Assembly Bill No. 1775

Passed the Assembly August 24, 2010

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Chief Clerk of the Assembly

Passed the Senate August 9, 2010

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 37222 of, to add Sections 37222.10, 37222.11, 37222.12, 37222.13, 37222.14, and 37222.15 to, and to repeal Section 37222.5 of, the Education Code, and to add Section 6722 to the Government Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, Furutani. Public 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 January 30 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.

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

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

(1) Declare January 30 the Fred Korematsu Day of Civil Liberties and the Constitution.

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

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

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

(1) During World War II, Fred Korematsu was arrested and convicted for defying the exclusion order at a time when persons of Japanese ancestry, including United States citizens, were ordered to live in concentration camps. Four decades later, Korematsu's wrongful conviction was overturned by Judge Marilyn Hall Patel of the United States District Court for the Northern District of California. In granting Mr. Korematsu's petition for writ of error coram nobis, Judge Patel acknowledged in her decision that "a grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II." Judge Patel further stated, "[Korematsu] stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive, and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused."

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

(3) In 1942, Gordon K. Hirabayashi and Minoru Yasui also defied the curfew imposed on United States citizens and permanent residents of Japanese ancestry. In 1943, Hirabayashi and Yasui were also wrongfully convicted and denied justice by the United States Supreme Court.

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

(5) Fred Korematsu was born in Oakland, California, on January 30, 1919, to Japanese immigrant parents. Upon graduation from Castlemont High School in 1937, Fred Korematsu wanted to serve his country in the military and attempted to enlist in the United States National Guard and the United States Coast Guard, but was rejected because his Selective Service classification had been changed to "Enemy Alien," even though he was a citizen of the United States.

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

(7) In 1942, Fred Korematsu refused to comply with Civilian Exclusion Order No. 34 which was authorized by President Franklin D. Roosevelt's Executive Order No. 9066. It imposed strict curfew regulations and required over 100,000 United States citizens and permanent residents of Japanese ancestry to leave their homes on the West Coast and submit to imprisonment based solely on their ancestry. Rather than reporting to the assembly center with the rest of his family, Fred Korematsu chose to defy the order and decided to carry on his life as an American citizen and a citizen of the State of California.

(8) Fred Korematsu was arrested on May 30, 1942, and charged with violating the military's exclusion order. While spending two and one-half months in the Presidio stockade prison in San Francisco, the Executive Director of the American Civil Liberties Union of Northern California, Ernest Besig, offered to defend him. Fred Korematsu was tried and convicted by a federal court and taken by military authorities to the Tanforan Assembly Center in San Bruno, California, where he lived in squalor. After spending several months at Tanforan, a former horse racing track, Korematsu and his family were sent to the Topaz concentration camp in Utah. Believing the discriminatory conviction went against freedoms guaranteed by the Constitution, Fred Korematsu appealed his case. Though the appeal went up to the United States Supreme Court in 1944, justice was denied to Fred Korematsu when the Supreme

Court upheld the conviction by a six to three vote, leaving him devastated and wondering what effect this would have on other Americans.

(9) Tens of thousands of Japanese American soldiers fought in Europe, North Africa, and the Pacific during World War II and served with indomitable spirit and valor, including those in the 442nd Infantry, the 100th Infantry Battalion, the 522nd Field Artillery Battalion, the Military Intelligence Service, the 232nd Combat Engineer Company, and the 1399th Engineer Construction Battalion. The 442nd Infantry of the United States Army was a combat team composed primarily of Japanese American soldiers who fought in Europe. Some members of the 442nd were recruited directly from the concentration camps, and many others had relatives that were incarcerated in the camps. Grouped together as the 442nd Regimental Combat Team, the unit became the most decorated unit in United States military history for its size and length of service, receiving seven Presidential Unit Citations, 21 Medals of Honor, 52 Distinguished Service Crosses, 560 Silver Stars, 4,000 Bronze Stars, and numerous additional distinctions.

(10) Following World War II and the release of Japanese Americans from the concentration camps, Fred Korematsu attempted to resume life as an American citizen, marrying his wife Kathryn and raising two children, Karen and Ken. He maintained his innocence through the years, but the conviction had a lasting impact on Fred Korematsu's basic rights, affecting his ability to obtain employment.

(11) In 1982, with newly discovered evidence found by Peter Irons, a legal historian and attorney, and Aiko Yoshinaga-Herzig, a researcher, Fred Korematsu made the decision to reopen his 1944 conviction by petitioning for a writ of error coram nobis to have the wrongful conviction vacated. The task of retrying a legal case based on events 40 years past was complicated and novel, but a pro bono legal team composed mostly of Sansei (third generation Japanese Americans) was determined to undo the injustice perpetrated on Fred Korematsu and their own family members who were imprisoned along with Korematsu. Similarly, Minoru Yasui and Gordon K. Hirabayashi also petitioned for writs of error coram nobis in Oregon and Washington. Fred Korematsu's attorneys worked closely with the legal teams assembled for the Minoru Yasui and Gordon K. Hirabayashi cases. These pro bono

teams were also composed primarily of Sansei, and together the attorneys for the three cases developed the legal strategies that would prove successful in defending the civil rights of Fred Korematsu, Minoru Yasui, Gordon K. Hirabayashi, and all Americans.

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

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

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

(15) The Civil Liberties Act of 1988 was signed into law by President Ronald Reagan and recognized the grave injustice that was done to United States residents and citizens of Japanese ancestry by the forced relocation and incarceration of civilians during World War II. Congress acknowledged that the incarceration of these Japanese Americans occurred because of racial prejudice, wartime hysteria, and a failure of political leadership. The apology

extended on behalf of the United States was also intended to make more credible and to be consistent with any expressions of concern by the United States over violations of human rights committed by other nations.

