavala, introduced the resolution that the word “Texas” be placed on the flag.¹⁴ Cox attempts to explain some of these inconsistencies, and why there is no record of the flag’s adoption, by quoting letters from Zavala’s granddaughter, Adina de Zavala, and grandson, Augustine de Zavala.¹⁵ The grandchildren’s statements are contradictory and, of course, hearsay. We are, therefore, left with no record of the flag’s design or any evidence that it was even adopted. Even if we were to assume that the flag was adopted in the form of a star with “Texas” placed around it *and* that the relevant journal entries were lost, it would still not be a de jure flag because the Provisional Government of Texas legislated by passing decrees and ordinances, not resolutions.¹⁶

Although the “Zavala flag” is not supported by the historical record, numerous authorities have given life to this “official first flag” due to the popularity of Cox’s book.¹⁷ The fact that the Austin-based Gallery of the Republic has issued replicas of “historic” Texas flags including the “Zavala flag” is evidence that this flag has achieved a life of its own.¹⁸ The Texas Bar Historical Foundation has even contacted state district and county judges to encourage them to place these replicas in their courthouses.¹⁹ The “Zavala flag” never existed, yet the influence of Cox’s work is such that this fictional flag is now displayed in bank lobbies, county courthouses, and state office buildings.

The proposition that a national flag existed before the adoption of the 1836 national flag is also inconsistent with the language of the 1836 Act. The Act states “[t]hat for the future there shall be a national flag.”²⁰ The clear implication is that no national flag existed prior to the adoption of the Act. If a national flag had been adopted by the general convention or the provisional government, there would have been no need for the Texas Congress to enact the 1836 law to create a national flag, as opposed to modifying it. The Texas Constitution of 1836 provides:

That no inconvenience may arise from the adoption of this constitution, it is declared by this convention that all laws now in force in Texas, and not inconsistent with this constitution, shall remain in full force until declared void, repealed, altered, or expire [sic] by their own limitation.²¹

There is no reference to a national flag in the decrees and ordinances of the provisional government.



Figure 2. 1836 NATIONAL STANDARD/“DAVID G. BURNET’S FLAG”
Gold star on azure field; de jure national flag 10 December 1836 to 25 January 1839; war flag 25 January 1839 to 29 December 1845. Pumbaa80 (user), commons.wikipedia.org

B. The 1836 National Standard

The first official flag was enacted by the Texas Congress on November 25, 1836, and approved by President Sam Houston on December 10, 1836: “SEC. 2. Be it further enacted, That for the future there shall be a national flag, to be denominated the ‘National Standard of Texas,’ the conformation of which shall be an azure ground, with a large golden star central.”²² This flag is known as David G. Burnet’s flag (figure 2), named after the president of the *ad interim* government.²³ President Burnet proposed the national standard and the national flag for the naval service in the following letter:

Executive Department
Columbia 11th Oct. 1836

To the honorable
the Senate and
the House of Representatives
Gentlemen

The 4th Section of the general provisions of the Constitution contemplates the adoption and providing of a seal for the Republic.

I have the honor to submit to the inspection of Congress, the form of a Seal, consisting of a Single Star, with the letters, REPUBLIC OF TEXAS, circular, and to recommend its adoption, as the Seal of this Republic.

I would also suggest to the consideration of Congress, the propriety of adopting and promulgating the form of a national flag, to be denominated The National Standard of Texas. And I would respectfully submit the following as a simple, emblematic and distinctive conformation, for such Standard:

GROUND, AZURE,
A LARGE GOLDEN STAR, CENTRAL.

A flag for ordinary use has already been ~~previously~~ adopted by the Government *ad interim* and is now in use and had received much nomination ~~into~~ in the Navy and I recommend to Congress a legal sanction being given to it. Flags constitute the primary evidences of nationality to vessels on the high seas, and it is needful they should be formally adopted and made known.

The flag in use by the navy is constructed as follows:

Union, blue—Star central
Thirteen Stripes prolonged, alternate red
and white.

The allusion of the 13. Stripes is emphatic, and will constitute an agreeable memorial of our common descent.

Signed,
David G. Burnet²⁴

The national standard served as the Texas flag for all purposes except for the navy until the adoption of the Lone Star Flag in 1839. From that point forward, the national

standard continued as the de jure war flag until Texas achieved statehood in 1845. The national standard was not completely replaced by the 1839 Lone Star Flag because the 1839 Act was merely an amendment to the 1836 Act. The 1839 Act specifically provided that the national standard was to remain unaffected: "Sec. 5. Be it further enacted, That the national standard of this Republic shall remain as was established by an act to which this is an amendment."²⁵

C. The 1836 National Flag for the Naval Service

The Act that established the 1836 national standard also established a war ensign:

SEC. 5. Be it further enacted, That the national flag for the naval service for the Republic of Texas as adopted by the president at Harrisburg on the ninth day of April, eighteen hundred and thirty-six, the conformation of which is union blue, star central, thirteen stripes prolonged, alternate red and white, be, and the same is hereby ratified and confirmed, and adopted as the future national flag for the naval service for the Republic of Texas.²⁶

This flag (figure 3), designed by President David G. Burnet, remained in use until the 1839 Lone Star Flag was adopted.

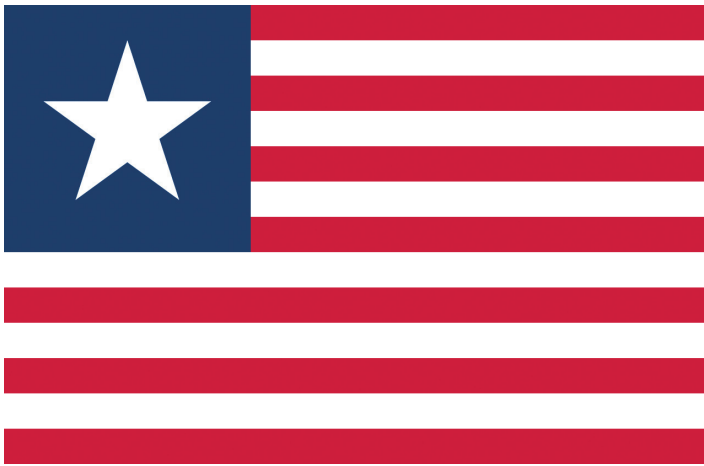


Figure 3. 1836 NATIONAL FLAG FOR THE NAVAL SERVICE White star on blue union, alternating red and white stripes; de jure naval ensign 9 April 1836 to 10 December 1836 (adopted by president); 10 December 1836 to 25 January 1839 (adopted by Congress). Texas Naval Ensign. wikipedia.org

D. The 1839 National Flag

The Lone Star Flag (figure 4) was adopted by the Texas Congress in 1839:

Sec. 3. Be it further enacted, That from and after the passage of this act, the national flag of Texas shall consist of a blue perpendicular stripe of the width of one third of the whole length of the flag, with a white star of five points in the centre thereof, and two horizontal stripes of equal breadth, the upper stripe white, the lower red, of

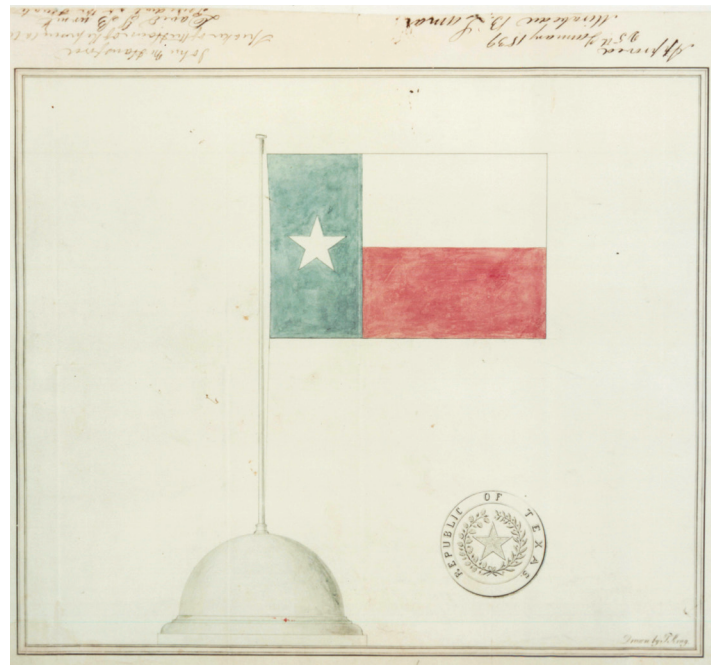


Figure 4. LONE STAR FLAG AND 1839 NATIONAL SEAL Lone Star Flag—white star on vertical blue stripe, white and red horizontal stripes; de jure national and state flag 25 January 1839 to 1 September 1879; de facto state flag 1 September 1879 to 31 August 1933; de jure state flag 31 August 1933 to present (red stripe changed to "blood red" stripe; blue stripe changed to "azure blue" stripe). 1839 National Seal—25 January 1839 to 29 December 1845 (also served as interim state seal to 16 February 1846), official design. Photograph courtesy of the Texas State Library and Archives Commission

the length of two thirds of the whole length of the flag; any thing in the act to which this is an amendment to the contrary notwithstanding.²⁷

A close reading of the 1839 Act along with its legislative history reveals that the Act implicitly repealed the 1836 national flag for the naval service. Section 5 of the Act states that the 1836 national standard shall be unaffected, but the 1836 national flag for the naval service is not mentioned.²⁸ In addition, section 4 of the 1839 Act gives the president the authority to establish a flag for the naval service;²⁹ something that would be unnecessary if the 1836 national flag for the naval service were still in existence:

Sec. 4. Be it further enacted, That the President be, and he is hereby authorized and required to establish such signal and other auxiliary flags, for the naval, revenue and land services, also for the use of the pilots and coasting traders, as the said services may require, and he may deem necessary and expedient.³⁰

The senate committee report on the 1839 Act makes it abundantly clear that the Texas Congress intended to replace the 1836 national flag for the naval service:

The Special Committee to whom the Act amending [sic] the Act entitled “An Act adopting a National Seal and Standard for the Republic of Texas” approved on the 10th December 1836 was referred, beg leave to

Report: That they have investigated the expediency of amending [sic] the act, contemplated by the Act submitted to them, and they have come to a conviction of the necessity of so amending [sic] the Law as to change the present form of the National Seal and Standard of the Republic, from motives which must appear self evident to every reflecting mind to be of the highest importance in a national point of view.

The Committee beg leave to make Some remarks of the ground upon which their Conviction is *grounde* founded and are as follows—In the early part of the Year 1836 when the army and navy of the Republic of Texas were engaged in War against the Enemy, which resulted in the achievement of our Independence, the President *ad interim* devised the National flag and Seal, as it were in a case of emmergency [sic] adopting the flag of the United States of America, with very little alteration, which act was subsequently ratified by the Law of 10th Dec 1836.

The then adopted flag was expedient for the time being, and has in many instances been beneficial to our Navy and Merchantmen, when encountered by the enemy forces, on account of being so much blended with the flag of the United States of America but the emergency has passed, and the future prospects of Texas are of such flattering nature that the National Independence requires that her Arms, Seal, and Standard assume also an Independent character, by a form, which will not blend them with those of any other nation.

Besides these considerations, the Committee would beg leave to state, that in as much as the proposition made by this Republic in her insipient [sic] stage of political existence to the United States of America, for an annexation to the American Confederacy has been withdrawn by the Minister of this Government at the Court of Washington, and as the wish of the majority of the people of Texas, so far as it is publicly known, is in favor of sustaining an Independent Station Among the Nations of the Earth, thereby the transition of the Single Star, into the American Constellation, and the emmerging [sic] the 13 Texian Stripes into the 26 Stripes of the United States of America inexpedient, the Committee are convinced of the necessity of adopting a Separate and Distinct Standard and Seal arms for this Republic, by so improving and embellishing the present as to fortify the Single Star with an olive and live oak branches, being emblems of Peace, and of the Materials of our strong arm of national defence in War, and indigenious to our Soil. Also the flag as proposed by the act, emblematical of Pease [sic], & friendship, or War.

All Civilized Maritime Nations have adopted the National Standard for the use of their Naval and Commercial Services of such Colours and devises as to be plainly and distinctly perceived at great distances, and have carefully guarded against any thing that would blend them with the flags of any other and specially of a neighbouring [sic] nation, to avoid any Collision in time of war, by a neutral power; this ought to be the guide to Texas also, whose flag displaying the National Arms, the Committee flatter themselves, will be known and respected far and wide, so soon as this Commerce of this *Country* Nation is extended with the foreign Nations, protecting the valuable productions of her rich soil, on the widely extended Ocean and in the distant ports of the habitable globe.

Therefore your Committee beg leave to offer a Substitute, amending the original act referred to them, accompanying the Same with a Specimen of the Arms, the Seal and the Standard.

Oliver Jones
Chairman³¹

The 1839 national flag continued to be the flag of Texas after Texas achieved statehood on December 29, 1845, by virtue of article XIII, section 3 of the Texas Constitution:

All laws and parts of laws now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States, the joint resolutions for annexing Texas to the United States, or to the provisions of this Constitution, shall continue and remain in force, as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof.³²

This constitutional provision also provides an explanation for the disappearance of the 1836 national standard. Presuming that the national standard was a war flag, its continued existence would be repugnant to the joint resolutions of annexation and to the new status of Texas as a state under the federal constitution. Therefore, section 2 of the 1836 Act was not continued in force after December 29, 1845. The joint resolution of the United States Congress to annex Texas specifically provided that Texas must cede to the United States “all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence.”³³ As a result, Texas relinquished its military authority other than the militia to the federal government.

The current description of the Texas flag was enacted by the Legislature in 1933 (figure 5).³⁴ Section 1 of the Act makes it clear that the legislature considered the 1839 law as still valid:

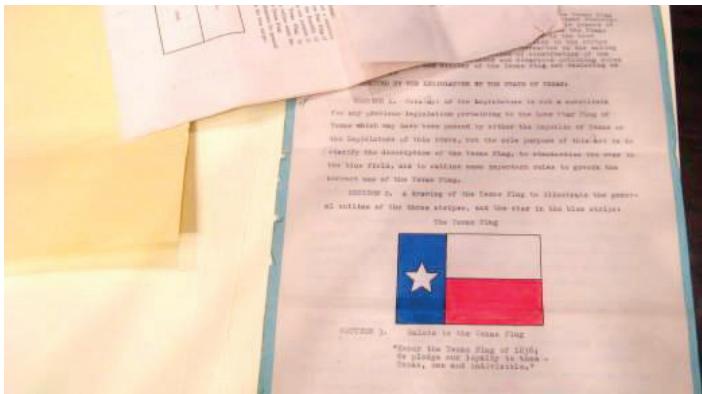


Figure 5. 1933 TEXAS FLAG ACT As shown by State Archivist Christopher LaPlante in his presentation at NAVA 42 (Austin 2008). Photograph courtesy of Al Cavalari.

This Act of the Legislature is not a substitute for any previous legislation pertaining to the Lone Star Flag of Texas which may have been passed by either the Republic of Texas or the Legislature of this State, but the sole purpose of this act is to clarify the description of the Texas Flag, to standardize the star in the blue field, and to outline some important rules to govern the correct use of the Texas Flag.³⁵

Even though the legislature stated that the 1933 Act was not a substitute for previous legislation, the previous legislation no longer existed. When the sixteenth legislature promulgated the Revised Civil Statutes of 1879, it provided that “all civil statutes, of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.”³⁶ Since the 1879 Revised Statutes neither included legislation concerning the flag nor expressly continued in force the 1839 Act, the 1839 flag law was repealed. Texas, therefore, had no de jure flag from the date of the repeal, September 1, 1879, to the effective date of the 1933 Act, August 31, 1933.³⁷

The 1933 description of the flag is extremely detailed and includes precise instructions for the design and location of the Lone Star. The colors of the stripes, blood red, azure blue, and white, are said to impart the “lessons of the Flag: bravery, loyalty, and purity.”³⁸ Despite these specifications, there is no standard reference to define what constitutes “blood red” and “azure blue,” and few Texas flags are manufactured in the official proportions (hoist to fly) of two to three.^{38a} The 1933 Act does include a drawing of the flag.³⁹

The Texas Legislature has obviously found the history of the Texas flag to be confusing. The legislature in 1933 adopted a salute to the Texas flag that began, “Honor the Texas Flag of 1836.”⁴⁰ Although it was known at least by the early 1950s that the salute erroneously identified the 1836 flag as the

Lone Star Flag, the legislature did not delete the words “of 1836” until 1965.⁴¹ In 1989 the legislature passed a resolution honoring the 150th anniversary of the Lone Star Flag, in which Lorenzo de Zavala, William B. Scates, Thomas Barnett, Sterling C. Robertson, Thomas J. Gazley, and Richard Ellis were misidentified as the committee that approved the flag allegedly designed by Charles B. Stewart.⁴² The committee listed in the resolution is the committee which debated the “Zavala flag” at the 1836 general convention.⁴³ Furthermore, the Lone Star Flag was not designed by the 1839 committee chaired by Senator Oliver Jones: the design of the flag was present in the original version of the bill introduced on December 28, 1838, by Senator William H. Wharton.⁴⁴ In December 1992, the legislature passed a concurrent resolution to correct these errors.^{44a}

Charles Stewart’s role as the designer of the Lone Star Flag is unsupported by any documentary evidence in his personal correspondence or that of his contemporaries. Mamie Wynne Cox states that Stewart was a member of the committee that drafted the 1839 Act and that he actually designed the Lone Star Flag.⁴⁵ However, Stewart’s name is not mentioned in the committee report presented by Senator Jones on January 4, 1839, and Stewart was not a member of the Texas Senate during the Third Congress.⁴⁶ Cox’s book also contains a photograph of Stewart’s alleged original design of the Lone Star Flag (figure 6).⁴⁷ This design looks suspiciously like a tracing of the Peter Krag art, including the upside down signature of President Lamar.⁴⁸ Not surprisingly, Cox makes no reference in her book to Peter Krag and his depiction of the flag and seal.^{48a}

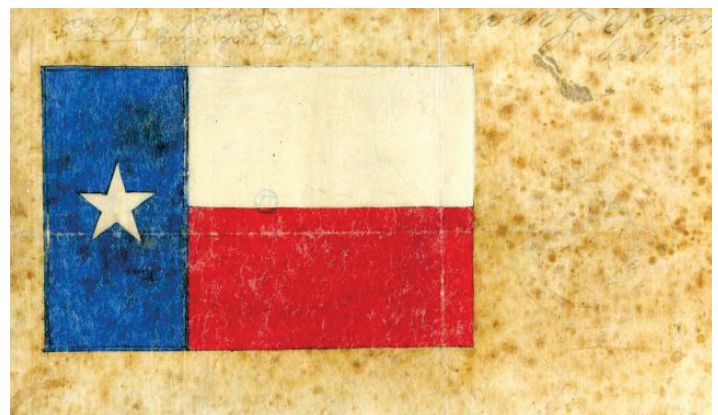


Figure 6. ALLEGED ORIGINAL DESIGN OF THE LONE STAR FLAG
Date unknown and authenticity questionable; donated by Stewart family to Texas State Library and Archives Commission in 1966. Photograph courtesy of the Texas State Library and Archives Commission.



Figure 7. FLAG FOR VESSELS SAILING UNDER LETTERS OF MARQUE AND REPRISAL Green, white, and red stripes; de jure privateer flag 29 November 1835 to 29 December 1845. Glasshouse (user), commons.wikipedia.org..

E. The 1835 Flag for Vessels Sailing Under Letters of Marque and Reprisal

Texas authorized an official privateer flag before declaring independence (figure 7):

SEC. 2. *Be it further ordained and decreed, &c., That all vessels sailing under Licenses, as Letters of Marque and Reprisal, which have been, or may be hereafter granted by the Governor and Council, or by the Governor, as provided in this supplementary Ordinance, or under any register or license of this Government, shall carry the flag of the Republic of the United States of Mexico, and shall have the figures 1, 8, 2, 4, cyphered in large Arabics on the white ground thereof.*⁴⁹

This flag disappeared from use after the decision was made to declare independence.

