

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 855 (Ramos) – As Introduced February 17, 2021

SUBJECT: JUDICIAL HOLIDAYS: NATIVE AMERICAN DAY

KEY ISSUE: SHOULD CALIFORNIA COURTS REPLACE THE COLUMBUS DAY HOLIDAY WITH A HOLIDAY HONORING NATIVE AMERICANS?

SYNOPSIS

This generally non-controversial measure would eliminate Columbus Day as an official judicial holiday and instead replace Columbus Day with Native American Day. The bill would preserve Columbus Day as a state holiday, but swap the date in which court personnel receive a paid day off. This bill follows decisions by both the Legislature and the executive branch to treat Columbus Day as a holiday but not a paid day off for staff. However, unlike the Legislature and executive branch, this bill would make the judicial branch the first branch of California government to make Native American Day a paid day off for staff. The goal of the day off is to boost awareness and appreciation of the contributions of Native Americans to California's culture and history.

This measure is sponsored by the Judicial Council of California who note that the bill is conducive with the courts ongoing efforts to make the judicial branch more representative and welcoming to all Californians. The Judicial Council also notes that swapping paid days off will have no meaningful impact on court operations as the number of working days in a calendar year will not be impacted by this bill. Although no formal opposition has been raised, several informal complaints have been received by the Committee, alleging that this bill is perpetuating "cancel culture" and may be discriminatory to Italian Americans. In response, the author and sponsor note that this bill does not eliminate Columbus Day as a state holiday or discriminate against Italian Americans, and that instead this bill recognizes the painful past that Columbus represents for many Native Americans and seeks to honor the contributions of Native Americans to California.

SUMMARY: Replaces Columbus Day with Native American Day as an approved judicial holiday. Specifically, **this bill:**

- 1) Deletes the statutory exclusion of "the fourth Friday in September, known as "Native American Day" from the list of state holidays not recognized by the courts.
- 2) Adds Columbus Day to the list of holidays excluded from the list of approved judicial holidays.

EXISTING LAW:

- 1) Provides that the official holidays in California are:
 - a) Every Sunday;
 - b) January 1st;

- c) The third Monday in January, known as “Dr. Martin Luther King, Jr. Day;”
 - d) February 12th, known as “Lincoln Day;”
 - e) The third Monday in February;
 - f) March 31st, known as “Cesar Chavez Day;”
 - g) The last Monday in May;
 - h) July 4th;
 - i) The first Monday in September;
 - j) September 9th, known as “Admission Day;”
 - k) The fourth Friday in September, known as “Native American Day;”
 - l) The second Monday in October, known as “Columbus Day;”
 - m) November 11th, known as “Veterans Day;”
 - n) December 25th;
 - o) Good Friday from 12 noon until 3 p.m.; and
 - p) Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday. (Government Code Section 6700.)
- 2) Provides, generally, that courts of justice may be held and judicial business transacted on any day except on a judicial holiday. (Code of Civil Procedure Section 133.)
- 3) Provides that every full day designated as a holiday in accordance with 1), including Thanksgiving Day, is a judicial holiday, except September 9, known as “Admission Day,” the fourth Friday in September, known as “Native American Day,” and any other day appointed by the President, but not by the Governor, for a public fast, thanksgiving, or holiday. (Code of Civil Procedure Section 135.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Originally established in 1937, Columbus Day was intended to celebrate the man who was then widely credited with discovering North America. However, soon after the official establishment of the holiday, critics began to highlight Christopher Columbus’ role in perpetuating the mass murder of Native Americans as a result of European settlement of North America, as well as his own mistreatment of the hundreds, if not thousands, of Native Americans he personally interacted with. Accordingly, beginning in the 1970s, movements to eliminate Columbus Day and replace the holiday with Native American or Indigenous People Day gathered momentum. Since 2014, with the passage of AB 1973 (Hernandez, Chap. 537, Stats. 2014), California has recognized the fourth Friday in September as “Native American Day” as an official state holiday, albeit a holiday that does not provide for paid time off for any state employee.

