

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1775

Introduced by Assembly Member Furutani
(Coauthors: Assembly Members Block and Hayashi)

February 9, 2010

An act to amend Section ~~33120~~ 37222 of the Education Code, and to add Section 6722 to the Government Code, relating to public education schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, as amended, Furutani. ~~Public education: Director of Education: schools: Fred Korematsu Day of Civil Liberties and the Constitution.~~

Existing law requires the Governor to proclaim certain days each year for specified reasons. Existing law also designates particular days each year as having special significance in public schools and educational institutions and encourages those entities to conduct suitable commemorative exercises on those dates.

This bill would require the Governor annually to proclaim April 19 as Fred Korematsu Day of Civil Liberties and the Constitution, would designate that date of each year as having special significance in public schools and educational institutions, and would encourage those entities to observe that date by conducting exercises remembering the life of Fred Korematsu and recognizing the importance of preserving civil liberties.

~~Existing law provides that the State Department of Education is conducted under the control of an executive officer known as the Director of Education. Existing law provides that the Superintendent~~

~~of Public Instruction is ex officio Director of Education. Existing law authorizes the Director of Education to conduct experimental work in education through various media, including radio and television.~~

This bill would provide that the permissible media for purposes of that authority also includes the Internet.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *It is the intent of the Legislature in enacting*
2 *this act to do all of the following:*

3 (1) *Declare April 19 the Fred Korematsu Day of Civil Liberties*
4 *and the Constitution.*

5 (2) *Emphasize the constitutional rights afforded to all Americans*
6 *regardless of race or ancestry, particularly the rights to due*
7 *process and life, liberty, and property that are guaranteed by the*
8 *Fifth and Fourteenth Amendments.*

9 (3) *Uphold the civil liberties of all citizens that are granted by*
10 *the United States and California Constitutions, especially in times*
11 *of real or perceived crisis.*

12 (b) *The Legislature finds and declares all of the following:*

13 (1) *During World War II, Fred Korematsu was arrested and*
14 *convicted for remaining in California at a time when persons of*
15 *Japanese ancestry, including United States citizens, were ordered*
16 *to live in concentration camps. Four decades later, Korematsu’s*
17 *wrongful conviction was overturned by Judge Marilyn Hall Patel*
18 *of the United States District Court. In granting Mr. Korematsu’s*
19 *petition for writ of error coram nobis, Judge Patel acknowledged*
20 *in her decision that a “grave injustice was done to American*
21 *citizens and resident aliens of Japanese ancestry who, without*
22 *individual review or any probative evidence against them, were*
23 *excluded, removed and detained by the United States during World*
24 *War II.” Judge Patel further stated, “Korematsu stands as a*
25 *caution that in times of distress the shield of military necessity and*
26 *national security must not be used to protect governmental actions*
27 *from close scrutiny and accountability. It stands as a caution that*
28 *in times of international hostility and antagonisms our institutions,*
29 *legislative, executive, and judicial, must be prepared to exercise*

1 *their authority to protect all citizens from the petty fears and*
2 *prejudices that are so easily aroused.”*

3 *(2) Fred Korematsu’s lifelong pursuit of justice on his own*
4 *behalf and for countless others is uniquely symbolic of the founding*
5 *ideals and traditions of our State and Nation. He remained a*
6 *tireless advocate for, and is an enduring symbol of, every*
7 *American’s right to liberty, due process, and equality without*
8 *regard to race, ethnicity, or national origin.*

9 *(3) In 1942, Gordon Hirabayashi and Minoru Yasui also defied*
10 *the curfew and exclusion regulations imposed on United States*
11 *residents of Japanese ancestry. Hirabayashi and Yasui were also*
12 *wrongfully convicted. And as with Fred Korematsu, they too were*
13 *denied justice by the United States Supreme Court in 1943.*

14 *(4) The Fifth Amendment and the Fourteenth Amendment of*
15 *our United States Constitution both guarantee a right to due*
16 *process. These rights were violated when Americans of Japanese*
17 *ancestry were denied the fundamental rights to notice of any*
18 *criminal charges, the right to attorneys, and the right to a trial.*
19 *Korematsu, Hirabayashi, and Yasui each took a principled stand*
20 *at great personal sacrifice in protesting government sanctioned*
21 *discrimination based on racial heritage and ancestry.*