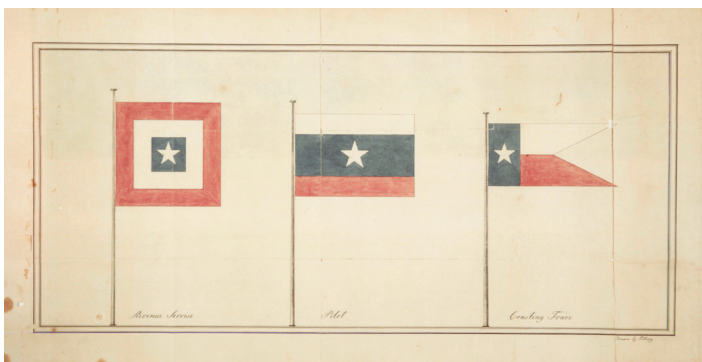


Figure 8. REVENUE SERVICE, PILOT, AND COASTING TRADER FLAGS Revenue service flag—white star on blue square surrounded by white and red squares, pilot flag—white star on blue stripe with white stripe above and red stripe below, coasting trader flag—white star on vertical blue stripe with swallowtail white and red horizontal stripes; de jure naval auxiliary flags 25 January 1839 to 29 December 1845. Photograph courtesy of the Texas State Library and Archives Commission.

F. The 1839 Pilot, Revenue Service, and Coasting Trader Flags

The pilot, revenue service, and coasting trader flags (figure 8) were established by section 4 of the 1839 Act.⁵⁰ The pilot flag has been erroneously portrayed as the Texas national flag at sea or the Texas merchant flag.⁵¹ These three flags were only auxiliary flags, similar to the United States Coast Guard ensign, and were never meant to replace the 1839 Lone Star Flag for use at sea. An 1841 Act regulating the coasting trade did not recognize any separate merchant flag or civil ensign, and stated that “no merchant vessel shall be permitted to assume the Flag of this Republic, unless owned by a citizen or citizens of the same.”⁵² The 1841 Act repeatedly speaks of the “flag of the Republic” or the “Texian flag,” referring to the single national flag approved in 1839.⁵³ The pilot, revenue service, and coasting trader flags apparently disappeared with the advent of statehood.

G. The 1985 County Sesquicentennial Flag

Certainly the oddest Texas flag is the official county flag for the Texas sesquicentennial celebrated in 1986 (figure 9). This flag was designed by Joydelle G. Wolfram for Falls County, and subsequently recognized by the legislature.⁵⁴ This busy flag is described in the senate concurrent resolution as follows:

WHEREAS, The flag, with a background of royal blue, exhibits a large white Lone Star on its left half; and
WHEREAS, Smaller stars surrounding the Lone Star, which represent the 254 counties of Texas, are grouped by color according to the comparative date of each county's creation; and

WHEREAS, Immediately adjacent to the Lone Star are 37 gold stars, 12 each between its top point and the points to either side, and another 13 between its bottom two points, all in representation of those counties that were created during Texas's period as a republic; and

WHEREAS, Around the Lone Star and the gold stars is a ring of white containing 115 red stars in representation of those counties that were created after statehood but prior to the Civil War; and

WHEREAS, Outside the first ring is another ring, also white, containing along its bottom and left and right sides an arc of 91 blue stars in representation of those counties that were created through the remainder of the 19th Century; and

WHEREAS, A shorter arc of 11 green stars, located along the top of the outer ring, represents those counties that have been created more recently, since the beginning of the 20th Century; and

WHEREAS, The other half of the flag, to the right of the design, depicts the name of the county with the date of its creation and an appropriately colored star; and



Figure 9. SESQUICENTENNIAL COUNTY FLAG Large white star on royal blue field, surrounded by two white arcs and 254 gold, red, blue, and green stars; 28 February 1985; use by counties optional. Wikimedia Commons.

WHEREAS, Display of the flag by counties would not be inconsistent with their display of the state sesquicentennial flag as authorized by the Texas 1986 Sesquicentennial Commission; and

WHEREAS, flying the county flag would further honor the proud history of the state's 254 counties; now, therefore, be it

RESOLVED, That the 69th Legislature of the State of Texas hereby designate as an official county flag for the Texas sesquicentennial, for counties choosing to adopt and fly it, the design incorporated in the sesquicentennial county flag for Falls County . . .⁵⁵

A cynic might wonder why Greer, Santa Fe, and Worth Counties, which are no longer part of Texas, are not represented by stars with slashes through them.⁵⁶

H. Display of the Flag

Texas has other laws and resolutions affecting flag usage in addition to those already mentioned. The legislature has declared Texas Independence Day, March 2nd, to be Texas Flag Day.⁵⁷ The 1933 flag statute contains rules governing the use of the flag,⁵⁸ which was presumably based on the uniform code of flag etiquette drafted in 1923 and 1924 by various patriotic and civic organizations including the American Legion and the Daughters of the American Revolution.⁵⁹ The Texas rules were amended in 1977 to allow for display of the flag at night and in inclement weather, and to allow the flag to be carried horizontally when necessary.⁶⁰ This last change was presumably made to validate the practice of displaying a huge Texas flag on the field at football games played by The University of Texas at Austin. In addition, all public schools and educational institutions are required to fly the flag on regular school days, and everyone is requested to fly the flag

during Texas Week (the week which contains March 2).⁶¹ The symbolism of the state and national flags must also be taught to Texas children in elementary school.⁶²

A separate statute passed in 1955 requires that the Texas flag occupy the position of honor when it is displayed within the state.⁶³ The only flag that can take precedence over the Texas flag is the United States flag.⁶⁴ This law makes some sense in the context of American federalism in which the states are sovereigns subservient only to the federal government, but it conflicts with international custom regarding the placements of flags of other nations when displaying the Texas flag. The law also fails to state explicitly that it does not apply to any practice of the federal government which accords the flag of another country or a federal department or agency a greater position of honor than the Texas flag.⁶⁵

I. Flag-Desecration Laws, Prohibitions Against Advertising, and Trademark

Texas passed its first flag-protection act in 1913.⁶⁶ The Act prohibited the use of "any imitation, label, trade-mark, design, device, imprint or form of the flag of the State of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose."⁶⁷ The fine for violating the Act was a fine between fifty and one hundred dollars.⁶⁸ It was also unlawful to "offer or expose for sale any article or commodity of commerce bearing the imitation, design, imprint or form of the flag of the State of Texas."⁶⁹ The fine for this violation of the Act was a fine between twenty-five and fifty dollars.⁷⁰ In August 1913, the legislature repealed this Act and passed a new law.⁷¹ The August 1913 law was substantially identical except that it exempted fraternal and patriotic organizations from its effect.⁷² Codified twice since 1913, this law is still in effect.⁷³ Currently use of the state flag on alcoholic-beverage labels and advertisements is regulated,⁷⁴ as is use of the state flag by private investigators and private security officers.⁷⁵

The first flag-desecration act was passed in 1917.⁷⁶ Prohibited conduct was very broad:

Any person who in any manner, for exhibition or display, shall after this Act takes effect, place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature, upon any flag, standard, color or ensign of the United States, or State flag of this State or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which after this Act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall after the first

day of September, 1917, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this Act takes effect, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article, or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color, or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine, not exceeding one hundred dollars or by imprisonment for not more than thirty days or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offence, to be recovered with costs in a civil action or suit, in any court having jurisdiction, and such action or suit may be brought by and in the name of any citizen of this State.
...⁷⁷

The State and its citizens were apparently more eager to enforce this law than the legislature expected. Less than two months after it became effective, the Act was amended so that it did not apply to:

any Act permitted by the Statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence, or any of which shall be printed, painted, or placed said flag, disconnected from any advertisement.⁷⁸

Although the criminal provisions of this law were repealed and replaced, the civil provisions were left off the list of laws to be repealed by the 1973 Penal Code and are still in effect.⁷⁹

During World War I, Texas passed the so-called "Disloyalty Act".⁸⁰

SECTION 1. If any person shall, at any time or place within this State, during the time the United States of America is at war with any other nation, use any language in the presence and hearing of another person, . . . of and concerning any flag, standard, color, or ensign of the United States of America, or any imitation thereof, . . . which language is disloyal to the United States of America, or abusive in character, and calculated to bring into disrepute . . . any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the flag, standard, color, or ensign, or the uniform of any officer of the army of the United States of America, or is of such nature as to be reasonably calculated to

provoke a breach of the peace, if said in the presence and hearing of a citizen of the United States of America, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years.

SEC. 2. Any person who shall, at any time or place within this State, during the time the United States is at war with any other nation, or nations, commit to writing or printing, or both writing and printing, by letters, words, signs, figures, or any other manner, and in any language, anything of and concerning . . . any flag, standard, color, or ensign of the United States, or any imitation thereof, . . . which is abusive in character, or disloyal to the United States, and reasonably calculated to bring into disrepute . . . any flag, standard, color, or ensign of the United States, or that of any of its officers, and reasonably calculated to provoke a breach of the peace if written to or in the presence of any citizen of the United States, or if said in the presence and hearing of any citizen of the United States shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years.

SEC. 3. Any person who shall, within this State, publicly or privately, mutilate, deface, defile, defy, tramp upon, or cast contempt upon, either by words or acts, any flag, standard, color, or ensign of the United States, or that of any of its officers, or on any imitation of either of them, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years.

SEC. 4. Any person who, during the existence of the war between the United States and any other nation, or nations, shall knowingly, within this State, display, or have in his possession for any purpose whatsoever, any flag, standard, color, or ensign, or coat of arms of any nation with which the United States is at war, or any imitation thereof, or that of any State, subdivision, city, or municipality of any such nation, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years.⁸¹

In 1920, the Court of Criminal Appeals of Texas held that section 1 of the Disloyalty Act violated the free speech provision of the Texas Constitution.⁸² Section 1 was held unconstitutional because it prohibited disloyal language *per se*, without requiring that the language be uttered under circumstances reasonably calculated to provoke a breach of the peace.⁸³ That same court in 1971, however, upheld a conviction for flag burning brought under the provisions of article 152 of the 1925 Penal Code, formerly section 3 of the Disloyalty Act.⁸⁴

The most famous law affecting the flag is former section 42.09 of the 1973 Penal Code, the flag-desecration statute.⁸⁵ The law stated that:

(a) A person commits an offense if he intentionally or knowingly desecrates:

...

(3) a state or national flag.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.⁸⁶

This statute was declared unconstitutional under the federal constitution by both the Court of Criminal Appeals of Texas and the United States Supreme Court in the celebrated flag burning case, *Johnson v. State*.⁸⁷

The legislature responded to the *Johnson* decision by enacting a new flag-desecration statute.⁸⁸ This law attempts to circumvent the *Johnson* opinion by removing the requirement that the act of desecration must "seriously offend one or more persons likely to observe or discover" the action.⁸⁹ The current law states as follows:

(a) A person commits an offense if the person intentionally or knowingly damages, defaces, mutilates, or burns the flag of the United States or the State of Texas.

(b) In this section, "flag" means an emblem, banner, or other standard or a copy of an emblem, standard, or banner that is an official or commonly recognized depiction of the flag of the United States or of this state and is capable of being flown from a staff of any character or size. The term does not include a representation of a flag on a written or printed document, a periodical, stationery, a painting or photograph, or an article of clothing or jewelry.

(c) It is an exception to the application of this section that the act that would otherwise constitute an offense is done in conformity with statutes of the United States or of this state relating to the proper disposal of damaged flags.

(d) An offense under this section is a Class A misdemeanor.⁹⁰

This new law appeared constitutionally suspect in light of the United States Supreme Court's decision in a 1990 flag-desecration case, *United States v. Eichman*.⁹¹ In March 1992 the Court of Appeals for the Eighth District of Texas (El Paso) held the revised flag-desecration law to be unconstitutional, but the court invited the State to appeal to the United States Supreme Court in the hope that the retirement of Justices Brennan and Marshall would allow the Supreme Court the opportunity to overrule its opinions in *Texas v. Johnson* and

United States v. Eichman.^{91a} The court of criminal appeals refused to grant the State's petition for discretionary review, thus clearing the way for an appeal to the Supreme Court. In October 1992 the Supreme Court denied the State's petition for writ of certiorari, allowing the judgment of the El Paso Court of Appeals to stand.^{91b} The Supreme Court's refusal to consider the *Jimenez* case seemed to settle the flag-desecration issue in Texas.

A design cannot be registered as a trademark if it depicts or simulates the flag, coat of arms, or other insignia of the United States, a state, a municipality, or a foreign nation.^{91c} Flags and state emblems are also protected by a multilateral treaty.^{91d}

III. Texas Seals

A. The Republic of Texas

There is no reference to an official seal in the records of the Provisional Government of Texas. The general convention, however, did adopt an emblem for the Republic:

Mr. Childress introduced the following resolution: Resolved that a single star of five points, either of gold or silver, be adopted as the peculiar emblem of this republic: & that every officer & soldier of the army and members of this convention, and all friends of Texas, be requested to wear it on their hats or bosoms: which was adopted.⁹²

The Texas Constitution of 1836 implies there was no pre-existing seal because it states that "[t]he president shall make use of his private seal until a seal of the republic shall be provided."⁹³

The Texas Congress provided for a seal in 1836 (figure 10):

SEC. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That for the future the national seal of this republic shall consist of a single star, with the letters "Republic of Texas," circular on said seal, which said seal shall also be circular.⁹⁴

This seal currently is used on publications of the Texas State Historical Association.



Figure 10. 1836 NATIONAL SEAL
10 December 1836 to 25 January
1839, design varies. Seal of the Republic of
Texas (1836) wikipedia.org.

The Texas Congress acted in 1839 to establish a national arms and to modify the national seal (see *supra* figure 4):

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That from and after the passage of this act, the national arms of the Republic of Texas be, and the same is hereby declared to be a white star of five points, on an azure ground, encircled by an olive and live oak branches.

Sec. 2. Be it further enacted, That the national great seal of this Republic shall, from and after the passage of this act, bear the arms of this nation as declared by the first section of this act, and the letters "Republic of Texas."⁹⁵

B. The State of Texas

The original state constitution included a description of the seal; however, it omitted the provision that the star be on an azure ground: "There shall be a seal of the State, which shall be kept by the Governor and used by him officially. The said seal shall be a star of five points, encircled by an olive and live oak branches, and the words 'the State of Texas.'"⁹⁶ With minor variations in capitalization and punctuation, this same description of the seal has appeared in all of the succeeding constitutions.⁹⁷ The current constitution provides that the seal shall be kept "by the secretary of state, and used by him officially under the direction of the governor."⁹⁸ The law requires that a duplicate seal be stored in a facility designed to withstand blast, fire, water, and other destructive forces.⁹⁹ A number of different representations of the seal

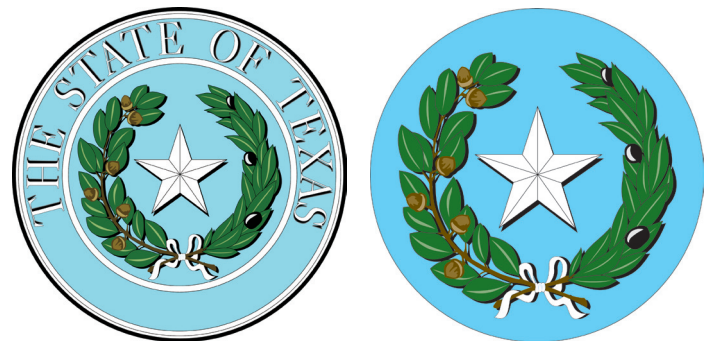
have appeared on publications issued by the secretary of state throughout the years.

In November 1946, the National Guard Bureau advised all states that the Air Force wanted state national guard aircraft to bear identifying insignia on the fuselage. The Texas adjutant general had the design of the seal thoroughly researched and requested that Octavio Martinez prepare an eighteen and three-fourths inch realization of the seal in 1956. Five copies of this design were later executed by Henry W. Schlattner in 1960 and presented to Governor Price Daniel, the Battleship *Texas*, the Texas Memorial Museum, and both houses of the Texas Legislature in a joint session on April 5, 1961 (figure 11).¹⁰⁰

In April 1991 Secretary of State John Hannah, Jr., appointed the Texas State Seal Advisory Committee to formulate recommendations on the design of the state seal in response to the concerns of several state agencies about a lack of uniformity in the seal's appearance. The members of this committee are the author, committee chair; Donna D. Darling, committee cochair, Texas Water Development Board; Michael R. Green, Texas State Library and Archives Commission; Randy Jennings, Texas Rehabilitation Commission; Guy Joyner, Office of the Secretary of State; Shari Massingill, Texas Department of Health; Colonel John C.L. Scribner, Adjutant General's Department; Kimberly T. Sutton, Office of the Secretary of State; Ron Tyler,



Figure 11. SCHLATTNER ART FOR STATE SEAL. 1960. Photo of art by H.W. Schlattner, UT Texas Memorial Museum Collection, di_06825, The Dolph Briscoe Center for American History, The University of Texas at Austin.



Left: Figure 12. STATE SEAL. 16 February 1846 to present, official design from June 1992. Art courtesy of the Office of the Secretary of State.

Right: Figure 13. STATE ARMS. Official design from June 1992. Art courtesy of the Office of the Secretary of State.

Texas State Historical Association; Juan Vega, Texas Water Development Board; and Douglas Young, State Preservation Board. The committee researched the history of the state seal and recommended that the Texas Memorial Museum's 1960 watercolor by Henry W. Schlattner be used as a model.¹⁰¹ In January 1992, the committee recommended that the secretary of state adopt official art for the state seal (figure 12)

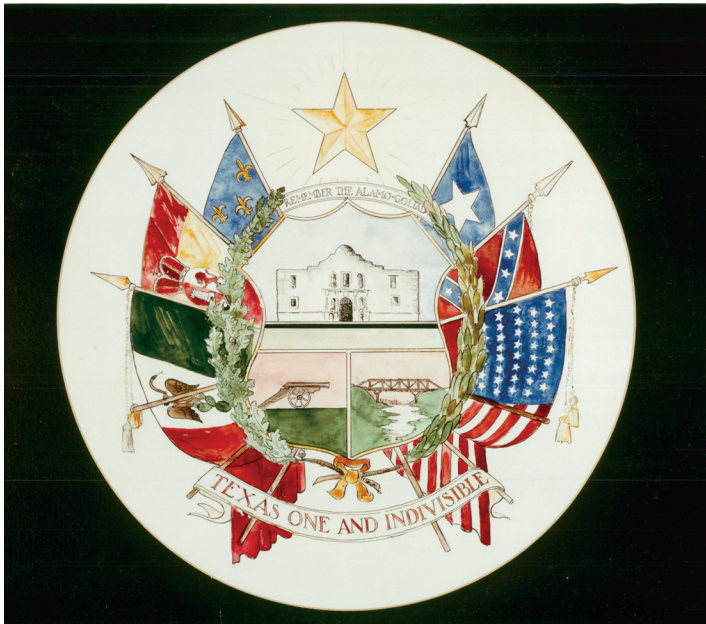


Figure 14. WEDEMAYER ART FOR REVERSE OF STATE SEAL. 26 August 1961 to 14 June 1991, official design. Photograph courtesy of The State Preservation Board, Austin, Texas, accession number 2003.008.

and state arms (figure 13), both designed by Juan Vega. The secretary of state officially adopted the committee's proposed design for the state seal and state arms in June 1992, resulting in the state arms regaining official recognition for the first time since it was inadvertently repealed in 1879.¹⁰²

Some question exists about whether the state seal should be denominated "The Great Seal of Texas." The constitution refers to the seal as the "seal of the State" or "State seal," while some statutes refer to the "great seal."¹⁰³ The better view is to refer to it simply as the "state seal" because this is what the seal is called in all of the state constitutions and because the Supreme Court of Texas has defined the words "great seal" to mean the seal of a nation, not a state.¹⁰⁴

C. The Reverse of the State Seal

A design for the reverse of the state seal was proposed by the Daughters of the Republic of Texas, and this design was adopted by the legislature in 1961 (figure 14)^{104a}. The seal's reverse is described as:

a shield, the upper half of which is divided in two parts; on the left stands the famous cannon of the first battle of the Texas Revolution at Gonzales, well-remembered for the Texans' use of the flag bearing the words "Come and Take it"; on the right is depicted "Vince's Bridge," which Deaf Smith destroyed during the Battle of San Jacinto, a move which has been named by military tacticians as strategic to victory for the Texans. The shield is circled by the same wreath of live oak and olive now used in the Great Seal of Texas. Circling the shield are unfurled the flags of France, Spain, and Mexico, the

Republic of Texas, the Confederate States of America, and the United States. Above the shield is emblazoned the motto, "Remember the Alamo," and beneath it are the words, "Texas One and Indivisible." Over all hangs the golden Lone Star, symbolic of Texas as a Republic and as a State . . .¹⁰⁵

This design took effect on August 26, 1961.¹⁰⁶

The official art for the reverse of the state seal that was adopted in 1961 differs in several respects from the resolution's description. The art depicts the Alamo in the upper half of the shield, although the resolution states that the upper half contains the cannon at Gonzales and Vince's Bridge. In fact, the resolution does not include the Alamo in the shield and fails to describe the shield's lower half. The motto in the art is "Remember the Alamo-Goliad," adding the word "Goliad."