(16) On January 15, 1998, Fred Korematsu was awarded the Presidential Medal of Freedom. The Presidential Medal of Freedom is the highest honor bestowed upon a civilian who has made a particularly meritorious contribution to the nation's interests.

(17) On June 11, 1998, Fred Korematsu received the first California Senate Medal.

(18) Fred Korematsu continued his efforts to ensure that Americans do not forget the lessons learned from our own history as he traveled across the country, speaking at various colleges, law schools, and other organizations. He received honorary doctorates from the University of San Francisco, California State University, East Bay (formerly California State University, Hayward), McGeorge School of Law, and the City University of New York Law School. Fred Korematsu shared his story and encouraged others to speak up when faced with injustice.

(19) After September 11, 2001 (9/11), Korematsu continued to speak out. In 2003, he filed a "Friend-of-the-Court" brief with the United States Supreme Court on behalf of Muslim inmates being held at Guantanamo Bay, warning that the government's extreme national security measures were reminiscent of the past. In 2004, he filed a similar brief on behalf of an American Muslim man being held in solitary confinement without a trial in a United States military prison.

(20) Fred Korematsu's life was the basis for the Emmy award-winning 2001 Public Broadcasting Service documentary "Of Civil Wrongs and Rights: The Fred Korematsu Story," coproduced by Eric Paul Fournier and Fred Korematsu's son, Ken Korematsu. The coram nobis cases were also the subject of an Oscar nominated film, "Unfinished Business" directed by Steven Okazaki.

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

(22) On April 18, 2009, Seattle University School of Law opened the Fred T. Korematsu Center for Law and Equality.

(23) On April 30, 2009, the Asian Law Caucus in San Francisco officially launched the Fred T. Korematsu Institute for Civil Rights and Education. The mission of the institute is to advance pan-ethnic civil rights issues, in a post-9/11 context, through education, leadership development, and activism. Fred Korematsu's daughter, Karen Korematsu, helped found the Korematsu Institute. She is active in advancing her father's legacy as a member of the Institute's Steering Committee and as a speaker at universities and organizations across the country.

(24) In November 2005, an elementary school at Mace Ranch in Davis, California, was renamed the Fred T. Korematsu Elementary School at Mace Ranch. In November 2006, the Discovery Academy elementary school in Oakland, California, was renamed the Fred T. Korematsu Discovery Academy. On December 15, 2009, the governing board of the San Leandro Unified School District, in a unanimous decision, named the new 9th grade campus the San Leandro High School Fred T. Korematsu Campus.

(25) In 1988, two new streets in San Jose, California, were named Korematsu Court and Hirabayashi Drive.

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

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

37222. (a) On each day designated and set apart as a day having special significance, all public schools and educational institutions are encouraged to observe that day and to conduct suitable commemorative exercises.

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

SEC. 3. Section 37222.10 is added to the Education Code, to read:

37222.10. (a) The second Wednesday in May of each year is designated and set apart as the Day of the Teacher, a day having special significance pursuant to Section 37222.

(b) On the Day of the Teacher, all public schools and educational institutions are encouraged to conduct exercises commemorating and directing attention to teachers and the teaching profession.

SEC. 4. Section 37222.11 is added to the Education Code, to read:

37222.11. (a) April 21 of each year is designated and set apart as John Muir Day, a day having special significance pursuant to Section 37222.

(b) On John Muir Day, all public schools and educational institutions are encouraged to conduct exercises stressing the importance that an ecologically sound natural environment plays in the quality of life for all of us, and emphasizing John Muir's significant contributions to the fostering of that awareness and the indelible mark he left on the State of California.

SEC. 5. Section 37222.12 is added to the Education Code, to read:

37222.12. (a) April 6 of each year is designated and set apart as California Poppy Day, a day having special significance pursuant to Section 37222.

(b) On California Poppy Day, all public schools and educational institutions are encouraged to conduct exercises honoring the California Poppy, including instruction about native plants, particularly the California Poppy, and the economic and aesthetic value of wildflowers; promoting responsible behavior toward our natural resources and a spirit of protection toward them; and emphasizing the value of natural resources and conservation of natural resources.

SEC. 6. Section 37222.13 is added to the Education Code, to read:

37222.13. (a) May 22 of each year is designated and set apart as Harvey Milk Day, a day having special significance pursuant to Section 37222.

(b) On Harvey Milk Day, all public schools and educational institutions are encouraged to conduct exercises remembering the life of Harvey Milk, recognizing his accomplishments, and familiarizing pupils with the contributions he made to this state.

SEC. 7. Section 37222.14 is added to the Education Code, to read:

37222.14. (a) March 30 of each year is designated and set apart as Welcome Home Vietnam Veterans Day, a day having special significance pursuant to Section 37222.

(b) On Welcome Home Vietnam Veterans Day, all public schools and educational institutions are encouraged to conduct exercises recognizing the contributions of all those involved in the Vietnam War and remembering the sacrifices they made for their country.

SEC. 8. Section 37222.15 is added to the Education Code, to read:

37222.15. (a) January 30 of each year is designated and set apart as Fred Korematsu Day of Civil Liberties and the Constitution, a day having special significance pursuant to Section 37222.

(b) On Fred Korematsu Day of Civil Liberties and the Constitution, all public schools and educational institutions are encouraged to conduct exercises remembering the life of Fred Korematsu and recognizing the importance of preserving civil liberties, even in times of real or perceived crisis.

SEC. 9. Section 37222.5 of the Education Code is repealed.

SEC. 10. Section 6722 is added to the Government Code, to read:

6722. The Governor annually shall proclaim January 30 as Fred Korematsu Day of Civil Liberties and the Constitution.

Approved _____, 2010

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Governor