22 *(5) Fred Korematsu was born in Oakland, California, on*
23 *January 30, 1919, to Japanese immigrant parents. Upon*
24 *graduation from Castlemont High School in 1938, Fred Korematsu*
25 *wanted to serve his country in the military and attempted to enlist*
26 *in the United States Coast Guard, but was rejected because his*
27 *Selective Service classification had been changed to “Enemy*
28 *Alien,” even though he was a citizen of the United States.*

29 *(6) Fred Korematsu attended the Master School of Welding and*
30 *worked at the docks in Oakland as a shipyard welder, quickly*
31 *rising through the ranks to foreman until his union barred all*
32 *people of Japanese ancestry and his employment was terminated.*
33 *When World War II broke out, Fred Korematsu suffered from acts*
34 *of discrimination, as he was turned away from restaurants and*
35 *barber shops, and denied the right to work, travel, and ultimately*
36 *to reside in his native State of California.*

37 *(7) In 1942, Fred Korematsu refused to comply with Civilian*
38 *Exclusion Order No. 34 which was authorized by President*
39 *Franklin D. Roosevelt’s Executive Order No. 9066. It imposed*
40 *strict curfew regulations and required over 100,000 Americans of*

1 *Japanese ancestry to leave their homes on the West Coast and*
2 *submit to imprisonment based solely on their ancestry. Rather than*
3 *reporting to the assembly center with the rest of his family, Fred*
4 *Korematsu chose to defy the order and decided to carry on his life*
5 *as an American citizen and a citizen of the State of California.*

6 (8) *Fred Korematsu was arrested on May 30, 1942, and charged*
7 *with violating the military's exclusion order. After spending two*
8 *and one-half months in a San Francisco prison, the Executive*
9 *Director of the American Civil Liberties Union of Northern*
10 *California, Ernest Besig, posted bail and offered to defend him.*
11 *Fred Korematsu was tried and convicted by a federal court and*
12 *taken by military authorities to the Tanforan concentration camp,*
13 *where he lived in squalor. Believing the discriminatory conviction*
14 *went against freedoms guaranteed by the Constitution, Fred*
15 *Korematsu appealed his case. Though the appeal went up to the*
16 *United States Supreme Court in 1944, justice was denied to Fred*
17 *Korematsu when the Supreme Court upheld the conviction by a*
18 *six to three vote, leaving him devastated and wondering what effect*
19 *this would have on other Americans.*

20 (9) *Thousands of Japanese American soldiers fought in Europe*
21 *and the Pacific during World War II and served with indomitable*
22 *spirit and valor including those in the 442nd Infantry, the 522nd*
23 *Field Artillery Battalion, the Military Intelligence Service, the*
24 *232nd Combat Engineer Company, and the 1399th Engineer*
25 *Construction Battalion. The 442nd Infantry of the United States*
26 *Army was a combat team composed primarily of Japanese*
27 *American soldiers who fought in Europe. Some members of the*
28 *442nd were recruited directly from the concentration camps, and*
29 *many others had relatives that were incarcerated in the camps.*
30 *The 442nd Regimental Combat Team became the most decorated*
31 *unit in United States military history for its size and length of*
32 *service, receiving seven Presidential Unit Citations, 21 Medals of*
33 *Honor, 29 Distinguished Service Crosses, 560 Silver Stars, 4,000*
34 *Bronze Stars, and numerous additional distinctions.*

35 (10) *Following World War II and the release of Japanese*
36 *Americans from the concentration camps, Fred Korematsu*
37 *attempted to resume life as an American citizen, marrying his wife*
38 *Kathryn and raising two children, Karen and Ken. He maintained*
39 *his innocence through the years but the conviction had a lasting*

1 *impact on Fred Korematsu's basic rights, affecting his ability to*
2 *vote and obtain employment.*