The flags circling the shield as depicted in 1961 include: (1) the banner of France as it appeared before the reign of Charles V (1364–1380) (the proper flag would be the circa 1643–1790 state flag); (2) the 1793–1931 state flag of Spain; (3) the 1823 flag of Mexico with its imperial eagle (as opposed to the current Aztec eagle); (4) the Lone Star Flag of Texas (although the location of the star makes this look like the flag of Chile); (5) the naval jack of the Confederate States of America (the proper flag would be one of the three national flags, either the Stars and Bars, the Stainless Banner, or the Blood Stained Banner); and (6) the forty-eight star United States flag (as opposed to either the official fifty star flag or the 1846–1847 twenty-eight star flag).¹⁰⁷

Four other problems with the reverse of the state seal adopted in 1961 are: the depiction of the live oak wreath; the cannon; the position of the United States flag; and the golden Lone Star, which supposedly symbolizes Texas as a republic and as a state. First, the official art depicts a wreath of post oak, not live oak, a problem with many of the designs of the obverse, or front, of the state seal.^{107a} Second, the cannon depicted looks very different from the actual cannon displayed in the Daughters of the Republic of Texas museum in Gonzales, which is much shorter and has solid, rather than spoked, wheels. Third, the forty-eight star United States flag is shown, which was obsolete in 1961, and the flag is not shown in the proper position of honor, i.e., to the observer's top left-center.¹⁰⁸ Finally, with the exception of the 1836 national standard, the Lone Star on the flag and seal has always been white.

In 1991 the legislature adopted a revised design for the reverse of the state seal to eliminate the errors and omissions previously described:

RESOLVED, That the design for the reverse side of the Great Seal of Texas shall consist of a shield, the lower half of which is divided into two parts; on the shield's



Figure 15. REVERSE OF STATE SEAL. 14 June 1991 to present, official design since June 1992. Art courtesy of the Office of the Secretary of State.

lower left is a depiction of the cannon of the Battle at Gonzales; on the shield's lower right is a depiction of Vince's Bridge; on the upper half of the shield is a depiction of the Alamo; the shield is circled by live oak and olive branches, and the unfurled flags of the Kingdom of France, the Kingdom of Spain, the United Mexican States, the Republic of Texas, the Confederate States of America, and the United States of America; above the shield is emblazoned the motto, "REMEMBER THE ALAMO", and beneath the shield are the words, "TEXAS ONE AND INDIVISIBLE"; over the entire shield, centered between the flags, is a white five-pointed star¹⁰⁹

The revised design was adopted at the request of the State Preservation Board, based on the recommendations of the Texas State Seal Advisory Committee.¹¹⁰ The revision was necessary because the reverse of the state seal will be rendered in stone on the rotunda floor of the underground expansion of the Texas Capitol. The legislature established the description of the reverse of the state seal as the official design, rather than adopting specific art as was done in 1961. This design took effect on June 14, 1991.¹¹¹ In January 1992, the Texas State Seal Advisory Committee recommended that the secretary of state adopt official art for the reverse of the state seal.¹¹² Alfred Znamierowski painted the first draft of the art for the reverse under the supervision of Whitney Smith, executive director of the Flag Research Center, and Douglas Young of the State Preservation Board completed the proposed official art. The secretary of state officially adopted the committee's

proposed design for the reverse of the state seal in June 1992 (figure 15).^{112a}

Technically the design of the seal's reverse is not a law because it was passed by the legislature in the form of a concurrent resolution and not as a bill.¹¹³ For this reason, the West Publishing Company did not include the 1961 description of the seal's reverse in *Texas Revised Civil Statutes Annotated*.¹¹⁴ The design is an expression of the legislature's will, but it does not have the effect of law.

D. Other Laws Affecting the Seal

State law requires that the seal be affixed to numerous documents. Patents for land from the state must be under both the state seal and the general land office seal.¹¹⁵ All commissions issued in the name and by the authority of the state must be sealed, including commissions for the state military service.¹¹⁶ Executive acts of the governor in criminal cases are required to pass under the state seal, including remissions of fines, reprieves, commutations of punishment, and pardons.¹¹⁷ The state seal is required to be used on state bonds,¹¹⁸ branch pilot's commissions,¹¹⁹ and many other miscellaneous matters.¹²⁰ Finally, the secretary of state is required to affix the seal to all official documents issued from his office.¹²¹ All documents deposited with the secretary of state and affixed with the state seal must be arranged and preserved.¹²² A facsimile of the seal may be printed, engraved, or stamped on public securities, contracts, checks, or similar documents that must be sealed. Use of a facsimile seal with intent to defraud on a public security, eligible contract, instrument of payment, or a certificate of assessment is punishable by confinement in the penitentiary for two to seven years.¹²³ It is a Class A misdemeanor for a person other than a political officeholder knowingly to use a representation of the state seal in political advertising.¹²⁴ The meaning of state and national symbols, which presumably includes the state seal, must be taught to Texas children in elementary school.^{124a}

Private use of the state seal is regulated. The seal may be used for commercial purposes only if a license is obtained from the secretary of state and royalties are paid.¹²⁵ These regulations do not apply to state agencies or officials who use the seal (including the reverse) for official or political purposes, but they are encouraged to submit renditions of the seal to the secretary of state to achieve uniformity.¹²⁶ A design cannot be registered as a trademark if it depicts or simulates the flag, coat of arms, or other insignia of the United States, a state, a municipality, or a foreign nation.^{126a} Flags and state emblems are also protected by a multilateral treaty.^{126b} Use of the state seal on alcoholic-beverage labels and advertisements is regulated,¹²⁷ as is use of the state seal by private investigators and private security officers.¹²⁸

The state seal appears in three other contexts. The legislature has authorized the minting of gold and silver state coins bearing the seal.¹²⁹ The seal is also displayed on the Texas Distinguished Service Medal, which is awarded to citizens who have achieved conspicuous success while rendering outstanding service to the state.¹³⁰ Finally, all state aircraft except those used for law enforcement purposes must be marked with the state seal on each side of the aircraft's vertical stabilizer.¹³¹

A few statutes refer to the secretary of state's seal.¹³² These statutes should refer to the state seal, because the secretary of state does not have a seal of office similar to that used by other officeholders like the comptroller of public accounts.¹³³

IV. Conclusion

Texans are rightfully proud of their short but eventful history. The Lone Star is a visible link to that past and a reminder of the days of the republic. Unfortunately, many of the laws dealing with the flag and seal are outdated, inaccurate, and sometimes downright ridiculous. The legislature should consider revising the laws that affect these venerable symbols prior to the placement of the laws into the Government Code as part of the state's continuing statutory revision program.¹³⁴

Endnotes

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Minneapolis, Minnesota, where it received the Captain William Driver Award.

¹ Flag Day Address (June 14, 1915), in JOHN BARTLETT, *FAMILIAR QUOTATIONS* 682 (Emily M. Beck ed., 15th ed. 1980).

² *THE DEVIL'S DICTIONARY* 75 (Stammer House Publishers 1978) (1906).

³ Texas was admitted into the Union on December 29, 1845, by virtue of a joint resolution of the United States Congress. *Calkin v. Cocke*, 55 U.S. (14 How.) 227, 239 (1852); Act approved Dec. 29, 1845, 9 Stat. 108. "The state government was not organized until February 16, 1846, and until that time the government and laws of the Republic were in force, to the exclusion of the state government." *Newby v. Haltaman*, 43 Tex. 314, 314–15 (1875); see TEX. CONST. of 1845, art. XIII, §§ 1–2, 6, 10. It was not until February 19, 1846, that the Lone Star Flag was lowered from the Texas capitol and the United States flag raised. The Texas Legislature has designated February nineteenth as Texas Statehood Day. Tex. H.R. Con. Res. 26, 47th Leg., R.S. 1941 Tex. Gen. Laws 1478.

^{3a} Charles A. Spain, Jr., *The Flags and Seals of Texas*, 33 S. TEX. L. REV. 215 (1992). Although minor errors in the publication of the original article have been corrected and some information has been added, this revision leaves the analysis and citations where they were in 1992, including not changing references to anything "current" et cetera, i.e., "current" in this article means 1992. Obviously a lot has changed from when the article was written, largely due to its publication.

⁴ The general convention "wrote the Declaration of Independence for Texas and the Constitution of the Republic, organized the *ad interim* government, and named Sam Houston commander-in-chief of the military forces of the Republic." 1 *THE HANDBOOK OF TEXAS* 404 (Walter P. Webb ed., 1952).

⁵ *Id.* at 606

⁶ *THE GENERAL CONVENTION AT WASHINGTON* 21, 69 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 841, 889 (Austin, Gammel Book Co. 1898). The March 11th date given in the journal is an error; the second Saturday in March 1836 was March 12th.

⁷ *THE GENERAL CONVENTION AT WASHINGTON* 21–24, 62–66 (1838), reprinted in H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 841–44, 882–86 (Austin, Gammel Book Co. 1898). The March 10th date given in the journal is a printing error; the second Friday in March 1836 was March 11th.

⁸ *THE GENERAL CONVENTION AT WASHINGTON* 66–70 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 886–90 (Austin, Gammel Book Co. 1898).

⁹ *THE GENERAL CONVENTION AT WASHINGTON* 69 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 889 (Austin, Gammel Book Co. 1898).

¹⁰ MAMIE W. COX, *THE ROMANTIC FLAGS OF TEXAS* 227–33 (1936).

¹¹ *Id.* at 230.

¹² *Id.* at 230–31.

¹³ *THE GENERAL CONVENTION AT WASHINGTON* 69 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 889 (Austin, Gammel Book Co. 1898).

¹⁴ *Id.*

¹⁵ Cox, *supra* note 10, at 231–32. Zavala's grandson later failed to mention his grandfather as the designer of the alleged March 1836 flag, and he also mistakenly identified the flag as the 1839 Lone Star Flag. Aug de Zavala, *Scion of First Vice-President of Republic of Texas Sketches Her History Under Six Flags*, DALLAS MORNING NEWS, Mar. 8, 1936, at III-9. For further information on Zavala's granddaughter, see *infra* note 17.

¹⁶ See TEX. PROVISIONAL GOV'T PLAN & POWERS art. III (1835). The *ad interim* government was specifically prohibited from exercising legislative and judicial powers. Executive ordinance adopted Mar. 16, 1836, res. 1, 1835–1836 Tex. Provisional Gov't Ordinances & Decrees 149, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1053 (Austin, Gammel Book Co. 1898), *repealed by* REPUB. TEX. CONST. of 1836, sched. § 1 (existing laws inconsistent with 1836 Texas Constitution not continued in force). The government under the constitution was not established until after the constitution was ratified on September 5, 1836.

¹⁷ DEVEREAUX D. CANNON, JR., FLAGS OF THE CONFEDERACY: AN ILLUSTRATED HISTORY 41–42 (1988); WILLIAM CRAMPTON, FLAGS OF THE UNITED STATES 47 (1989); DAUGHTERS OF THE REPUBLIC OF TEXAS, TEXAS AND ITS FLAGS 1 (1981); FLAGS OF THE WORLD 82 (E.M.C. Bartaclough & W.E. Crampton eds., 1978); WILLIAM R. FURLONG & BYRON MCCANDLESS, SO PROUDLY WE HAIL: THE HISTORY OF THE UNITED STATES FLAG 193 (Harold D. Langley ed., 1981); CHARLES E. GILBERT, JR., FLAGS OF TEXAS 74–75, 78 (1989); CHARLES E. GILBERT, JR., A CONCISE HISTORY OF EARLY TEXAS 1519 to 1861, at 58–59, 61 (1964); MARK LLOYD, FLAGS OF THE UNITED STATES 47 (1990); WHITNEY SMITH, THE FLAG BOOK OF THE UNITED STATES 206–08 (rev. ed. 1975) (in 2009 Smith repudiated “the statement I made when authoring *The Flag Book of the United States*, published in 1970 and republished with modifications in 1975. My statement, made on page 207, read ‘The new design, the idea of Dr. Charles B. Stewart...’; see Letter from Whitney Smith to Charles Spain (May 19, 2009), <https://perma.cc/46PW-W5ZE>); STEVE VEAZEY & JOHN D. POTTER, JR., FLAGS IN THE HISTORY OF TEXAS 13 (1991); see also L.W. Kemp, *Official Flags of the Republic of Texas*, 59 SW. HIST. Q. 487, 487 (1956). *Contra* RITA D. HABAN, HOW PROUDLY THEY WAVE: FLAGS OF THE FIFTY STATES 95 (1989) (“[t]he first official flag of the Republic of Texas [was] David G. Burnet’s flag”); 1 THE HANDBOOK OF TEXAS, *supra* note 4, at 606 (erroneously stating that Zavala’s design included word “Texas,” but correctly stating that no final action on design was taken and that Burnet flag was first official flag of Republic); M. Looscan, *The History and Evolution of the Texas Flag*, in 1 A COMPREHENSIVE HISTORY OF TEXAS 1685 TO 1897, at 696–97 (Dudley G. Wooten ed., Dallas, William G. Scarff 1898) (“The first ‘Lone Star’ flag bearing the sanction of governmental authority . . . was that adopted by President Burnet at Harrisburg, April 9, 1836, for the use of the Texas navy If any provision for a flag was devised by that convention [at Washington-on-the-Brazos], it is not generally known”) (“M. Looscan” is Adele Looscan; “M.” comes from “Mrs. Michael Looscan.”).

One source recognizes the “Zavala flag” as the official flag of the revolutionary government without mentioning *The Romantic Flags of Texas*. JOHN E. CONNER ET AL., THE FLAGS OF TEXAS 214–16. (1964). Like Cox, the authors of *The Flags of Texas* misunderstand the convention’s action in *accepting*, as opposed to *adopting*, a design for the flag. The convention, of course, could accept a report without enacting the report as law, and nowhere does the record show the convention enacted the “Zavala flag” as an official flag. One source of *The Flags of Texas*’s information, an April 26, 1931, *Dallas Morning News* article, is based on patently erroneous information from Zavala’s granddaughter, Adina de Zavala. Theresa M. Hunter, *Romantic Flags of the Texas Revolution*, DALLAS MORNING NEWS, Apr. 26, 1931, at feature sec. 6. Hunter’s article claims that Zavala designed the Lone Star Flag! *The Flags of Texas* does state, however, that the final design of the “Zavala flag” is uncertain and that the flag was never made. CONNER ET AL., *supra*, at 216, 232.

¹⁸ The author has attempted without success to discuss the authenticity of the “Zavala flag” with the Gallery of the Republic. See Letter from Charles Spain to Ted C. Pearsall, Director, Gallery of the Republic (Dec. 9, 1988) (on file with *South Texas Law Review*).

¹⁹ State Bar of Texas, *Convention Highlights*, 54 TEX. B.J. 808, 811 (1991) (photograph of Texas Bar Historical Foundation president Bill Daniel and Gallery of the Republic director Ted C. Pearsall with so-called “Zavala

flag”); State Bar of Texas, 1991 *Report of Committee on History and Traditions of the Bar*, 54 TEX. B.J. 683, 684 (1991); Angela Dorau & Cynthia Freeman, *A New Beginning for Texas’ Legal Past*, 54 TEX. B.J. 316 (1991); State Bar of Texas, 1990 *Report of Committee on History and Traditions of the Bar*, 53 TEX. B.J. 786 (1990).

The author contacted the Texas Bar Historical Foundation regarding the “Zavala flag” and was told that the Foundation relies solely on the Gallery of the Republic’s claim that the flag is authentic. Letter from Charles Spain to Bill Daniel, President, Texas Bar Historical Foundation (July 23, 1991); Letter from Bill Daniel to Charles Spain (Aug. 23, 1991) (both on file with *South Texas Law Review*).

²⁰ Act of Nov. 25, 1836, 1st Cong., R.S., § 2, 1836–1837 Repub. Tex. Laws 72, 72, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1132, 1132 (Austin, Gammel Book Co. 1898), *amended by* Act of Jan. 21, 1839, 3d Cong., R.S., § 3, 1838–1839 Repub. Tex. Laws 87, 88, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), *repealed by* TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

²¹ REPUB. TEX. CONST. of 1836, sched. § 1. The Congress later repealed all laws prior to September 1, 1836, except for the laws of the consultation and provisional government, and various land laws. Act approved Jan. 20, 1840, 4th Cong., R.S., § 2, 1840 Repub. Tex. Laws 3, 4, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, 106 at 177, 178 (Austin, Gammel Book Co. 1898), *repealed by* Revised Statutes, 16th Leg., R.S., § 4, 1879 Tex. Rev. Civ. Stat. 718. This law repealed all the Mexican laws except certain land laws and became effective on March 16, 1840, forty days after the adjournment of the Texas Congress. See Act approved Jan. 16, 1840, 4th Cong., R.S., § 1, 1840 Repub. Tex. Laws 6, 6–7, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 180, 180–81 (Austin, Gammel Book Co. 1898), *amended by* Act approved Dec. 1, 1849, 3d Leg., R.S., ch. 5, 1848–1849 Tex. Gen. Laws 5, *reprinted in* 3 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 443 (Austin, Gammel Book Co. 1898) (laws effective sixty days after adjournment of legislature), *repealed by* TEX. CONST. art. XVI, § 48 (existing laws repugnant to 1876 Texas Constitution not continued in force); see TEX. CONST. art. III, § 39 (laws effective ninety days after adjournment of legislature).

²² Act of Nov. 25, § 2, 1836–1837 Repub. Tex. Laws at 72, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1132 (Austin, Gammel Book Co. 1898).

The legislative history of the Act is as follows: S.J. OF REPUB. OF TEX., 1st Cong., R.S. 53 (Nov. 14, 1836, act to establish coat of arms introduced by Sen. William H. Wharton, read first time), 55 (Nov. 16, 1836, act to establish coat of arms taken up, referred to select committee of four on motion of Sen. Stephen H. Everitt), 61 (Nov. 24, 1836, message received from house and act laid on table), 62 (Nov. 25, 1836, read second time, rules suspended, read third time, and passed); H.J. OF REPUB. OF TEX., 1st Cong., R.S. 187–88 (Nov. 24, 1836, act establishing national seal and standard of Republic of Texas taken up and read first time on motion of Rep. Jesse Billingsley, read second time, words “of Texas” stricken from title on motion of Rep. Edward Thomas Branch, rules suspended on motion of Rep. Joseph Rowe, read third time, passed, and retitled “An Act to Establish a National Seal and Standard of the Republic of Texas” on motion of Rep. Rowe).

Unfortunately there is no material in the bill file (number 522) on this Act at the State Library and Archives Commission. The author has been unsuccessful in his attempts to locate Senator Wharton’s original bill, subsequent amendments, and the select committee’s report, if any.

²³ 1 THE HANDBOOK OF TEXAS, *supra* note 4, at 252, 606.

²⁴ REPUBLIC OF TEX., EXECUTIVE RECORD BOOK 21 (Mar. 1836 to Oct. 1836 *ad interim* government) (original in custody of State Library and Archives Commission), reprinted in 1 THE TEXAS SENATE: REPUBLIC TO CIVIL WAR, 1836–1861, at 12–13 (Patsy M. Spaw ed., 1990) (hereinafter EXECUTIVE RECORD BOOK).

²⁵ Act of Jan. 21, 1839, 3d Cong., R.S., § 5, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

²⁶ Act of Nov. 25, 1836, 1st Cong., R.S., § 5, 1836–1837 Repub. Tex. Laws 72, 72, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1132, 1132 (Austin, Gammel Book Co. 1898), implicitly repealed by Act of Jan. 21, 1839, 3d Cong., R.S., §§ 3–4, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898). Despite a search of the *Executive Record Book* and the bill file, the author was unable to find President Burnet's April 9, 1836, order adopting the national flag for the naval service. See EXECUTIVE RECORD BOOK, *supra* note 24; legislative history, *supra* note 22.

Nineteenth-century British flag books and charts incorrectly depicted the 1836 naval ensign as having a blue, vertical stripe similar to the current state flag, rather than the blue union authorized by the Texas President and Congress. J.S. HOBBS, THREE HUNDRED AND SIX ILLUSTRATIONS OF THE MARITIME FLAGS OF ALL NATIONS; ARRANGED GEOGRAPHICALLY, WITH ENLARGED STANDARDS 4 (London, C. Wilson 1848); THE MARITIME FLAGS OF ALL NATIONS (London, Richard H. Laurie 1842), reprinted in TIMOTHY WILSON, FLAGS AT SEA 70–71 (1986). Two sources incorrectly state that the 1836 naval ensign was originally designed in 1819. WILLIAM CRAMPTON, FLAGS OF THE WORLD 132 (1990); WILLIAM CRAMPTON, THE COMPLETE GUIDE TO FLAGS 33 (1989).

²⁷ Act of Jan. 21, 1839, 3d Cong., R.S., § 3, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by Revised Statutes, 16th Leg., R.S., § 4, 1879 Tex. Rev. Civ. Stat. 718. Accompanying the original Act in the custody of the State Library and Archives Commission is a drawing by Peter Krag of the national flag and seal. See Kemp, *supra* note 17, at page following 488 (color reproduction of art, although in original, President Lamar's approval and signature are at top and upside down).

²⁸ Act of Jan. 21, 1839, 3d Cong., R.S., § 5, 1838–1839 Repub. Tex. Laws at 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

²⁹ Act of Jan. 21, 1839, 3d Cong., R.S., § 4, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

³⁰ *Id.*; see *infra* notes 50–53 and accompanying text (information on pilot, revenue service, and coasting trader flags).

³¹ REPUB. TEX. SENATE COMM. REPORT, 3d Cong., R.S. (Jan. 4, 1839) (available in bill files of Third Congress in custody of State Library and Archives Commission). The text of the report reprinted in Looscan, *supra* note 17, at 697–98, is not entirely faithful to the original.

³² TEX. CONST. of 1845, art. XIII, § 3.

³³ Act approved Mar. 1, 1845, § 2, 5 Stat. 797, 798.

³⁴ Act approved Apr. 19, 1933, 43d Leg., R.S., ch. 87, §§ 2, 4, 5, 1933 Tex. Gen. Laws 186, 186–87 (current version at TEX. REV. CIV. STAT. ANN. art.

6142a, §§ 2, 4, 5 (West 1970)). Mamie Wynne Cox claims the bill was drafted by Wylie A. Parker, principal of Forest Avenue High School on Dallas, and on this matter she is correct. Cox, *supra* note 10, at 322; ROBERT MABERRY, JR., TEXAS FLAGS 114 (2001).

³⁵ Act approved Apr. 19, 1933, 43d Leg., R.S., ch. 87, § 1, 1933 Tex. Gen. Laws 186, 186 (current version at TEX. REV. CIV. STAT. ANN. art. 6142a, § 1 (West 1970)).

³⁶ Revised Statutes, 16th Leg., R.S., § 4, 1879 Tex. Rev. Civ. Stat. 718. Similar provisions existed in the 1895, 1911, and 1925 Revised Civil Statutes. Revised Statutes, 39th Leg., R.S., § 2, 1925 Tex. Rev. Civ. Stat. 2419; Revised Statutes, 32d Leg., R.S., § 4, 1911 Tex. Rev. Civ. Stat. 1719; Revised Statutes, 24th Leg., R.S., § 4, 1895 Tex. Rev. Civ. Stat. 1103.

³⁷ The Texas Constitution provides that all laws take effect ninety days after adjournment of the legislative session. TEX. CONST. art. III, § 39.

³⁸ TEX. REV. CIV. STAT. ANN. art. 6142a, §§ 4–5 (West 1970). For a definition of “azure,” see *infra* note 95.

^{38a} Steven Long, *Highflying Faux Pas: Display Flag Incorrectly and You May Cause a Flap*, HOUSTON CHRONICLE, Apr. 21, 1992, at D1.

³⁹ TEX. REV. CIV. STAT. ANN. art. 6142a, § 2 (West 1970).

⁴⁰ Act approved Apr. 19, 1933, 43d Leg., R.S., ch. 87, § 3, 1933 Tex. Gen. Laws 186, 187, amended by Act of Mar. 25, 1965, 59th Leg., R.S., ch. 55, [1] 1965 Tex. Gen. Laws 138, amended by Act of May 29, 1989, 71st Leg., R.S., ch. 418, 1989 Tex. Gen. Laws 1566 (current version at TEX. REV. CIV. STAT. ANN. art. 6142a, § 3 (West Supp. 1992)).

⁴¹ Act of Mar. 25, 1965, 59th Leg., R.S., ch. 55, [1] 1965 Tex. Gen. Laws 138, amended by Act of May 29, 1989, 71st Leg., R.S., ch. 418, 1989 Tex. Gen. Laws 1566 (current version at TEX. REV. CIV. STAT. ANN. art. 6142a, § 3 (West Supp. 1992)); see generally *Texas Flag Named in State's Pledge Found Nonexistent*, DALLAS MORNING NEWS, Apr. 25, 1951, § I, at 4; Retta Baker Ferrell, *Historical Error Has Chance of Correction*, AUSTIN STATESMAN, Jan. 20, 1965, at A12; 32 Years Late: *Texas Flag Pledge Put Aright*, HOUSTON POST, Feb. 11, 1965, § 4, at 7.

⁴² Tex. H.R. Con. Res. 9, 71st Leg., R.S., 1989 Tex. Gen. Laws 6268. This erroneous information apparently came from Charles Gilbert's *A Concise History of Early Texas 1519 to 1861 and Flags of Texas*. GILBERT, A CONCISE HISTORY OF EARLY TEXAS, *supra* note 17, at 69; GILBERT, FLAGS OF TEXAS, *supra* note 17, at 80.

⁴³ See *supra* text accompanying notes 4–21.

⁴⁴ The legislative history of the Act of January 21, 1839, is as follows: S.J. OF REPUB. OF TEX., 3d Cong., R.S. 76 (Dec. 28, 1838, introduced by Sen. William H. Wharton and read first time), 82 (Jan. 4, 1839, substitute reported by Sen. Oliver Jones, chairman of committee to which act was referred), 87 (Jan. 7, 1839, read second time, word “standard” stricken on motion of Sen. Jones, rules suspended on motion of Sen. Stephen H. Everitt, read third time, and passed), 97 (Jan. 11, 1839, substitute presented by Sen. Jones and laid on table for one day), 106 (Jan. 14, 1839, amended substitute read third time and passed); H.J. OF REPUB. OF TEX., 3d Cong., R.S. 300 (Jan. 7, 1839, house informed of senate passage), 305 (Jan. 8, 1839, read first and second times), 326 (Jan. 10, 1839, read third time and passed), 328 (Jan. 11, 1839, vote reconsidered on motion of Rep. Caldwell and laid on table), 346 (Jan. 14, 1839, informing house of senate passage), 356 (Jan. 16, 1839, senate amendment read first time), 375 (Jan. 18, 1839, read second time), 388 (Jan. 21, 1839, read third time and passed), 404 (Jan. 23, 1839, joint committee on enrolled bills reported that bill was enrolled and presented to president for his signature and adoption).

Senator Wharton's original bill is as follows:

AN ACT

Amending the Act entitled "An Act adopting a National Seal and *Standard Flag for the Republic of Texas*" approved on the 10th December 1836.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled.* That from and after the passage of this Act, the National Great Seal of this Republic shall consist of a Single Star of five points, with an olive and live oak branches encircled and with the letters "Republic of Texas."

SECTION 2. *Be it further enacted &c:* That the National *Standard* Flag of Texas in future shall consist of a blue perpendicular stripe of the width of one third of the whole length of the flag, with a white star of five points in the center thereof, and of two horizontal stripes of equal breadth, the upper [sic] stripe white, and the lower red, of the length [sic] of two thirds of the whole length [sic] of the flag; any thing in the act to which this is an amendment [sic], to the contrary notwithstanding.

Repub. of Tex. S.B., 3d Cong., R.S. (1838) (available in bill files of Third Congress in custody of State Library and Archives Commission).

^{44a} The resolution is as follows:

WHEREAS, House Concurrent Resolution 9 of the 71st Legislature, Regular Session, recognized Dr. Charles B. Stewart as the designer of the Lone Star Flag; and

WHEREAS, That same concurrent resolution acknowledged Lorenzo de Zavala, William B. Scates, Thomas Barnett, Sterling C. Robertson, Thomas J. Gazley, and Richard Ellis as the members of the committee that approved the Lone Star Flag design; and

WHEREAS, Subsequent historical research has revealed that the actual designer of the Lone Star Flag is unknown; and

WHEREAS, That same research has revealed that the six listed committee members were appointed in March 1836 by the General Convention at Washington-on-the-Brazos to design a national flag for the newly independent Republic of Texas, but that the General Convention apparently never adopted a national flag; and

WHEREAS, Senator William H. Wharton, who had originated Texas' first national flag, known as David G. Burnet's Flag, introduced a bill in the Texas Senate on December 28, 1838, containing the design for the Lone Star Flag; and

WHEREAS, Senator Wharton's bill was referred to a committee consisting of Senator Oliver Jones and two other senators whose identities are unknown, and that committee reported a substitute bill containing Senator Wharton's design; the legislation was passed by the Congress of the Republic of Texas on January 21, 1839, and approved by President Mirabeau B. Lamar on January 25, 1839; and

WHEREAS, The design for the Lone Star Flag enacted in 1839 remains unchanged to this day; and

WHEREAS, The legislature desires to honor the Texans instrumental in adopting the Lone Star Flag and to correct the unintentional historical errors in House Concurrent Resolution 9 of the 71st Legislature, Regular Session; now, therefore, be it

RESOLVED, That the 72nd Legislature of the State of Texas, Fourth Called Session, recognize Senator William H. Wharton and Senator Oliver Jones for their efforts in adopting this abiding symbol of our state's unity.

Tex. H.R. Con. Res. 9, 72d Leg., 4th C.S., 1992 Tex. Gen. Laws 24.

⁴⁵ Cox, *supra* note 10, at 64–66; see also SMITH, *supra* note 17, at 207; VEAZEY & POTTER, *supra* note 17, at 15.

⁴⁶ See REPUB. TEX. SENATE COMM. REPORT, *supra* note 31 and accompanying text.

⁴⁷ Cox, *supra* note 10, at frontispiece. The drawing was donated to the Texas State Library and Archives Commission by Stewart's descendants in 1966. See Archives and Information Services Division, Texas State Library and Archives Commission.

⁴⁸ See *supra* note 27. Michael R. Green, a reference archivist at the State Library and Archives Commission, is openly skeptical of the validity of the Stewart family claims.

^{48a} It is worth noting that the Stewart myth persists despite the fact that serious flag scholars from Adele Looscan and L.W. Kemp to Whitney Smith and Robert Maberry do not recognize Stewart as the designer of the Lone Star Flag. See Kemp, *supra* note 17; Looscan, *supra* note 17, MABERRY, *supra* note 34, at 171 at n.2 (2001); Smith, *supra* note 17. The Texas State Historical Association's *Texas Almanac* states that "no one knows who actually designed the flag." TEXAS ALMANAC 2016–2017, at 21 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2016). The author has also written on the subject, and the issue has been addressed by the 2013 Texas Vexillological Commission. Charles A. Spain, Jr., *Who Designed the Lone Star Flag?*, 18 TEX. HERITAGE 16 (2000); TEX. VEXILLOLOGICAL COMM'N, REPORT ON THE DESIGN OF THE LONE STAR FLAG (adopted and filed May 4, 2013), <https://perma.cc/T5ZR-QAA7>, see *infra* FLAG RES. Q., Aug. 2016, at page 28.

⁴⁹ Ordinance passed Nov. 29, 1835, § 2, 1835–1836 Tex. Provisional Gov't Ordinances & Decrees 38, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 942 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force); see U.S. CONST. art. I, § 8, cl. 11 (empowering Congress to grant letters of marque and reprisal), § 10, cl. 1 (prohibiting states from granting letters of marque and reprisal). The numbers "1824" in the flag refer to the Mexican Constitution of October 4, 1824, at which time Texas was part of the State of Coahuila and Texas.

The provisional government was authorized to pass emergency laws as required before independence by virtue of the Plan and Powers of the Provisional Government of Texas. TEX. PROVISIONAL GOV'T PLAN & POWERS art. III (1835). This ordinance continued in effect after Texas declared independence. See *supra* note 21 and accompanying text.

⁵⁰ Act of Jan. 21, 1839, § 4, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force). Accompanying the original Act in the custody of the State Library and Archives Commission is Peter Krag's drawing of the three flags.

⁵¹ CANNON, *supra* note 17, at 44; SMITH, *supra* note 17, at 207, 212–13.

⁵² Act approved Jan. 4, 1841, 5th Cong., R.S., § 1, 1840–1841 Repub. Tex. Laws 15, 15, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 479, 479 (Austin; Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

⁵³ Act approved Jan. 4, 1841, 5th Cong., R.S., 1840–1841 Repub. Tex. Laws 15, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 479 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force).

The term "Texian" refers to the Mexican and Republican periods of Texas history. 2 THE HANDBOOK OF TEXAS 768 (Walter P. Webb ed., 1952).

⁵⁴ Tex. S. Con. Res. 48, 69th Leg., R.S., 1985 Tex. Gen. Laws 3400 (effective June 8, 1985); Tex. H.R. Con. Res. 52, 69th Leg., R.S., 1985 Tex. Gen. Laws 3501 (effective Feb. 28, 1985).

⁵⁵ Tex. S. Con. Res. 48, 69th Leg., R.S., 1985 Tex. Gen. Laws 3400. The house of representatives concurrent resolution is virtually identical. For a photograph of the Falls County flag, see TEX. NAT'L DISPATCH, Aug. 1984, at 3 (official newspaper of Texas 1986 Sesquicentennial Commission).

⁵⁶ See generally Ralph H. Brock, *A Lawyer's Look at the Boundaries of Texas Part I: Origins, and the Red River Controversies*, 50 TEX. B.J. 1098, 1098 (1987) (Greer County lost to Oklahoma after dispute over which fork of Red River, Prairie Dog Town Fork or North Fork, constituted northern boundary of Texas); Ralph H. Brock, *A Lawyer's Look at the Boundaries of Texas Part III: The Western Boundaries*, 51 TEX. B.J. 136, 137 (1988) (Santa Fe and Worth Counties ceded to United States as part of Compromise of 1850).

⁵⁷ Tex. H.R. Con. Res. 6, 34th Leg., R.S. 1915 Tex. Gen. Laws 276.

⁵⁸ Act approved Apr. 19, 1933, 43d Leg., R.S., ch. 87, § 6, 1933 Tex. Gen. Laws 186, 189, amended by Act of May 12, 1977, 65th Leg., R.S., ch. 272, 1977 Tex. Gen. Laws 728 (current version at TEX. REV. CIV. STAT. ANN. art. 6142a, § 6 (West Supp. 1992)).

⁵⁹ NATIONAL FLAG CONFERENCE, THE FLAG CODE (1923), reprinted in SCOT M. GUENTER, THE AMERICAN FLAG, 1777–1924, at 207–12 (1990); see FURLONG & McCANDLESS, *supra* note 17, at 215; SMITH, *supra* note 17, at 80. The 1923–1924 flag code was the basis for the United States flag code. FURLONG & McCANDLESS, *supra* note 17, at 216; see Act approved June 22, 1942, ch. 435, 56 Stat. 377, amended by Act approved Dec. 22, 1942, ch. 806, 56 Stat. 1074, amended by Act approved July 9, 1953, ch. 183, 67 Stat. 142, amended by Act approved July 7, 1976, Pub. L. No. 94-344, 90 Stat. 810 (codified at 36 U.S.C. §§ 173–178 (1988)).

⁶⁰ Act of May 12, 1977, 65th Leg., R.S., ch. 272, 1977 Tex. Gen. Laws 728 (current version at TEX. REV. CIV. STAT. ANN. art. 6142a, § 6 (West Supp. 1992)).

⁶¹ Texas Education Code, 61st Leg., R.S., ch. 889, sec. 1, § 2.02, 1969 Tex. Gen. Laws 2735, 2737 (current version at TEX. EDUC. CODE ANN. § 2.02 (West 1991)) (flying flag at schools); Tex. S. Con. Res. 8, 42d Leg., 3d C.S., 1932 Tex. Gen. & Spec. Laws 131 (current version at TEX. REV. CIV. STAT. ANN. art. 6144a (West 1970)) (flying flag during Texas Week). The 1932 concurrent resolution should not have been placed in *Texas Revised Civil Statutes Annotated*. See *infra* text accompanying notes 113–114.

⁶² Tex. Dep't of Educ., 9 Tex. Reg. 3321, 3337 (1984) (effective June 21, 1984), amended by Tex. Dep't of Educ., 10 Tex. Reg. 276, 278, adopted 10 Tex. Reg. 929 (1985) (effective Apr. 1, 1985) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.29(c)(3)(C) (1988)), repealed by Tex. Dep't of Educ., 16 Tex. Reg. 5957, adopted 16 Tex. Reg. 7011 (1991) (effective Dec. 23, 1991) and repropoed by Tex. Dep't of Educ., 16 Tex. Reg. 5957, 6020, adopted 16 Tex. Reg. 7089 (1991) (effective Dec. 23, 1991) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.32(c)(3)(C) (1992)), amended by Tex. Dep't of Educ., 17 Tex. Reg. 5197, 5199 (1992) (effective Aug. 6, 1992) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.32(c)(3)(C), (i) (4)(D) (Supp. 1993) (§ 75.32(i)(4)(D) to supersede § 75.32(c)(3)(C) effective Sept. 1996) (social studies curriculum for second grade).

⁶³ Act of Apr. 6, 1955, 54th Leg., R.S., ch. 77, 1955 Tex. Gen. Laws 361 (current version at TEX. REV. CIV. STAT. ANN. art. 6142b (West 1970)). Senator Dorsey B. Hardeman introduced Senate Bills 244, 245, and 246 after a United Nations flag was flown at The University of Texas in place of the Texas flag.

The legislative history of the 1955 Act is as follows: S.J. OF REPUB. OF TEX., 54th Leg., R.S. 218 (Feb. 22, 1955, “An Act to regulate the display of the Texas flag so as to forbid the use of any flag other than that of the United

States in a position superior to that of the Texas flag at any place within the boundaries of the State of Texas; and declaring an emergency.” introduced by Sen. Hardeman, read first time, and referred to Committee on State Affairs), 228 (Feb. 24, 1955, reported favorably with amendment), 239 (Feb. 28, 1955, rules suspended (record vote), read second time, committee amendment adopted to add “; provided, however, that the Texas flag alone shall be displayed on the Texas capitol, other state owned buildings and state parks.”, and passed to engrossment), 240 (Feb. 28, 1955, rules suspended (record vote), read third time, and passed), 432 (Mar. 24, 1955, senate informed of house passage with amendments), 581 (Apr. 6, 1955, called from table for consideration of house amendments, and senate concurred), 636 (Apr. 11, 1955, enrolled bill signed in senate); H.J. OF TEX., 54th Leg., R.S. 560 (Mar. 1, 1955, informing the house of senate passage), 575 (Mar. 2, 1955, senate bill laid before house, read first time, and referred to Committee on State Affairs), 1004 (Mar. 22, 1955, reported favorably from committee), 1048 (Mar. 24, 1955, read second time, amendment offered to “Amend Section 1 of Senate Bill No. 245 by striking the semicolon in Line 36 and all words following thereafter in Section 1 and substituting in lieu thereof a period.”, and amendment adopted), 1049 (Mar. 24, 1955, rules suspended (record vote), read third time, caption amended to read “An Act to regulate the display of the Texas flag so as to forbid the use of any flag other than that of the United States in a position superior to that of the Texas flag at any place within the boundaries of the State of Texas; and declaring an emergency.”, and passed), 1454 (Apr. 11, 1955, house informed of senate concurrence with house amendment), 1457 (Apr. 11, 1955, enrolled bill signed in house).