3 *(11) In January of 1982, with newly discovered evidence found*
4 *by Peter Irons, a wartime historian and attorney, and Aiko*
5 *Yoshinaga-Herzig, a researcher, Fred Korematsu made the*
6 *decision to reopen his 1944 conviction by petitioning for a writ of*
7 *error coram nobis to have the wrongful conviction vacated. The*
8 *task of retrying a legal case based on events 40 years past was*
9 *complicated and novel, but a legal team composed mostly of Sansei*
10 *third generation Japanese Americans was determined to undo the*
11 *injustice perpetrated on Fred Korematsu and their own family*
12 *members who were imprisoned along with Korematsu. Similarly,*
13 *Minoru Yasui and Gordon Hirabayashi also petitioned for writs*
14 *of error coram nobis in Oregon and Washington. Fred Korematsu's*
15 *attorneys worked closely with the legal teams assembled for the*
16 *Minoru Yasui and Gordon Hirabayashi cases. These teams were*
17 *also composed primarily of Sansei, and together the attorneys for*
18 *the three cases developed the legal strategies that would prove*
19 *successful in defending the civil rights of Fred Korematsu, Minoru*
20 *Yasui, Gordon Hirabayashi, and all Americans.*

21 *(12) The writ of error coram nobis has been extremely limited*
22 *in application but has been used by courts once an individual has*
23 *been convicted and released in order to correct a court's*
24 *fundamental error or to reverse a manifest injustice. For Fred*
25 *Korematsu, the fundamental errors at the Supreme Court level*
26 *were the suppression, alteration, and destruction of evidence by*
27 *United States government officials that Japanese Americans were*
28 *not disloyal nor were predisposed to espionage and sabotage, as*
29 *had been argued by the government in the Korematsu, Hirabayashi,*
30 *and Yasui cases, and that no facts warranted the issuance of the*
31 *military orders and Executive Order No. 9066. Thus, Fred*
32 *Korematsu's lawyers argued that a fraud on the Supreme Court*
33 *had been committed, resulting in Fred Korematsu's conviction.*

34 *(13) After litigating for over one year in the United States*
35 *District Court for the Northern District of California, Fred*
36 *Korematsu and his legal team emerged triumphant on November*
37 *10, 1983, when Judge Marilyn Hall Patel announced from the*
38 *bench her decision granting the petition for the writ of error coram*
39 *nobis to overturn Fred Korematsu's conviction. The written*
40 *decision was published on April 19, 1984.*

1 (14) *The decision by Judge Patel influenced petitions for writ*
2 *of error coram nobis in the United States District Courts of Oregon*
3 *and Washington, where Minoru Yasui and Gordon K. Hirabayashi*
4 *successfully filed to have their wrongful convictions vacated. The*
5 *coram nobis decisions in these cases impaired the precedent of*
6 *the original Supreme Court cases which validated the curfew and*
7 *exclusion orders. In addition, the decisions influenced Congress’*
8 *passage of the Civil Liberties Act of 1988.*

9 (15) *The Civil Liberties Act of 1988 was signed into law by*
10 *President Ronald Reagan and recognized the grave injustice that*
11 *was done to United States residents and citizens of Japanese*
12 *ancestry by the forced relocation and incarceration of civilians*
13 *during World War II. Congress acknowledged that the*
14 *incarceration of these Japanese Americans occurred because of*
15 *racial prejudice, wartime hysteria, and a failure of political*
16 *leadership. The apology extended on behalf of the United States*
17 *was also intended to make more credible and to be consistent with*
18 *any expressions of concern by the United States over violations of*
19 *human rights committed by other nations.*

20 (16) *In January 1998, Fred Korematsu was awarded the*
21 *Presidential Medal of Freedom. The Presidential Medal of*
22 *Freedom is the highest honor bestowed upon a civilian who has*
23 *made a particularly meritorious contribution to the nation’s*
24 *interests. That same year, Fred Korematsu also received the*
25 *California Senate Medal.*

26 (17) *Fred Korematsu continued his efforts to ensure that*
27 *Americans do not forget the lessons learned from our own history*
28 *as he traveled across the country, speaking at various colleges,*
29 *law schools, and functions. He received honorary doctorates from*
30 *the University of San Francisco, California State University at*
31 *Hayward, McGeorge School of Law, and the City University of*
32 *New York Law School. Fred Korematsu shared his story and*
33 *encouraged others to speak up when faced with injustice.*