Senator Hardeman filed two other bills relating to flags, Senate Bill 244 “An Act to prohibit the display of flags of international organizations, other nations or states in equal or superior prominence or honor to the flag of the United States or of the State of Texas; and declaring an emergency.” and Senate Bill 246, “An Act to regulate the display of the United States and Texas flags within the boundaries of Texas; and declaring an emergency.” Both bills have the same legislative history: S.J. OF TEX., 54th Leg., R.S. 218 (Feb. 22, 1955, introduced by Sen. Hardeman, read first time, and referred to Committee on State Affairs), 228 (Feb. 24, 1955, reported favorably), 711 (Apr. 14, 1955, laid on the table subject to call). Obviously there is an article waiting to be written about Senator Hardeman and the 1955 Act.

⁶⁴ Act of Apr. 6, 1955, 54th Leg., R.S., ch. 77, 1955 Tex. Gen. Laws 361 (current version at Tex. Rev. Civ. Stat. Ann. art. 6142b (West 1970)).

⁶⁵ The Supremacy Clause of the United States Constitution mandates that federal law supersedes Texas law. U.S. CONST. art. VI, cl. 2. A custom of the federal government not embodied in a law, regulation, or executive order would not supersede Texas law, but it seems unlikely that the federal practice would be challenged.

⁶⁶ Act approved Mar. 6, 1913, 33d Leg., R.S., ch. 14, 1913 Tex. Gen. Laws 28, repealed by Act approved Aug. 19, 1913, 33d Leg., 1st C.S., ch. 19, § 2a, 1913 Tex. Gen. & Spec. Laws 28, 28.

⁶⁷ Act approved Mar. 6, 1913, 33d Leg., R.S., ch. 14, § 1, 1913 Tex. Gen. Laws 28, 28, repealed by Act approved Aug. 19, 1913, 33d Leg., 1st C.S., ch. 19, § 2a, 1913 Tex. Gen. & Spec. Laws 28, 28.

⁶⁸ *Id.*

⁶⁹ Act approved Mar. 6, 1913, 33d Leg., R.S., ch. 14, § 2, 1913 Tex. Gen. Laws 28, 28, repealed by Act approved Aug. 19, 1913, 33d Leg., 1st C.S., ch. 19, § 2a, 1913 Tex. Gen. & Spec. Laws 28, 28.

⁷⁰ *Id.*

⁷¹ Act approved Aug. 19, 1913, 33d Leg., 1st C.S., ch. 19, 1913 Tex. Gen. & Spec. Laws 28, repealed and codified by Penal Code and Code of Criminal Procedure, 39th Leg., R.S., § 1, arts. 150, 151, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 31 (codification), 181 (repealer), repealed and recodified by Business &

Commerce Code, 60th Leg., R.S., ch. 785, sec. 1, § 17.07, sec. 3(a), 1967 Tex. Gen. Laws 2343, 2583 (codification), 2619 (repealer) (current version at TEX. BUS. & COM. CODE ANN. § 17.07 (West 1987)). The August 19, 1913 Act did not prohibit the use of the Texas flag in advertising until July 1, 1914, yet it repealed the March 1913 Act on November 17, 1913. The August 1913 Act, therefore, had the doubtless unintended effect of allowing persons to use the flag in advertising from November 17, 1913, to June 30, 1914.

There is one attorney general opinion that interprets former Penal Code article 150. Op. Tex. Att'y Gen. No. O-3597 (1941) (private detective using state seal on business cards and car doors does not violate article 150 as law only prohibits use of Texas flag for advertising). The opinion takes a questionable view of what constitutes advertising.

⁷² Act approved Aug. 19, 1913, § 1a, 1913 Tex. Gen. & Spec. Laws at 28.

⁷³ TEX. BUS. & COM. CODE ANN. § 17.07 (West 1987). The State Bar Committee on Revision of the Penal Code commented that this provision is rarely enforced. STATE BAR COMM. ON REVISION OF THE PENAL CODE, TEXAS PENAL CODE: A PROPOSED REVISION 303 (final draft Oct. 1970).

The Texas Department of Agriculture comes close to violating at least the spirit of this law with its "Taste of Texas emblem" (figure 17), defined as "[a] flag-shaped emblem bearing the words 'Taste of Texas' so colored as to closely model the flag of the state of Texas." Tex. Dep't of Agric., 9 Tex. Reg. 536, 562 (emerg. rule), proposed 9 Tex. Reg. 563, adopted 9 Tex. Reg. 1881 (1984) (effective Apr. 16, 1984), amended by Tex. Dep't of Agric., 14 Tex. Reg. 5301, adopted 14 Tex. Reg. 6251 (1989) (effective Dec. 11, 1989), amended by Tex. Dep't of Agric., 18 Tex. Reg. 277, adopted 18 Tex. Reg. 2623 (1993) (effective May 6, 1993) (codified at Tex. Dep't of Agric., 4 TEX. ADMIN. CODE § 17.51 (1994)). This concern was raised when the rule was proposed but was eventually rejected. Tex. Dep't of Agric., 9 Tex. Reg. 1881 (1984).

Figure 17. TASTE OF TEXAS EMBLEM. 16 April 1984 to present, official design. Source: 18 Tex. Reg. 280.



In June 1992 the Texas State Lottery also ran afoul of the spirit of the law by printing the flag on the scratch-off portion of "instant winner" lottery tickets. See Todd J. Gillman, *Lottery Scratches Flag Design*, DALLAS MORNING NEWS, June 26, 1992, at A1; Dennis Baggett, *Mind Your Whites and Blues: Flag-wavers Get Red-Faced Only When Etiquette Falters*, DALLAS MORNING NEWS, July 5, 1992, at A44.

⁷⁴ Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.18(b)(7), .28(g) (1988) (effective Jan. 1, 1976) (prohibiting use of United States and Texas flags on distilled-spirits labels and advertisements). *But cf.* Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.52, .55(a) (1988) (effective Jan. 1, 1976) (prohibiting use of United States flag on wine labels and advertisements); Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.82(d), .90(g) (1988) (effective Jan. 1, 1976) (prohibiting misleading use of flags on malt-beverage labels and advertisements).

⁷⁵ Tex. Bd. of Private Invest. & Private Sec. Agencies, 7 Tex. Reg. 1511, 1512 (1982) (effective Apr. 26, 1982) (codified at Tex. Bd. of Private Invest. & Private Sec. Agencies, 22 TEX. ADMIN. CODE § 423.1(h) (1982)), repealed by Tex. Bd. of Private Invest. & Private Sec. Agencies, 9 Tex. Reg. 1471 (1984) (effective Mar. 26, 1984); Tex. Bd. of Private Invest. & Private Sec. Agencies, 8 Tex. Reg. 5096, 5097, adopted 9 Tex. Reg. 1471 (1984) (effective Mar. 26, 1984) (codified at Tex. Bd. of Private Invest. & Private Sec. Agencies, 22 TEX. ADMIN. CODE § 423.1(e) (Supp. 1991–1992)) (prohibiting use of state flag by private investigators and private security officers except for identification and license items prepared or issued by board).

⁷⁶ Act approved Mar. 29, 1917, 35th Leg., R.S., ch. 123, 1917 Tex. Gen. Laws 320, amended by Act approved Oct. 16, 1917, 35th Leg., 3d C.S., ch.

22, 1917 Tex. Gen. Laws 81, *civil provisions repealed and codified by Revised Statutes*, 39th Leg., R.S., § 1, arts. 6139–6142, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1747–48 (codification), 2419 (repealer) (current version of civil provisions at TEX. REV. CIV. STAT. ANN. arts. 6139–6142 (West 1970)), *criminal provisions repealed and codified by Penal Code and Code of Criminal Procedure*, 39th Leg., R.S., § 1, arts. 148, 149, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 30–31 (codification), 181 (repealer), *criminal provisions repealed by Penal Code*, 63d Leg., R.S., ch. 399, § 3(a), 1973 Tex. Gen. Laws 883, 991.

There is one attorney general opinion that interprets former Penal Code article 148. Op. Tex. Att'y Gen. No. O-2520 (1940) (picture showing Betsy Ross making first American flag and displaying words "Bottle of Pearl [Beer] Please, San Antonio Brewing Association—Established 1886" violates article 148).

⁷⁷ Act approved Mar. 29, 1917, § 1, 1917 Tex. Gen. Laws at 320. Note that the Act allowed a citizen to sue for civil damages, in addition to any criminal prosecution by the state. This Act is almost identical to a law passed by Congress that was applicable only to the District of Columbia. Act approved Feb. 8, 1917, ch. 34, 39 Stat. 900, *repealed and codified by Act approved July 30, 1947*, ch. 389, sec. 1, § 3, sec. 2, 61 Stat. 641, 642 (codification), 645 (repealer), *amended by Act approved July 5, 1968*, Pub. L. No. 90-381, sec. 3, 82 Stat. 291, 292 (codified at 4 U.S.C. § 3 (1988)).

⁷⁸ Act approved Oct. 16, 1917, 35th Leg., 3d C.S., ch. 22, § 1, 1917 Tex. Gen. Laws 81, 82, *civil provisions repealed and codified by Revised Civil Statutes*, 39th Leg., R.S., § 1, art. 6142, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1748 (codification), 2419 (repealer) (current version of civil provisions at TEX. REV. CIV. STAT. ANN. art. 6142 (West 1970)), *criminal provisions repealed and codified by Penal Code and Code of Criminal Procedure*, 39th Leg., R.S., § 1, art. 149, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 31 (codification), 181 (repealer), *criminal provisions repealed by Penal Code*, 63d Leg., R.S., ch. 399, § 3(a), 1973 Tex. Gen. Laws 883, 991.

Section 2 of the October 1917 Act stated that "the construction of that [March 1917] law has been more strict than was contemplated when passed." Act approved Oct. 16, 1917, 35th Leg., 3d C.S., ch. 22, § 2, 1917 Tex. Gen. Laws 81, 83, *civil provisions repealed by Revised Civil Statutes*, 39th Leg., R.S., § 2, 1925 Tex. Rev. Civ. Stat. 2, 2419, *criminal provisions repealed by Penal Code and Code of Criminal Procedure*, 39th Leg., R.S., § 3, art. 1, 1925 Tex. Crim. Stat. 2, 181. One suspects that the original Act was met by howls of protest.

⁷⁹ TEX. REV. CIV. STAT. ANN. arts. 6139–6142 (West 1970); see Seth S. Searcy III & James R. Patterson, *Practice Commentary*, TEX. PENAL CODE ANN. § 42.09 (West 1989). The proposed 1970 revision of the Penal Code placed articles 6139 to 6142 of the Revised Statutes on the list of statutes to be repealed, but the 1973 Penal Code failed to repeal them. Compare STATE BAR COMM. ON REVISION OF THE PENAL CODE, TEXAS PENAL CODE: A PROPOSED REVISION (preliminary final draft Sept. 1970) with STATE BAR COMM. ON REVISION OF THE PENAL CODE, *supra* note 73; Searcy & Patterson, *supra*.

⁸⁰ Act of Mar. 11, 1918, 35th Leg., 4th C.S., ch. 8, 1918 Tex. Gen. & Spec. Laws 12, *repealed and codified by Penal Code and Code of Criminal Procedure*, 39th Leg., R.S., § 1, arts. 152–156, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 31–33 (codification), 181 (repealer), *repealed by Penal Code*, 63d Leg., R.S., ch. 399, § 3(a), 1973 Tex. Gen. Laws 883, 991. This Act was passed more than two months before a similar act was passed by Congress. See Act approved May 16, 1918, ch. 75, sec. 1, § 3, 40 Stat. 553, 553, *repealed by Act approved Mar. 3, 1921*, ch. 136, 41 Stat. 1359. The federal Act required the existence of a state of war as a prerequisite for an offense.

⁸¹ Act of Mar. 11, 1918, 35th Leg., 4th C.S., ch. 8, §§ 1–4, 1918 Tex. Gen. & Spec. Laws 12, 13–14, *repealed and codified by Penal Code and Code of Criminal Procedure*, 39th Leg., R.S., § 1, arts. 152–156, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 31–33 (codification), 181 (repealer), *repealed by Penal Code*,

63d Leg., R.S., ch. 399, § 3(a), 1973 Tex. Gen. Laws 883, 991. Note that the flag-desecration provisions of section 3 did not require the existence of a state of war as a prerequisite for an offense.

⁸² *Ex parte Meckel*, 87 Tex. Crim. 120, 220 S.W. 81 (1920); see generally Tex. CONST. art. I, § 8. The court of criminal appeals is the highest appellate court in Texas for criminal matters.

⁸³ *Meckel*, 220 S.W. at 84.

⁸⁴ *Deeds v. State*, 474 S.W.2d 718 (Tex. Crim. App. 1971) (burning American flag in public park in Dallas); see generally Penal Code and Code of Criminal Procedure, 39th Leg., R.S., § 1, art. 152, 1925 Tex. Crim. Stat. 2, 32, repealed by Penal Code, 63d Leg., R.S., ch. 399, § 3, 1973 Tex. Gen. Laws 883, 991. Other appellate decisions upholding convictions for flag desecration are *Renn v. State*, 495 S.W.2d 922 (Tex. Crim. App. 1973) (displaying American flag on which stars were replaced by peace sign), overruled on other grounds by *Burrell v. State*, 526 S.W.2d 799, 804 (Tex. Crim. App. 1975); *Van Slyke v. State*, 489 S.W.2d 590 (Tex. Crim. App. 1973) (stomping on, blowing nose on, and masturbating with American flag), appeal dismissed, 418 U.S. 907 (1974); *Holland v. State*, 489 S.W.2d 594 (Tex. Crim. App. 1973) (companion case to *Van Slyke*); *Case v. State*, 489 S.W.2d 593 (Tex. Crim. App. 1973) (companion case to *Van Slyke*); and *Delorme v. State*, 488 S.W.2d 808 (Tex. Crim. App. 1973) (wearing American flag on pants).

The court of criminal appeals in *Delorme* noted that the severity of the penalty in article 152 (2 to 25 years) was far greater than in other jurisdictions, but stated that the penalty was a matter for the legislature to consider, not the courts. *Delorme*, 488 S.W.2d at 811 n.3.

⁸⁵ Penal Code, 63d Leg., R.S., ch. 399, sec. 1, § 42.09, 1973 Tex. Gen. Laws 883, 957, amended by Act of May 29, 1989, 71st Leg., R.S., ch. 1253, § 2, 1989 Tex. Gen. Laws 5055, 5056, amended by Act of July 17, 1989, 71st Leg., 1st C.S., ch. 27, § 2, 1989 Tex. Gen. Laws 94, 94 (deleting provision relating to desecration of state or national flag), repealed by Act of Aug. 25, 1991, 72d Leg., 2d C.S., ch. 10, § 11.17, 1991 Tex. Gen. Laws 180, 207, amended by Act of May 29, 1993, 73d Leg., R.S., ch. 900, § 1.16, 1993 Tex. Gen. Laws 3586, 3704 (repealing 1991 repealer).

⁸⁶ *Id.* At the time former section 42.09 of the Penal Code was in effect, a Class A misdemeanor was punishable by a fine not to exceed \$2,000 and/or confinement in jail for a term not to exceed one year. Penal Code, 63d Leg., R.S., ch. 399, sec. 1, § 12.21, 1973 Tex. Gen. Laws 883, 907, amended by Act of May 2, 1991, 72d Leg., R.S., ch. 108, sec. 1, § 12.21, 1991 Tex. Gen. Laws 681, 681 (fine not to exceed \$3,000), repealed by Act of Aug. 25, 1991, 72d Leg., 2d C.S., ch. 10, § 11.17, 1991 Tex. Gen. Laws 180, 207 (repeal effective Sept. 1, 1994), amended by Act of May 29, 1993, 73d Leg., R.S., ch. 900, sec. 1.01, § 12.21, sec. 1.16, 1993 Tex. Gen. Laws 3586, 3602 (fine not to exceed \$4,000), 3704 (repealing 1991 repealer).

⁸⁷ *Johnson v. State*, 755 S.W.2d 92 (Tex. Crim. App. 1988), *aff'd sub nom.* *Texas v. Johnson*, 491 U.S. 397 (1989). In holding that the statute was unconstitutional, the court of criminal appeals stated that its previous holding in *Deeds v. State* was no longer good authority. *Johnson*, 755 S.W.2d at 94; *Deeds*, 474 S.W.2d at 718.

It is interesting to note that the trial-court judge who presided over the *Deeds* trial, John C. Vance, is the same judge who wrote the court-of-appeals opinion in *Johnson*. The Court of Appeals for the Fifth District of Texas (Dallas) affirmed *Johnson*'s conviction for flag desecration, but was reversed by the court of criminal appeals. *Johnson v. State*, 706 S.W.2d 120 (Tex. App.—Dallas 1986), *rev'd*, 755 S.W.2d 92 (Tex. Crim. App. 1988), *aff'd sub nom.* *Texas v. Johnson*, 491 U.S. 397 (1989). Justice Vance later became criminal district attorney of Dallas County and in that position he unsuccessfully appealed the court-of-criminal-appeals judgment in *Johnson* to the United States Supreme Court.

The legislature registered its strong opposition to the United States Supreme Court's opinion in *Johnson* by petitioning the Congress to propose an amendment to the Constitution to protect "the American flag and 50 state flags from wilful desecration." Tex. H.R. Con. Res. 18, 71st Leg., 1st C.S., 1989 Tex. Gen. Laws 154, 155.

⁸⁸ Act of July 17, 1989, 71st Leg., 1st C.S., ch. 27, § 1, 1989 Tex. Gen. Laws 94, 94, repealed by Act of Aug. 25, 1991, 72d Leg., 2d C.S., ch. 10, § 11.17, 1991 Tex. Gen. Laws 180, 207 (repeal effective Sept. 1, 1994) (current version at TEX. PENAL CODE ANN. § 42.14 (West Supp. 1992)), amended by Act of May 29, 1993, 73d Leg., R.S., ch. 900, sec. 1.01, § 42.11, sec. 1.16, 1993 Tex. Gen. Laws 3586, 3680 (renumbering section 42.14 as section 42.11), 3704 (repealing 1991 repealer).

⁸⁹ See *supra* text accompanying note 86.

⁹⁰ Act of July 17, 1989, § 1, 1989 Tex. Gen. Laws at 94. For the punishment for a Class A misdemeanor see *supra* note 86.

⁹¹ *United States v. Eichman*, 496 U.S. 310 (1990) (construing the Flag Protection Act of 1989, Pub. L. No. 101-131, 103 Stat. 777 (codified at 18 U.S.C. § 700 (1988 & Supp. I 1989))).

^{91a} *Johnson*, 491 U.S. 397 (1989); *Eichman*, 496 U.S. 310 (1990); *State v. Jimenez*, 828 S.W.2d 455 (Tex. App.—El Paso, pet. ref'd), cert. denied, 506 U.S. 917 (1992).

^{91b} *Jimenez*, 828 S.W.2d at 455.

^{91c} Act of Jan. 26, 1962, 57th Leg., 3d C.S., ch. 24, § 2, 1962 Tex. Gen. Laws 62, 63, repealed and codified by Business & Commerce Code, 60th Leg., R.S., ch. 785, sec. 1, § 16.08, sec. 4(c), 1967 Tex. Gen. Laws 2343, 2571 (codification), 2620 (repealer) (current version at TEX. BUS. & COM. CODE ANN. § 16.08(a) (West 1987)). The Texas statute is based on a similar provision in the federal trademark Act. Act approved Feb. 20, 1905, ch. 592, § 5, 33 Stat. 724, 725, amended by Act approved Mar. 2, 1907, ch. 2573, § 1, 34 Stat. 1251, 1251, amended by Act approved Feb. 18, 1911, ch. 113, 36 Stat. 918, amended by Act approved Jan. 8, 1913, ch. 7, 37 Stat. 649, amended by Act approved Mar. 19, 1920, ch. 104, § 9, 41 Stat. 533, 535, amended by Act approved June 7, 1924, ch. 341, 43 Stat. 647, repealed and codified by Trademark Act of 1946, ch. 540, §§ 2, 46(a), 60 Stat. 427, 428 (codification), 444 (repealer), amended by Act approved Oct. 9, 1962, Pub. L. 87-772, § 2, 76 Stat. 769, 769, amended by Act approved Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949, 1949, amended by Trademark Law Revision Act of 1988, Pub. L. 100-667, § 104, 102 Stat. 3935, 3938 (codified at 15 U.S.C. § 1052 (1988)). See generally *In re United States Dep't of the Interior*, 142 U.S.P.Q. 506 (BNA) (Pat. Office Trademark Trial & App. Bd. 1964) (defining what constitutes an insignia of the United States). The 1905 trademark statute was the earliest federal flag-protection law. It was enacted to prevent desecration of the flag, coat of arms, and related symbols by halting the registration of commercial trademarks that contained representations of those marks. See GUENTER, *supra* note 59 at 138–39 (1990).

^{91d} Union Convention of Paris, March 20, 1883, for the Protection of Industrial Property, Nov. 6, 1925, art. 6ter, 47 Stat. 1789, 1804, 74 L.N.T.S. 289, 304, revised by Union Convention of Paris, March 20, 1883, for the Protection of Industrial Property, June 2, 1934, art. 6ter, 53 Stat. 1748, 1758, 192 L.N.T.S. 17, 34, revised by Convention of Paris for the Protection of Industrial Property of 20th March, 1883, done Oct. 31, 1958, art. 6ter, 13 U.S.T. 1, 9, 828 U.N.T.S. 107, 128, revised by Paris Convention for the Protection of Industrial Property of March 20, 1883, done July 14, 1967, art. 6ter, 21 U.S.T. 1583, 1593 (United States did not ratify articles 1–12), 24 U.S.T. 2140 (United States ratification of articles 1–12), 828 U.N.T.S. 305, 326.

⁹² THE GENERAL CONVENTION AT WASHINGTON 70 (1838), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 890 (Austin, Gammel Book Co. 1898).

The five-pointed star was not an element in the government seal of the State of Coahuila and Texas (figure 16): “ART. 54. The seal shall contain, within the figure of an ellipses [sic], the eagle upon a nopal, crowned with the cap of liberty, with lines diverging therefrom, representing rays of light; the border of the oval bearing the following inscription: ‘Executive Department of the State of Coahuila and Texas.’” Laws and Decrees, State of Coahuila and Texas, Decree no. 19, art. 54 (1825), translated in *LAWS AND DECREES OF THE STATE OF COAHUILA AND TEXAS* 25, 32 (J.P. Kimball trans., Houston 1839), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 135, 142 (Austin, Gammel Book Co. 1898).



Figure 16. SEAL OF THE STATE OF COAHUILA AND TEXAS
Adopted 25 August 1825. Source: Herbert Gambrell & Virginia Gambrell, *A Pictorial History of Texas* 70 (1960).

⁹³ REPUB. TEX. CONST. of 1836, general provisions § 4. This language was originally proposed on March 9, 1836 to be in general provisions section 6. *THE GENERAL CONVENTION AT WASHINGTON* 39, 50 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 859, 870 (Austin, Gammel Book Co. 1898) (report of committee to draft constitution). Even though an actual seal did not exist, the 1836 Texas Constitution provided that “[t]here shall be a seal of the republic, which shall be kept by the president, and used by him officially; it shall be called the great seal of the republic of Texas.” REPUB. TEX. CONST. of 1836, art. VI, § 8. The original proposal was for placement in article III, section 11. *THE GENERAL CONVENTION AT WASHINGTON* 39, 43 (1838), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 859, 863 (Austin, Gammel Book Co. 1898).

⁹⁴ Act of Nov. 25, 1836, 1st Cong., R.S., § 1, 1836–1837 Repub. Tex. Laws 72, 72, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 1132, 1132 (Austin, Gammel Book Co. 1898), amended by Act of Jan. 21, 1839, 3d Cong., R.S., § 2, 1838–1839 Repub. Tex. Laws 87, 88, reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 87, 88 (Austin, Gammel Book Co. 1898), repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force); see also TEX. CONST. of 1845, art. V, § 14 (state seal). For the legislative history of the Act, see *supra* note 22.

⁹⁵ Act of Jan. 21, 1839, 3d Cong., R.S., §§ 1–2, 1838–1839 Repub. Tex. Laws 87, 87–88, reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 87, 87–88 (Austin, Gammel Book Co. 1898), § 1 repealed by Revised Statutes, 16th Leg., R.S., § 4, 1879 Tex. Rev. Civ. Stat. 718, § 2 repealed by TEX. CONST. of 1845, art. XIII, § 3 (existing laws repugnant to United States Constitution and 1845 Texas Constitution not continued in force); see also TEX. CONST. of 1845, art. V, § 14 (state seal). Accompanying the original Act, in the custody of the State Library and Archives Commission, is a drawing by Peter Krag of the national flag and seal. See Kemp, *supra* note 17, at page following 488 (color reproduction of art, although in the original, President Lamar’s approval and signature are at the top and upside down).

The word “azure” in heraldry simply means blue, not any particular shade of blue. See RICHARD S. PATTERSON & RICHARDSON DOUGALL, *THE EAGLE AND THE SHIELD: A HISTORY OF THE GREAT SEAL OF THE UNITED STATES* 548–50 (1976).

In describing the 1838 Act, Mamie Wynne Cox makes two erroneous statements: (1) the Texas Congress “approved” an act altering the seal on January 7, 1839 (in reality that was the date of the second and third readings of the bill in the senate) and (2) the Texas Congress changed the seal again on January 25, 1839 in a subsequent act to “A white star of five points on an azure ground encircled by an olive and live-oak branch and the letters

T-E-X-A-S between the star points; the National Great Seal should ‘Bear the Arms of the Nation declared by the first section of this Act, and the letters ‘Republic of Texas’ circular.” (in reality that was the date of President Mirabeau B. Lamar’s approval of the Act). Cox, *supra* note 10, at 300–01. *The Romantic Flags of Texas* has no bibliography, so it is anyone’s guess how Cox came to many of her assertions.

⁹⁶ TEX. CONST. of 1845, art. V, § 14. The 1845 Texas Constitution went into effect on the date of the state government’s organization, February 16, 1846. TEX. CONST. of 1845, art. XIII, § 6. The 1839 national seal, therefore, served as the state seal from December 29, 1845, to February 16, 1846.

⁹⁷ TEX. CONST. of 1869, art. IV, § 18; TEX. CONST. of 1866, art. V, § 14; TEX. CONST. of 1861, art. V, § 14.

⁹⁸ TEX. CONST. art. IV, § 19; see Tex. Sec’y of State, 10 Tex. Reg. 4562 (1985), adopted 11 Tex. Reg. 126 (1986) (effective Jan. 24, 1986), repealed in part and amended in part by Tex. Sec’y of State, 11 Tex. Reg. 2408 (emerg. rule), proposed 11 Tex. Reg. 2412, adopted 11 Tex. Reg. 3258 (1986) (effective July 29, 1986), amended by Tex. Sec’y of State, 12 Tex. Reg. 1807 (emerg. rule), proposed 12 Tex. Reg. 1809, adopted 12 Tex. Reg. 2566 (1987) (effective Aug. 24, 1987), amended by Tex. Sec’y of State, 15 Tex. Reg. 4427 (emerg. rule), proposed 15 Tex. Reg. 4429, adopted 15 Tex. Reg. 6187 (1990) (effective Nov. 7, 1990) (codified at Tex. Sec’y of State, 1 TEX. ADMIN. CODE § 71.40 (Supp. 1991–1992)) (definition of seal).

⁹⁹ Preservation of Essential Records Act, 59th Leg., R.S., ch. 548, § 12, [1] 1965 Tex. Gen. Laws 1161, 1163, repealed and codified by Act of Apr. 30, 1987, 70th Leg., R.S., ch. 147, sec. 1, § 441.059(a); sec. 6(a), 1987 Tex. Gen. Laws 316, 493 (codification), 534 (repealer) (current version at TEX. GOV’T CODE ANN. § 441.059(a) (West 1990)).

¹⁰⁰ Tex. H.R. Con. Res. 49, 57th Leg., R.S., 1961 Tex. Gen. Laws 1264 (calling a joint session of the legislature to receive framed seals from the Texas Heritage Foundation and the Adjutant General’s Department); H.J. OF TEX., 57th Leg., R.S. 956 (1961) (text of Major General K.L. Berry’s speech to joint session of the legislature). But see 1961 TEX. ADJUTANT GEN. REP. 62 (describing presentation of five Schlattner art watercolors to Governor Daniel, both houses of Texas Legislature, Texas Memorial Museum, and Travis Bryan of Bryan, Texas); Thomas Turner, *Descendant of Austin’s Gets Copy of State Seal*, DALLAS MORNING NEWS, May 24, 1961, § 1, at 16. For photographs of the presentations to Governor Daniel, the Texas Memorial Museum, and the Texas House of Representatives, see 3 TEX. HERITAGE 106, 111, 113 (1961). A color photograph of the Schlattner art appears in TEXAS LEGISLATIVE COUNCIL, *THE TEXAS CAPITOL: SYMBOL OF ACCOMPLISHMENT* 63 (4th ed. 1986). In 2003 the Texas Memorial Museum transferred its watercolor to the Dolph Briscoe Center for American History at The University of Texas at Austin.

Secretary of State Zollie Steakley accepted what appears to be the Martinez art as the true and correct state seal. 1960 TEX. ADJUTANT GEN. REP. 54. The original Martinez watercolor has apparently been lost, but reproductions of what may be the Martinez art appear on the cover of the *Texas Adjutant General’s Department Annual Report* and in two 1960s magazines. 1961 TEX. ADJUTANT GEN. REP.; 1960 TEX. ADJUTANT GEN. REP.; *Texas One and Indivisible Has Spent More Than 100 Years Evolving Design for State Seal*, TEX. PUBLIC EMPLOYEE, Mar. 1964, at 28 (color art); John H. Jenkins, III, *The Seal of Texas*, 22 TEX. LIBRARIES 5, 8 (1960) (black-and-white art; attributed to Colonel M.H. Wilson). The *Texas Public Employee* article discusses the Schlattner art and does not mention Martinez’s work, but the art depicted contains noticeable differences from the known Schlattner art, suggesting that it was painted by Martinez. The *Texas Public Employee* article was reprinted by some secretaries of state, e.g., John L. Hill, and distributed to the public in response to questions about the state seal.

¹⁰¹ See generally Lynn Ashby, *It's a Great Seal but Which Seal*, HOUSTON POST, July 21, 1991, at C1.

¹⁰² Letters from John Hannah, Jr., Secretary of State, to state agency heads (Mar. 12, 1993); see Lynn Ashby, *Texas Has One Seal, at Long Last*, HOUSTON POST, June 16, 1992, at A11. See *supra* note 95. The description of the old national arms is the only source for the azure background of the state seal. The 1839 law defined the national arms, then defined the national seal as bearing the arms with the letters "Republic of Texas." Act of Jan. 21, 1839, §§ 1–2, 1838–1839 Repub. Tex. Laws at 87–88, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 87–88 (Austin, Gammel Book Co. 1898).

In the 1992 version of this article, the state seal, state arms, and reverse of the state seal all were accompanied with "©State of Texas. Used by permission." The Office of the Secretary of State later decided not to pursue copyright registration of the state seal, state arms, and reverse of the state seal. Letter from John Hannah, Jr., Secretary of State, to Charles Spain (Mar. 17, 1992); see Spain, *supra* note 3a, at pages 249, 250, 254.

¹⁰³ TEX. CONST. art. IV, § 19; see, e.g., Act of Apr. 17, 1969, 61st Leg., R.S., ch. 111, 1969 Tex. Gen. Laws 282 (current version at TEX. REV. CIV. STAT. ANN. art. 6144h, § 7(a) (West 1970)) (Texas Distinguished Service Medal).

¹⁰⁴ Phillips v. Lyons, 1 Tex. 392, 394–95 (1846). See *supra* notes 93, 96, 97 and accompanying text; *infra* note 116.

^{104a} Two sources erroneously state that the Daughters of the American Revolution proposed the design for the reverse of the state seal. CRAMPTON, *supra* note 17, at 47; LLOYD, *supra* note 17, at 47.

¹⁰⁵ Tex. H.R. Con. Res. 2, 57th Leg., 2d C.S., 1961 Tex. Gen. Laws 521; see Tex. Sec'y of State, 11 Tex. Reg. 2408 (emerg. rule), *proposed* 11 Tex. Reg. 2412, *adopted* 11 Tex. Reg. 3258 (1986) (effective July 29, 1986), *amended by* Tex. Sec'y of State, 12 Tex. Reg. 1807 (emerg. rule), *proposed* 12 Tex. Reg. 1809, *adopted* 12 Tex. Reg. 2566 (1987) (effective Aug. 24, 1987), *amended by* Tex. Sec'y of State, 15 Tex. Reg. 4427 (emerg. rule), *proposed* 15 Tex. Reg. 4429, *adopted* 15 Tex. Reg. 6187 (1990) (effective Nov. 7, 1990) (codified at Tex. Sec'y of State, 1 TEX. ADMIN. CODE § 71.40 (Supp. 1991–1992)) (definition of reverse of seal). The art was designed in 1931 by architect Henry C. Wedemeyer, who worked on a commission from the Daughters of the Republic of Texas, which explains why the art contains a forty-eight star United States flag. See Tex. H.R. Res. 27, 74th Leg., R.S. (1995) (Texas House of Representatives resolution honoring Wedemeyer for his design of the reverse of the state seal; the author acknowledges that such simple resolutions are at times questionable in their historical accuracy). A color photograph of the art appears in TEXAS LEGISLATIVE COUNCIL, *supra* note 100.

Wedemeyer's contribution was forgotten for many decades. Clara L. Scherz, Director of the Capitol Information and Guide Service at the Texas Capitol from 1988 until 1998, discovered Wedemeyer's original watercolor hanging on the wall of a basement office in 1991 during the renovation of the Texas Capitol. The watercolor was accessioned by the State Preservation Board and is displayed in the Secretary of State's Private Office on the Capitol's first floor.

¹⁰⁶ The Texas Constitution provides that resolutions take effect when the governor signs them. TEX. CONST. art. IV, § 15.

¹⁰⁷ See SMITH, note 17, at 12–13, 16 n.* (France); 8–9 (Spain); 25 (Mexico); 212–13 (Texas); 264–65, 272–73 (Confederate States of America); 282 (United States).

^{107a} See, e.g., *Inaccurate Seals of State Display Wrong Oak Leaves*, DALLAS MORNING NEWS, Nov. 23, 1943, § I, at 7.

¹⁰⁸ See 36 U.S.C. § 175(c) (1988) ("No other flag or pennant should be placed above or, if on the same level, to the right [the observer's left] of the flag of the United States of America."). The current fifty-star flag became official on

July 4, 1960. Exec. Order No. 10,834, § 31, 3 C.F.R. 367, 369 (1959–1963), *reprinted in* 4 U.S.C. § 1 (1988).

¹⁰⁹ Tex. S. Con. Res. 159, 72d Leg., R.S., 1991 Tex. Gen. Laws 3369, 3369.

¹¹⁰ See *supra* note 101 and accompanying text. Besides various aesthetic considerations, the committee was particularly concerned about the inclusion of the confederate naval jack in the 1961 official design. This flag is both controversial and historically incorrect, so the committee recommended that the revised design merely refer to the flag of the Confederate States of America, thus allowing the artist to substitute the Stars and Bars for the naval jack.

¹¹¹ See *supra* note 106.

¹¹² See *supra* note 101 and accompanying text, note 110.

^{112a} Letters from John Hannah, Jr., *supra* note 102; see Ashby, *supra* note 102.

¹¹³ See TEX. CONST. art. III, § 30.

¹¹⁴ Letter from Richard J. Grambling, Associate Editor, West Publishing Company, to Charles Spain (July 12, 1988) (on file with *South Texas Law Review*).

¹¹⁵ Act approved May 12, 1846, 1st Leg., R.S., § 7, 1846 Tex. Gen. Laws 232, 234, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1538, 1540 (Austin, Gammel Book Co. 1898), *repealed and codified by* Revised Statutes, 16th Leg., R.S., § 1, art. 3952, § 4, 1879 Tex. Rev. Civ. Stat. 2, 565 (codification), 718 (repealer), *repealed and recodified by* Revised Statutes, 24th Leg., R.S., § 1, art. 4175, § 4, 1895 Tex. Rev. Civ. Stat. 1, 821 (codification), 1103 (repealer), *repealed and recodified by* Revised Statutes, 32d Leg., R.S., § 1, art. 5361, § 4, 1911 Tex. Rev. Civ. Stat. 2, 1118 (codification), 1719 (repealer), *repealed and recodified by* Revised Statutes, 39th Leg., R.S., § 1, art. 5404, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1523 (codification), 2419 (repealer), *repealed and recodified by* Natural Resources Code, 65th Leg., R.S., ch. 871, sec. 1, § 51.243(a), sec. 2(a)(1), 1977 Tex. Gen. Laws 2345, 2436 (codification), 2689 (repealer) (current version at TEX. NAT. RES. CODE ANN. § 51.243(a) (West 1978)); see Act of Apr. 29, 1943, 48th Leg., R.S., ch. 247, § 1, 1943 Tex. Gen. Laws 368, 369 (current version at TEX. REV. CIV. STAT. ANN. art. 5421c-6 (West 1962)) (ratifying and validating certain patents).

¹¹⁶ TEX. CONST. art. IV, § 20 (use of state seal on commissions in general); Act presented Apr. 15, 1905, 29th Leg., R.S., ch. 104, § 35, 1905 Tex. Gen. Laws 167, 175, *repealed and codified by* Revised Statutes, 32d Leg., R.S., § 1, art. 5803, § 4, 1911 Tex. Rev. Civ. Stat. 2, 1234 (codification), 1719 (repealer), *repealed and recodified by* Revised Statutes, 39th Leg., R.S., § 1, art. 5801, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1636 (codification), 2419 (repealer), *repealed and recodified by* Act of Apr. 25, 1963, 58th Leg., R.S., ch. 112, sec. 1, art. 5782, § 2, sec. 3, 1963 Tex. Gen. Laws 209, 214 (codification), 267 (repealer), *repealed and recodified by* Act of Apr. 30, 1987, 70th Leg., R.S., ch. 147, sec. 1, § 431.008, sec. 6, 1987 Tex. Gen. Laws 316, 417 (codification), 534 (repealer), *amended by* Act of Apr. 5, 1989, 71st Leg., R.S., ch. 13, § 1, 1989 Tex. Gen. Laws 291, 291 (current version at TEX. GOV'T CODE ANN. § 431.008 (West 1990)) (use of state seal on military commissions).

The 1836 Texas Constitution provides that "[a]ll grants and commissions shall be in the name, and by the authority of the republic of Texas, shall be sealed with the great seal, and signed by the president." REPUB. TEX. CONST. of 1836, art. VI, § 9. This language was originally proposed on March 9, 1836 to be in article III, section 12, but in the proposed text "great seal" was merely "seal." THE GENERAL CONVENTION AT WASHINGTON 39, 43 (1838), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 859, 863 (Austin, Gammel Book Co. 1898) (report of committee to draft constitution). The 1845 Texas Constitution contains a similar provision: "All commissions shall be in the name and by the authority of the State of Texas, be sealed with the State Seal,

signed by the Governor and attested by the Secretary of State.” TEX. CONST. of 1845, art. V, § 15; *see also* TEX. CONST. of 1869, art. IV, § 19; TEX. CONST. of 1866, art. V, § 15; TEX. CONST. of 1861, art. V, § 15.

¹¹⁷ Penal Code and Code of Criminal Procedure, 16th Leg., R.S., § 2, art. 987, 1879 Tex. Crim. Stat. 1, 116, *repealed and recodified by* Penal Code and Code of Criminal Procedure, 1895, 24th Leg., R.S., § 2, art. 1022, § 3, 1895 Tex. Crim. Stat. 2, 138 (codification), 182 (repealer), *implicitly repealed and recodified by* Penal Code and Code of Criminal Procedure, 32d Leg., R.S., § 2, art. 1057, 1911 Tex. Crim. Stat. 1, 288, *repealed and recodified by* Penal Code and Code of Criminal Procedure, 39th Leg., R.S., § 2, art. 958, § 3, art. 1, 1925 Tex. Crim. Stat. 2, 150 (codification), 181 (repealer), *repealed and recodified by* Code of Criminal Procedure, 59th Leg., R.S., ch. 722, sec. 1, arts. 48.03, 54.02, § 1(a), [2] 1965 Tex. Gen. Laws 317, 538 (codification), 563 (repealer) (current version at TEX. CODE CRIM. PROC. ANN. art. 48.03 (West 1979)).