34 (18) *Fred Korematsu’s life was the basis for the Emmy winning*
35 *2002 Public Broadcasting Service documentary “Of Civil Wrongs*
36 *and Rights: The Fred Korematsu Story,” coproduced by Eric Paul*
37 *Fournier and Fred Korematsu’s son, Ken Korematsu. The coram*
38 *nobis cases were also the subject of an Oscar nominated film,*
39 *“Unfinished Business” produced by Steven Okazaki. Fred*
40 *Korematsu’s daughter, Karen Korematsu-Haigh, helped found the*

1 *Korematsu Civil Rights Fund sponsored by the Bay Area Asian*
2 *Law Caucus.*

3 (19) *A true civil liberties hero was lost on March 30, 2005,*
4 *when Fred Korematsu passed away at 86 years of age due to*
5 *respiratory illness in Larkspur, California, leaving behind a lasting*
6 *influence on the importance of maintaining the constitutionally*
7 *mandated guarantee of liberty for all Americans.*

8 (20) *On April 18, 2008, Seattle University School of Law opened*
9 *the “Fred T. Korematsu Center for Law and Equality.”*

10 (21) *On April 30, 2009, the Asian Law Caucus officially*
11 *launched the Fred T. Korematsu Institute for Civil Rights and*
12 *Education.*

13 (22) *On December 15, 2009, the San Leandro School Board in*
14 *a unanimous decision named the new 9th grade campus, “San*
15 *Leandro High School, Fred Korematsu Campus.”*

16 (23) *Fred Korematsu’s life and his willingness to assert that*
17 *our civil liberties are the hallmark of our great country have left*
18 *an indelible mark on the history of our nation and holds a special*
19 *meaning for the people of California.*

20 *SEC. 2. Section 37222 of the Education Code is amended to*
21 *read:*

22 37222. (a) *The following days in each year are designated and*
23 *set apart as days having special significance:*

24 (1) *The second Wednesday in May as the Day of the Teacher.*

25 (2) *April 21 of each year as John Muir Day.*

26 (3) *April 6 of each year as California Poppy Day.*

27 (4) *May 22 of each year as Harvey Milk Day.*

28 (5) *April 19 of each year as Fred Korematsu Day of Civil*
29 *Liberties and the Constitution.*

30 (b) *On each of the days designated in subdivision (a), all public*
31 *schools and educational institutions are encouraged to observe*
32 *those days and to conduct suitable commemorative exercises as*
33 *follows:*

34 (1) *On the Day of the Teacher, exercises commemorating and*
35 *directing attention to teachers and the teaching profession.*

36 (2) *On John Muir Day, exercises stressing the importance that*
37 *an ecologically sound natural environment plays in the quality of*
38 *life for all of us, and emphasizing John Muir’s significant*
39 *contributions to the fostering of that awareness and the indelible*
40 *mark he left on the State of California.*

1 (3) On California Poppy Day, exercises honoring the California
 2 Poppy, including instruction about native plants, particularly the
 3 California Poppy, and the economic and aesthetic value of
 4 wildflowers; promoting responsible behavior toward our natural
 5 resources and a spirit of protection toward them; and emphasizing
 6 the value of natural resources and conservation of natural resources.

7 (4) On Harvey Milk Day, exercises remembering the life of
 8 Harvey Milk, recognizing his accomplishments, and familiarizing
 9 pupils with the contributions he made to this state.

10 (5) *On Fred Korematsu Day of Civil Liberties and the*
 11 *Constitution, exercises remembering the life of Fred Korematsu*
 12 *and recognizing the importance of preserving civil liberties, even*
 13 *in times of real or perceived crisis.*

14 (c) It is the intent of the Legislature that the exercises
 15 encouraged in this section be integrated into the regular school
 16 program, and be conducted by the school or institution within the
 17 amount otherwise budgeted for educational programs.

18 *SEC. 3. Section 6722 is added to the Government Code, to*
 19 *read:*

20 *6722. The Governor annually shall proclaim April 19 as Fred*
 21 *Korematsu Day of Civil Liberties and the Constitution.*

22 ~~SECTION 1. Section 33120 of the Education Code is amended~~
 23 ~~to read:~~

24 ~~33120. The Director of Education may conduct experimental~~
 25 ~~work in education through various media, including radio,~~
 26 ~~television, and the Internet.~~