¹¹⁸ TEX. REV. CIV. STAT. ANN. art. 2606a, § 1 (West 1965) (1934 refunding bonds); TEX. REV. CIV. STAT. ANN. art. 4413(501), § 3.31 (West Supp. 1992) (Texas Housing Bonds); TEX. AGRIC. CODE ANN. § 252.051(g) (West 1982) (farm and ranch security bonds); TEX. EDUC. CODE ANN. § 52.11(h) (West 1987) (student loan bonds); TEX. GOV'T CODE ANN. § 465.025(d) (West Supp. 1992) (Texas National Research Laboratory Commission bonds); TEX. NAT. RES. CODE ANN. § 161.116(b) (West 1978) (Veterans Land Board bonds); TEX. NAT. RES. CODE ANN. § 162.036(b) (West Supp. 1992) (veterans housing assistance program bonds); TEX. PARKS & WILD. CODE ANN. § 21.013(c) (West 1991) (park development bonds); TEX. WATER CODE ANN. § 17.023 (West 1988) (water development bonds).

¹¹⁹ TEX. WATER CODE AUX. LAWS art. 8253 (West 1992); Houston Pilots Licensing and Regulatory Act, TEX. WATER CODE AUX. LAWS art. 8280a, § 4.06 (West 1992); Galveston County Pilots Licensing and Regulatory Act, TEX. WATER CODE AUX. LAWS art. 8280b, § 4.06(a) (West 1992); Brazoria County Pilots Licensing and Regulatory Act, TEX. WATER CODE AUX. LAWS art. 8280c, § 4.06(a) (West 1992).

¹²⁰ The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-30 (West 1964) (securities certificate under state seal constitutes prima facie evidence of compliance with Act) (*see* State Secs. Bd., 7 TEX. ADMIN. CODE § 127.3 (1988) (effective Jan. 1, 1976) (“state seal” as used in section 30 of The Securities Act includes seal of State Securities Board)); The Public Facility Corporation Act, TEX. REV. CIV. STAT. ANN. art. 717s, § 4.058 (West Supp. 1992) (certificate of secretary of state under state seal); Texas Non-Profit Corporation Act, TEX. REV. CIV. STAT. ANN. art. 1396-9.06(A) (West 1980) (certificate of secretary of state under state seal); Electric Cooperative Corporation Act, TEX. REV. CIV. STAT. ANN. art. 1528b, § 8 (West 1980) (copy of articles of incorporation); Telephone Cooperative Act, TEX. REV. CIV. STAT. ANN. art. 1528c, § 7 (West 1980) (copy of articles of incorporation); TEX. REV. CIV. STAT. ANN. art. 6265 (West 1926) (certificate of articles of incorporation for railroad); TEX. AGRIC. CODE ANN. § 201.048(d) (West 1982) (certificate of organization for soil and water conservation district); TEX. BUS. CORP. ACT ANN. art. 9.05 (West 1980) (certificate of secretary of state under state seal); Uniform Criminal Extradition Act, TEX. CODE CRIM. PROC. ANN. art. 51.13, §§ 7, 22 (West 1979) (warrant of arrest); Health Facilities Development Act, TEX. HEALTH & SAFETY CODE ANN. § 221.104 (West 1992) (certificate of secretary of state under state seal); TEX. HEALTH & SAFETY CODE ANN. § 345.063(b) (West 1992) (bedding stamps); Tex. Dep't of Agric., 4 TEX. ADMIN. CODE § 21.11(c) (1989) (certified seed labels); Tex. Bd. of Barber Exam., 22 TEX. ADMIN. CODE §§ 51.36(b) (enrollment application), .37(a) (student certificate), .69 (physician's health certificate), .70 (class A registered barber's certificate), .71 (teacher's certificate), .73 (manicurist's certificate), .74 (journeyman barber's

permit), .75 (assistant barber's certificate), .76 (licensed barber college certificate), .79 (barber shop permit) (1989); Tex. Dep't of Health, 25 TEX. ADMIN. CODE § 181.1 (Supp. 1991–1992) (certified copy of record on file with Bureau of Vital Statistics).

¹²¹ Act approved May 9, 1846, 1st Leg., R.S., § 3, 1846 Tex. Gen. Laws 189, 189, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1495, 1495 (Austin, Gammel Book Co. 1898), *repealed and codified by* Revised Statutes, 16th Leg., R.S., § 1, art. 2721, § 4, 1879 Tex. Rev. Civ. Stat. 2, 394 (codification), 718 (repealer), *repealed and recodified by* Revised Statutes, 24th Leg., R.S., § 1, art. 2803, § 4, 1895 Tex. Rev. Civ. Stat. 1, 545 (codification), 1103 (repealer), *repealed and recodified by* Revised Statutes, 32d Leg., R.S., § 1, art. 4305, § 4, 1911 Tex. Rev. Civ. Stat. 2, 875 (codification), 1719 (repealer), *repealed and recodified by* Revised Statutes, 39th Leg., R.S., § 1, art. 4331, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1153 (codification), 2419 (repealer), *amended by* Act of May 1, 1981, 67th Leg., R.S., ch. 128, § 1, 1981 Tex. Gen. Laws 322, 322, *repealed and recodified by* Act of Apr. 30, 1987, 70th Leg., R.S., ch. 147, sec. 1, § 405.017, sec. 6, 1987 Tex. Gen. Laws 316, 364 (codification), 534 (repealer), *amended by* Act of May 25, 1989, 71st Leg., R.S., ch. 297, § 5, 1989 Tex. Gen. Laws 1255, 1256 (current version at TEX. GOV'T CODE ANN. § 405.017 (West 1990)); *see* Tex. Sec'y of State, 1 TEX. ADMIN. CODE § 71.8(b) (1988) (effective Jan. 1, 1976) (certification under state seal of document on file in office of secretary of state); *see also* Act approved Mar. 20, 1848, 2d Leg., R.S., ch. 131, § 1, 1847–1848 Tex. Gen. Laws 184, 184, *reprinted in* 3 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 184, 184 (Austin, Gammel Book Co. 1898) (state officers including secretary of state to furnish copies of papers, documents, or records, or with a certificate “attested by the seals of their respective offices,” certifying to any facts contained therein), *repealed and codified by* Revised Statutes, 16th Leg., R.S., § 1, art. 2372, § 4, 1879 Tex. Rev. Civ. Stat. 2, 346 (codification), 718 (repealer), *repealed and recodified by* Revised Statutes, 24th Leg., R.S., § 1, art. 2436, § 4, 1895 Tex. Rev. Civ. Stat. 1, 481 (codification), 1103 (repealer), *repealed and recodified by* Revised Statutes, 32d Leg., R.S., § 1, art. 3833, § 4, 1911 Tex. Rev. Civ. Stat. 2, 786 (codification), 1719 (repealer), *repealed and recodified by* Revised Statutes, 39th Leg., R.S., § 1, art. 3913, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1050 (codification), 2419 (repealer) (state officers including secretary of state to furnish copies of papers, documents, or records, or with a certificate “under seal,” certifying to any facts contained therein), *amended by* Act of May 10, 1961, 57th Leg., R.S., ch. 222, § 1, 1961 Tex. Gen. Laws 449, 449, *amended by* Act of May 28, 1965, 59th Leg., R.S., ch. 446, § 1, [1] 1965 Tex. Gen. Laws 909, 909 (current version at TEX. REV. CIV. STAT. ANN. art. 3913 (West 1966)).

¹²² Act approved May 9, 1846, 1st Leg., R.S., § 3, 1846 Tex. Gen. Laws 189, 189, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822–1897, at 1495, 1495 (Austin, Gammel Book Co. 1898), *repealed and codified by* Revised Statutes, 16th Leg., R.S., § 1, art. 2721, § 4, 1879 Tex. Rev. Civ. Stat. 2, 394 (codification), 718 (repealer), *repealed and recodified by* Revised Statutes, 24th Leg., R.S., § 1, art. 2803, § 4, 1895 Tex. Rev. Civ. Stat. 1, 545 (codification), 1103 (repealer), *repealed and recodified by* Revised Statutes, 32d Leg., R.S., § 1, art. 4305, § 4, 1911 Tex. Rev. Civ. Stat. 2, 875 (codification), 1719 (repealer), *repealed and recodified by* Revised Statutes, 39th Leg., R.S., § 1, art. 4331, § 2, 1925 Tex. Rev. Civ. Stat. 2, 1153 (codification), 2419 (repealer), *amended by* Act of May 1, 1981, 67th Leg., R.S., ch. 128, § 1, 1981 Tex. Gen. Laws 322, 322, *repealed and recodified by* Act of Apr. 30, 1987, 70th Leg., R.S., ch. 147, sec. 1, § 405.011, sec. 6, 1987 Tex. Gen. Laws 316, 363 (codification), 534 (repealer), *amended by* Act of May 25, 1989, 71st Leg., R.S., ch. 297, § 3, 1989 Tex. Gen. Laws 1255, 1256 (current version at TEX. GOV'T CODE ANN. § 405.011 (West 1990)).

¹²³ Texas Uniform Facsimile Signature of Public Officials Act, 57th Leg., R.S., ch. 204, §§ 3 (facsimile seal), 4 (penalty), 1961 Tex. Gen. Laws 406, 406–07, *amended by* Act of May 11, 1967, 60th Leg., R.S., ch. 290, sec. 1, §§ 3–4, 1967 Tex. Gen. Laws 701, 702, *amended by* Act of May 20, 1981, 67th Leg., R.S., ch. 246, sec. 2, §§ 3–4, 1981 Tex. Gen. Laws 623, 624 (current version at TEX. REV. CIV. STAT. ANN. art. 717j-1, § 3 (West Supp. 1992)).

¹²⁴ Act of May 31, 1987, 70th Leg., R.S., ch. 899, sec. 1, § 255.006, 1987 Tex. Gen. Laws 2995, 3027 (current version at TEX. ELEC. CODE ANN. § 255.006 (West Supp. 1992)). For the punishment for a Class A misdemeanor *see supra* note 86.

^{124a} Tex. Dep't of Educ., 9 Tex. Reg. 3321, 3337 (1984) (effective June 21, 1984), *amended by* Tex. Dep't of Educ., 10 Tex. Reg. 276, 278, *adopted* 10 Tex. Reg. 929 (1985) (effective Apr. 1, 1985) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.29(b)(3)(A)-(C) (1988)), *repealed by* Tex. Dep't of Educ., 16 Tex. Reg. 5957, *adopted* 16 Tex. Reg. 7011 (1991) (effective Dec. 23, 1991) and *reproposed by* Tex. Dep't of Educ., 16 Tex. Reg. 5957, 6020, *adopted* 16 Tex. Reg. 7089 (1991) (effective Dec. 23, 1991) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.32(b)(3)(A)-(C) (1992)), *amended by* Tex. Dep't of Educ., 17 Tex. Reg. 5197, 5198 (1992) (effective Aug. 6, 1992) (codified at Tex. Dep't of Educ., 19 TEX. ADMIN. CODE § 75.32(b)(3)(A)-(C), (h)(4)(A) (Supp. 1993) (§ 75.32(h)(4)(A) to supersede § 75.32(b)(3)(A)-(C) effective Sept. 1996) (social studies curriculum for first grade).

¹²⁵ Act of May 10, 1955, 54th Leg., R.S., ch. 350, 1955 Tex. Gen. Laws 898, *repealed and codified by* Business & Commerce Code, 60th Leg., R.S., ch. 785, sec. 1, § 17.08, sec. 4(c), 1967 Tex. Gen. Laws 2343, 2583 (codification), 2620 (repealer), *amended by* Act of May 25, 1985, 69th Leg., R.S., ch. 811, § 10, 1985 Tex. Gen. Laws 2860, 2862 (current version at TEX. BUS. & COM. CODE ANN. § 17.08 (West 1987)); Tex. Sec'y of State, 10 Tex. Reg. 4562 (1985), *adopted* 11 Tex. Reg. 126 (1986) (effective Jan. 24, 1986), *repealed in part and amended in part by* Tex. Sec'y of State, 11 Tex. Reg. 2408 (emerg. rule), *proposed* 11 Tex. Reg. 2412, *adopted* 11 Tex. Reg. 3258 (1986) (effective July 29, 1986), *amended by* Tex. Sec'y of State, 12 Tex. Reg. 1807 (emerg. rule), *proposed* 12 Tex. Reg. 1809, *adopted* 12 Tex. Reg. 2566 (1987) (effective Aug. 24, 1987), *amended by* Tex. Sec'y of State, 15 Tex. Reg. 4427 (emerg. rule), *proposed* 15 Tex. Reg. 4429, *adopted* 15 Tex. Reg. 6187 (1990) (effective Nov. 7, 1990) (codified at Tex. Sec'y of State, 1 TEX. ADMIN. CODE §§ 71.40–48 (1988 & Supp. 1991–1992)).

Three attorney general opinions exist interpreting the 1955 law. Op. Tex. Att'y Gen. Nos. WW-91 (1957) (1955 law prohibits use of the state seal as a lounge car decoration on a Texas Zephyr passenger train), WW-1355 (1962) (1955 law does not prohibit use of the state seal on stationery mailed by a state official for the purpose of campaigning), H-694 (1975) (sheriff or constable may not send an eviction notice on stationery containing the state seal); *see also* Op. Tex. Att'y Gen. No. O-3597, *supra* note 71.

¹²⁶ Tex. Sec'y of State, 11 Tex. Reg. 2408 (emerg. rule), *proposed* 11 Tex. Reg. 2412, *adopted* 11 Tex. Reg. 3258 (1986) (effective July 29, 1986) (codified at Tex. Sec'y of State, 1 TEX. ADMIN. CODE § 71.42 (1988)).

^{126a} Act of Jan. 26, 1962, 57th Leg., 3d C.S., ch. 24, § 2, 1962 Tex. Gen. Laws 62, 63, *repealed and codified by* Business & Commerce Code, 60th Leg., R.S., ch. 785, sec. 1, § 16.08, sec. 4(c), 1967 Tex. Gen. Laws 2343, 2571 (codification), 2620 (repealer) (current version at TEX. BUS. & COM. CODE ANN. § 16.08(a) (West 1987)); *see supra* note 91c.

^{126b} *Supra* note 91d; International Protection of Government Emblems and Seals, 41 Fed. Reg. 35,741 (1976) (intent of Patent and Trademark Office to forward state seals listed in *Seals and Other Devices in Use at the Government Printing Office* to World Intellectual Property Organization

(WIPO) for protection under Paris Convention); *see* SEALS AND OTHER DEVICES IN USE AT THE GOVERNMENT PRINTING OFFICE 75 (1975) (illustrating Texas state seal).

¹²⁷ Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.18(b)(7), .28(g) (1988) (effective Jan. 1, 1976) (prohibiting use of United States and Texas seals on distilled-spirits labels and advertisements). *But cf.* Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.52, .55(a) (1988) (effective Jan. 1, 1976) (no prohibition on use of seals on wine labels and advertisements); Tex. Alco. Bev. Comm'n, 16 TEX. ADMIN. CODE §§ 45.82(d), .90(g) (1988) (effective Jan. 1, 1976) (prohibiting misleading use of seals on malt-beverage labels and advertisements).

¹²⁸ Tex. Bd. of Private Invest. & Private Sec. Agencies, 7 Tex. Reg. 1511, 1512 (1982) (effective Apr. 26, 1982) (codified at Tex. Bd. of Private Invest. & Private Sec. Agencies, 22 TEX. ADMIN. CODE § 423.1(g) (1982)), *repealed by* Tex. Bd. of Private Invest. & Private Sec. Agencies, 9 Tex. Reg. 1471 (1984) (effective Mar. 26, 1984); Tex. Bd. of Private Invest. & Private Sec. Agencies, 8 Tex. Reg. 5096, 5097, *adopted* 9 Tex. Reg. 1471 (1984) (effective Mar. 26, 1984) (codified at Tex. Bd. of Private Invest. & Private Sec. Agencies, 22 TEX. ADMIN. CODE § 423.1(d) (Supp. 1991–1992)) (prohibiting use of state seal by private investigators and private security officers except for identification and license items prepared or issued by board).

¹²⁹ State Purchasing and General Services Act, 70th Leg., R.S., ch. 910, sec. 1, § 11.05, 1987 Tex. Gen. Laws 3083, 3083 (current version at TEX. REV. CIV. STAT. ANN. art. 601b, § 11.05 (West Supp. 1992)).

¹³⁰ TEX. REV. CIV. STAT. ANN. art. 6144h, § 7(a) (West 1970).

¹³¹ State Aircraft Pooling Act, 70th Leg., R.S., ch. 335, sec. 1, § 9A, 1987 Tex. Gen. Laws 1750, 1750 (current version at TEX. REV. CIV. STAT. ANN. art. 4413(34b), § 9A (West Supp. 1992)).

¹³² TEX. REV. CIV. STAT. ANN. art. 4012 (West 1966) (free or reduced transportation for officers of adjutant general or state rangers with certificate of secretary of state under seal); TEX. REV. CIV. STAT. ANN. art. 4512b, § 5 (West 1976) (certified copy of chiropractic examiners board register with hand and seal of secretary of state); TEX. REV. CIV. STAT. ANN. art. 4582b, § 2(E)(2) (West Supp. 1992) (list of licensed funeral directors, embalmers, and funeral establishments under hand and seal of secretary of state); TEX. REV. CIV. STAT. ANN. art. 5154a, § 5 (West 1987) (labor union organizer's card to be attested by secretary of state's seal of office); TEX. REV. CIV. STAT. ANN. art. 6528 (West Supp. 1992) (railroad bonds to be indorsed by secretary of state under his seal of office); TEX. EDUC. CODE ANN. § 88.204 (West 1991) (sale by Texas A&M University of title to experimental station must be attested by secretary of state under his official seal); TEX. TAX CODE ANN. § 171.355(d) (West 1982) (secretary of state's certification of receipt of service of process under secretary's official seal).

¹³³ *See* TEX. GOV'T CODE ANN. § 403.011 (1990) (comptroller's seal); Letter from Guy Joyner, Staff Attorney, Office of the Secretary of State, to Charles Spain (Dec. 13, 1991) (on file with *South Texas Law Review*) (no seal for office of the secretary of state).

¹³⁴ *See* TEX. GOV'T CODE ANN. § 323.007 (West 1988). And then-Rep. Leticia Van de Putte did introduce, and legislature enacted, such a revision. *See* Act of May 14, 1993, 73d Leg., R.S., ch. 300, 1993 Tex. Gen. Laws 1374 (omnibus flag and seal revision Act); *see also* Tex. Sec'y of State, 19 Tex. Reg. 2343, *adopted* 19 Tex. Reg. 4251 (1994) (effective June 13, 1994) (codified at Tex. Sec'y of State, 1 TEX. ADMIN. CODE § 71.50 (1996)) (definition of standard designs for state seal, state arms, and reverse of seal). The effects of the 1993 Act are the subject of a future article.

Texas Vexillological Commission

Report on the Design of the Lone Star Flag

For the Lone Star Flag's 150th anniversary in 1989, both the House of Representatives and Senate passed House Concurrent Resolution 9 (71st Legislature, Regular Session, 1989 Texas General and Special Laws, page 6268),[1] which stated, "This beautiful symbol of our state was designed by Dr. Charles B. Stewart, the second signer of the Texas Declaration of Independence; the design was first approved by a committee of prominent Texans including Lorenzo de Zavala, William B. Scates, Thomas Barnett, Sterling C. Robertson, Thomas J. Gazley, and Richard Ellis; and . . . the Lone Star Flag was officially adopted by the Third Congress of the Republic of Texas in Houston on January 25, 1839."

In 1992 the Legislature changed its mind after reviewing the historical record. The House of Representatives and Senate passed, and Governor Ann Richards signed, House Concurrent Resolution 9 (72nd Legislature, Fourth Called Session, 1992 Texas General and Special Laws, page 24),[2] which declared that because "subsequent historical research has revealed that the actual designer of the Lone Star Flag is unknown," the legislature would instead "recognize Senator William H. Wharton and Senator Oliver Jones for their efforts in adopting this abiding symbol of our state's unity." The Legislature recognized that a committee consisting of Lorenzo de Zavala, William B. Scates, Thomas Barnett, Sterling C. Robertson, Thomas J. Gazley, and Richard Ellis was appointed in March 1836 by the General Convention at Washington-on-the-Brazos to design a national flag for the newly independent Republic of Texas, but the General Convention apparently never adopted a national flag, and the 1836 committee did not review the Lone Star Flag adopted in 1839. Because the 1992 concurrent resolution acknowledged that no one knows who designed the Lone Star flag, the 1989 recognition of Dr. Stewart as the "designer of the Lone Star flag" was erroneous.

Five years later, House Concurrent Resolution 19 (75th Legislature, Regular Session)[3] was filed, recognizing Stewart as the Lone Star flag's designer without any reference to the 1992 concurrent resolution. It also stated that the Lone Star Flag's design was "approval by a committee of six signers of the Texas Declaration of Independence," the same error from the 1989 concurrent resolution that was corrected in the 1992 concurrent resolution. House Concurrent Resolution 19 was withdrawn by the author on March 20, 1997,[4] due to the conflict with the 1992 concurrent resolution, but the identical text was refiled by the same author as House Resolution

1123 on May 26, 1997. House Resolution 1123 [5] was adopted by the House of Representatives on May 30, days before the session adjourned on June 2. [6] As a simple resolution, it was not considered by the Senate and did not require approval by the Governor.

No primary historical evidence has yet been brought forth to support the claim that the Lone Star Flag was designed by Charles B. Stewart. In her 1898 article "The History and Evolution of the Texas Flag," Adele Looscan is clearly skeptical that the March 1836 general convention adopted a flag, and she does not mention Stewart at all in connection with the Lone Star Flag. The Stewart claim appears to have originated in the 1920s, when Stewart's son, Edmund B. Stewart, began publically displaying what he claimed was her father's original drawing of the 1839 Lone Star Flag and the national great seal. In a July 7, 1922 letter, Stewart's son claimed his father and Lorenzo de Zavala were appointed by President Lamar to a committee of three to design the Texas flag. Zavala, however, died in November 1836, two years before Lamar became president. Furthermore, the committee of three is doubtless the 1838–1839 Senate committee of which Senator Oliver Jones was the chair. Lamar, as President, would have had no role in appointing a Senate committee, and it would have been highly unusual for Stewart to serve on the committee since he was not a senator.

The chief source of the Stewart claim is in Mamie Wynne Cox's 1936 book, *The Romantic Flags of Texas*. Cox, relying on information from Stewart's granddaughter, Elizabeth Stewart Fling, identifies the three members of the 1838–1839 Senate committee as Senator William H. Wharton, Senator Oliver Jones, and Stewart. Cox states that Stewart personally designed the flag and drew the original art for both the flag and seal on linen, which was signed by President Lamar on January 25, 1839, the day Lamar approved the flag bill. Although Stewart's papers were available, Cox does not cite to any of Stewart's letters or journals to support the claim that he designed the flag.

The Stewart art for the 1839 flag and seal is reproduced as the frontispiece to Cox's book. The Stewart art displays the flag and seal almost identical to the Krag art. The approval of President Lamar is also almost identical to the Krag art, including the fact that Lamar's writing is upside down. One significant difference is that the signatures of Representative Hansford and Senator Burnett are absent from the Stewart art. In their place is the legend, "Original Flag—Republic of Texas."

The Stewart claim next appears in Charles E. Gilbert, Jr.'s 1964 book, *A Concise History of Early Texas 1519 to 1861*. Gilbert relies largely on Cox for his research, but adds the claim that Stewart's design for the Lone Star Flag was approved by a committee consisting of Lorenzo de Zavala, William B. Scates, Thomas Barnett, Sterling C. Robertson, Thomas J. Gazley, and Richard Ellis. This committee was the 1836 flag committee

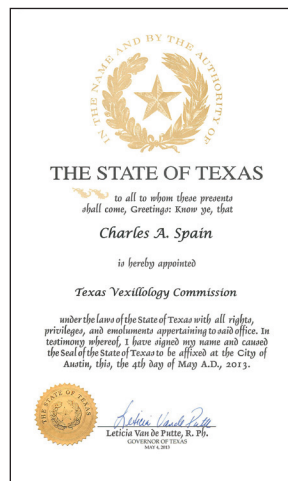
present at Washington-on-the-Brazos. Although Stewart was a member of the 1836 convention, Gilbert does not suggest that Stewart was an active participant in the convention's flag debates. Gilbert's book was republished in 1989 under the title *Flags of Texas*.

Due to the influence of Cox's and Gilbert's books, several other works have credited the Stewart claim in passing. A recent reference to the Stewart claim is made in his bibliographic entry in *The New Handbook of Texas* (1996), which was written by Virginia Stewart Lindley Ford. Stewart's original entry in *The Handbook of Texas* (1952) did not refer to his designing the Lone Star Flag.

After reviewing the existing historical records, the Commission finds that no primary evidence has been brought forth to substantiate the claim that the Lone Star Flag was designed by Charles B. Stewart. Until any such evidence is discovered, the Commission concludes that House Concurrent Resolution 9 of the 72nd Legislature, Fourth Called Session, correctly declared that "subsequent historical research has revealed that the actual designer of the Lone Star Flag is unknown." This resolution, passed by both the House of Representatives and Senate and approved by the Governor, constitutes the opinion of the full Legislature, not the 1997 simple resolution, which was introduced only after the author abandoned an attempt to pass the identical text in a concurrent resolution.

H.P. "Pete" Van de Putte,
Chairman (San Antonio)
Hugh L. Brady (Austin)
David Ott (Beaumont)
Charles A. Spain (Houston)

Adopted and filed May 4, 2013



The Texas Vexillological Commission was created on May 4, 2013, by Acting Governor Leticia Van de Putte. Senator Van de Putte was President pro tempore of the Senate in 2013, and pursuant to Texas Constitution article IV, section 17(a), became acting Governor when both the Governor and Lieutenant Governor were absent from the State, allowing her to "exercise the powers and authority appertaining to the office of Governor until the Governor or Lieutenant Governor reassumes those powers and duties."

Six Flags Over Texas

A Report by the Texas Historical Commission
Reprinted from the June 20, 1997 *Texas Register*,
volume 22, pages 5959 to 5967¹

Motion Adopted July 19, 1996

Through its general powers and duties granted in the Texas Government Code, §442.005(a), the Texas Historical Commission (THC) approves the designs, shown as Exhibit A of this notice,² for the six national flags of Texas history. THC has reviewed these designs and determined that they represent the appropriate flags of the six nations at the time of each claim to this soil, with the exception of the current flag of the United States of America. THC urges that these standard designs be adopted for display in all appropriate locations. THC gratefully acknowledges the assistance of Charles Adkin Spain and Dr. Whitney Smith for their research of these designs.

Background

The "Six Flags" sets purchased by the state, businesses, and individuals are generally the flags manufactured in mass quantities by the six largest U.S. flag manufacturers (Annin, CF, Collegeville, Dettra, J.C. Schultz, and Valley Forge). Two of the flags in these sets, Spain and Mexico, are historically inaccurate because they do not represent a flag that flew over Texas during the time those two nations claimed sovereignty over Texas. The French flag is also oftentimes historically incorrect. It is, however, economically infeasible to display the historically correct flags because the flags would have to be custom manufactured.

The only practical way to purchase a correct "Six Flags" set is for the State, acting through the commission, to specify the proper designs of the "Six Flags" and to request the major flag manufacturers to make this historically correct set once existing supplies have been sold.

The art for the proposed designs has been provided by Dr. Whitney Smith of the Flag Research Center in Winchester, Massachusetts, who is the world's leading expert on flags. Dr. Smith was an adviser to the State Preservation Board and Office of the Secretary of State when the reverse of the state seal was redesigned in 1991–1992, and an adviser to the Texas Department of Transportation when it featured color art of the "Six Flags" in the travel publication *A Quick Look at Texas*. The proposed designs are basically the same designs that appear in the current version of the reverse of the state seal. Dr. Smith has agreed to allow the commission to use the art for the proposed designs as long as a copyright acknowledgment is published in the *Texas Register*.

Endnotes

¹ <https://texashistory.unt.edu/ark:/67531/metaph221813/m1/1186>

² <https://texashistory.unt.edu/ark:/67531/metaph221818/m1/280/>

³ <https://perma.cc/A3DF-RZHF>

⁴ <https://perma.cc/864Y-TXFW>

⁵ <https://perma.cc/X2FK-P2YB>

⁶ <https://perma.cc/EGH2-6DAD>

Kingdom of Spain

Spain has had four significant flags during its occupation of the New World. The royal banner of Castile and Leon, bearing two lions and two castles, was used as a state flag from circa 1230 to circa 1516. This flag, although widely used in “Six Flags” displays, predates any Spanish presence in Texas: the first Spanish mission, Ysleta Mission in present El Paso, was established in 1681.



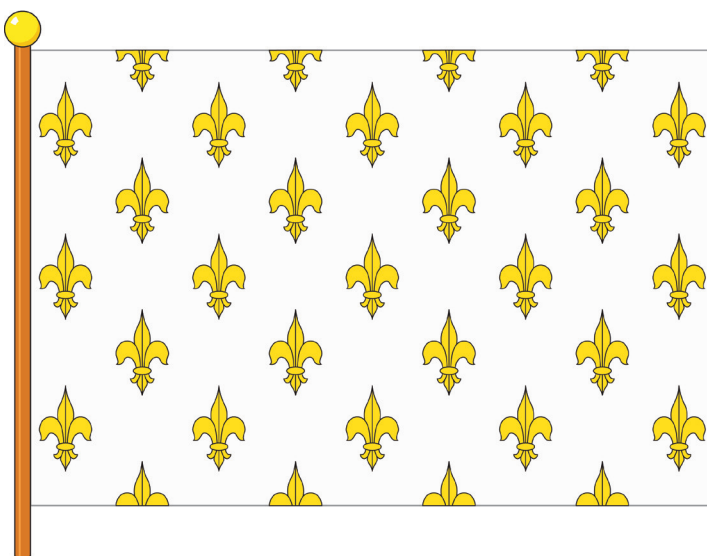
[Figure 1] KINGDOM OF SPAIN March 8, 1793 to April 27, 1931

From 1516 to May 28, 1785, Spain used a state flag consisting of a modified red saltire on white to signify the House of Burgundy. A variant of the state flag existed from 1580 to 1640 that depicted the complete Spanish coat of arms on a white field. Although displaying the Burgundian saltire as a “Six Flag” would be historically correct, few people would recognize the flag.

King Charles III established the familiar Spanish flag containing horizontal stripes of red-gold-red and the simple arms of Castile and Leon as the Spanish state flag on land effective March 8, 1793, and this flag was used until April 27, 1931. This flag appears in the reverse of the Texas state seal and would be the logical choice for inclusion in the “Six Flags.”

Kingdom of France

The flag of France that was allegedly carried by René Robert Cavelier, Sieur de La Salle in 1685, was probably a plain white flag strewn with fleurs-de-lys. This flag (circa 1643 to October 31, 1790) was a simplified version of the French state flag that bore the entire royal arms superimposed over numerous fleurs-de-lys strewn on a white field. Another French flag frequently (and incorrectly) included in the “Six Flags” contains three or more fleurs-de-lys on a blue field; this was the French state flag from circa 1370 to circa 1600. The fleurs-de-lys flag on



[Figure 2] KINGDOM OF FRANCE circa 1643 to October 31, 1790

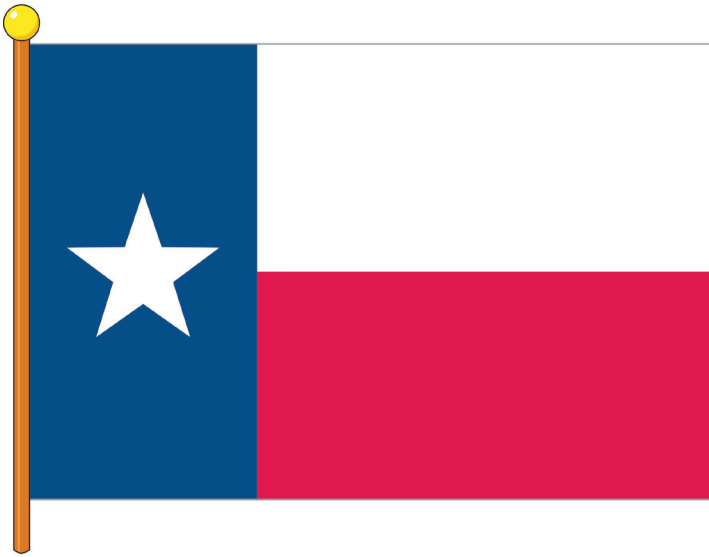
a white field without the royal arms appears in the reverse of the Texas state seal. Technically, the heraldic description of the flag is “white, semé [strewn] of gold fleurs-de-lys,” so the actual number of fleurs-de-lys is indeterminate and they would bleed off the four edges of the flag.



[Figure 3] UNITED MEXICAN STATES April 1823 to 1863

United Mexican States

In April 1823, Mexico adopted its first republican flag, which was used until 1863. This flag is similar to the current Mexican flag with vertical stripes of green-white-red. Both flags contain an eagle holding a serpent in its mouth and standing on a nopal or cactus, but the current Mexican flag depicts a stylized Aztec eagle rather than the natural eagle in the 1823 flag. The 1823 Mexican flag appears in the reverse of the Texas state seal.



[Figure 4] REPUBLIC OF TEXAS / STATE OF TEXAS January 25, 1839 to present

Republic of Texas

Texas had two official national flags for use on land during its existence: the 1836 national standard and the 1839 national flag that became the state flag. Some authorities also erroneously claim that Lorenzo de Zavala designed a Republic of Texas flag (usually portrayed as a blue field with white star of five points central and with the letters "T-E-X-A-S," one letter between each star point).

The first official flag for use on land, the "National Standard of Texas," was adopted by the Congress and approved on December 10, 1836. It consisted of an azure ground with a large golden star central. This flag, known as David G. Burnet's flag, served as the national flag until January 25, 1839.

The second official flag for use on land, the Lone Star Flag, was adopted by the Texas Congress and approved on January 25, 1839: "[T]he national flag of Texas shall consist of a blue perpendicular stripe of the width of one third of the whole length of the flag, with a white star of five points in the centre thereof, and two horizontal stripes of equal breadth, the upper stripe white, the lower red, of the length of two thirds of the whole length of the flag." This flag later became the state flag.

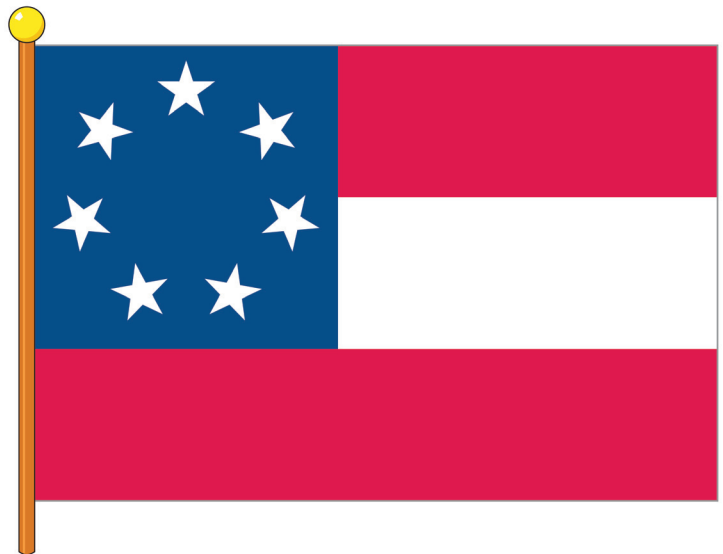
Although it would be historically correct to display David G. Burnet's flag in the "Six Flags," the Lone Star Flag appears in the reverse of the Texas state seal and would be the logical choice for inclusion in the "Six Flags."

Confederate States of America

The Confederate States of America had three principal flag designs during its existence. The first, known as the Stars and Bars, was chosen by a legislative committee of the provisional

government as the national flag and was raised over the capitol in Montgomery, Alabama on March 4, 1861. The flag consisted of: "a red field with a white space extending horizontally through the center, and equal in width to one-third the width of the flag. The red space above and below to be the same as the white. The union blue extending down through the white space and stopping at the lower red space. In the center of the union a circle of white stars corresponding to the number with the States in the Confederacy." The Stars and Bars was never adopted by legislation, but served as the Confederate flag for more than two years. Texas was the seventh state to join the Confederacy.

Because of the Stars and Bars's similarity with the United States flag, it was unsatisfactory for use as a battle flag. The most famous Confederate battle flag was the battle flag of the



[Figure 5] CONFEDERATE STATES OF AMERICA March 4, 1861 to May 1, 1863

Army of Northern Virginia, a square having a red ground with a blue saltire bordered with white and emblazoned with white five-pointed stars corresponding in number to that of the Confederate States. The design of this battle flag was used in the second national flag of the Confederacy, the Stainless Banner. This flag flew from May 1, 1863, to March 4, 1865, and consisted of a white field with the battle flag of the Army of Northern Virginia in the canton.

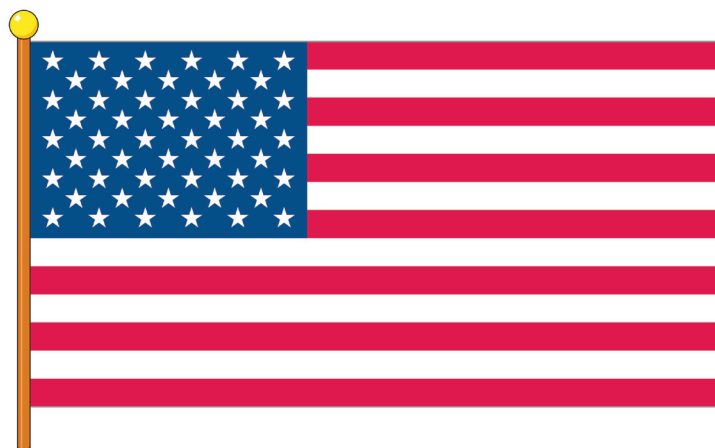
The Stainless Banner was revised on March 4, 1865, in part because naval officers objected that the flag looked both like a flag of truce and the British White Ensign. The revision added a vertical red stripe to the flag's fly. This third national flag was short-lived as the Confederacy surrendered in April 1865.

Another Confederate flag that is sometimes displayed in Texas today is a rectangular version of the battle flag of the Army of Northern Virginia. This flag was the Confederate naval jack as it appeared after May 26, 1863, and was similar to the battle flag of the Army of Tennessee that was issued in 1864.

It would be historically correct to display either the seven-star Stars and Bars, the Stainless Banner, or the 1865 revision of the Stainless Banner in the “Six Flags.” The Texas State Seal Advisory Committee choose to use the seven-star Stars and Bars when the committee updated the design of the reverse of the Texas state seal in 1992 because the Stars and Bars is the most recognizable and least inflammatory of the three Confederate Flags. The seven-star Stars and Bars would be the logical choice for inclusion in the “Six Flags.”

United States of America

The last of the “Six Flags” to fly over Texas is the flag of the United States. Texas entered the Union on December 29, 1845, as the 28th state. The 27 star United States flag was first raised in Texas on February 19, 1846, when the state government was organized in Austin. The 28 star United States flag flew only from July 4, 1846, to July 3, 1847, after which Iowa’s admission necessitated the addition of another star. A 28 star United States flag appears on the reverse of the Texas state seal to avoid the necessity of changing the reverse should another state be admitted in the future, but it would make economic sense to use the current United States flag in the “Six Flags.”



[Figure 6] UNITED STATES OF AMERICA July 4, 1960 to present

Notes

¹ <https://texashistory.unt.edu/ark:/67531/metapht176676/m1/89> and <https://perma.cc/U7JA-NM9C>.

² Exhibit A to the original motion the Commission adopted.

The artwork was produced by Graham Bartram, based on original drawings provided by Dr. Whitney Smith. Permission is granted for this artwork to be reproduced in connection with the “Six Flags,” including the manufacturing of flags.

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