This bill. As a part of the Judicial Branch’s ongoing efforts to modernize itself, the Judicial Council of California published The Strategic Plan for California’s Judicial Branch. Goal number one of the strategic plan includes improving access, fairness, and diversity within the courts. The Strategic Plan for California’s Judicial Branch states that the Judicial Branch must work, “to remove all barriers to access and fairness by being responsive to the state’s cultural, ethnic, socioeconomic, linguistic, physical, gender, and age diversities, and to all people as a whole.” (Judicial Council of California, *The Strategic Plan for California’s Judicial Branch*, available at: <https://www.courts.ca.gov/3045.htm>.) Recognizing that celebrating Columbus Day is hurtful to many Californians of Native American ancestry, the court noted that eliminating the holiday removes barriers to Native Americans seeking to access the court system. However, unlike executive branch employees who negotiate their holidays as a part of the collective bargaining process, judiciary employees have holidays set in the Code of Civil Procedure and thus cannot change the Columbus Day holiday without legislation.

Accordingly, this bill eliminates existing language that precludes California courts from recognizing the state’s declaration of Native American Day as a state holiday. Additionally, this bill adds Columbus Day to the list of state holidays that are not celebrated as judicial holidays. By, in essence, trading one holiday for another, this bill ensures that California courts will be the first branch of state government to recognize Native American Day as an official paid holiday for all staff.

Author’s Statement. The author notes that the Judicial Branch is the only branch of California government still recognizing Columbus Day as a holiday, due in part to the court’s separate statutory designation of holidays. In support of updating the judicial holiday statute, the author argues:

Leading up to the 2020 observance of the Columbus Day holiday by Judicial Council employees, the question arose as to why the judicial branch continues to observe the day as a paid holiday when many other states and government agencies no longer observe it. The Judicial Council approached Assemblymember Ramos, who has been working to create a California Native American Day for more than twenty years. This year, he introduced AB 855, which allows the Council to swap Columbus Day as a paid judicial holiday with another state holiday, California Native American Day, which is an unpaid state holiday. If AB 855 is approved, then judicial employees will become the first state workers to enjoy a paid state holiday on California Native American Day.

This bill should present no meaningful impact to day-to-day court operations. Since the onset of the COVID-19 pandemic, California courts have been under increasing scrutiny regarding their operations during the stay-at-home orders and the general shut down of public life since March of 2020. Despite the risks and issues posed by the pandemic, court operations are critical to a functioning society, and several court stakeholders have noted that court operations have been wildly inconsistent between counties and that significant backlogs are building in case calendars, especially for civil matters (See Asm. & Sen. Comms. on Judiciary, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (2021-22 Reg. Session) available at: <https://ajud.assembly.ca.gov/reports>). Accordingly, the Legislature will likely be mindful that its actions do not further exacerbate the case backlogs that have accrued in the courts during the COVID-19 pandemic.

Recognizing the need to avoid adding to court backlogs, the Judicial Council proffers that this bill should have little, if any, impact on court operations. The Judicial Council notes that this bill does not add any additional non-court days to the judicial holiday calendar. Further, the Judicial Council notes that in the absence of this bill, courts would continue to be closed on Columbus Day and that this bill simply switches paid days off for court personnel from a holiday that is offensive to thousands of Californians to one that recognizes the history, heritage, and contributions of Native Americans to this state.

Recognizing diversity, the realities of history, and promoting inclusivity in public institutions is not “cancelling” the past. Although this measure is ostensibly non-controversial, and no formal opposition has been recorded to the bill, several informal complaints have been raised to Committee staff that this bill perpetuates “cancel culture” or the widespread elimination of a person, work or art or literature, or reference from the broader culture. It should be noted that while many try to argue that “cancel culture” is a product of the political left, in reality all sides of America’s deeply polarized political landscape can be accused of “cancelling” viewpoints with which they do not agree. (Anthony Zurcher, *Cancel culture: Have any two words become more weaponized?*, BBC News (Feb. 18, 2021) available at: <https://www.bbc.com/news/world-us-canada-55959135>.)

In fact, as it pertains to the legacy of Christopher Columbus and Columbus Day, as well as elevating the recognition of Native Americans, an examination of state holidays across the country reveals that moving away from Columbus Day is a bipartisan effort. As of 2018, only 21 states continue to give state employees Columbus Day off as a paid holiday. (Drew DeSilver, *Working on Columbus Day? It depends on where you live.*, Pew Research Center (Oct. 10, 2019) available at: <https://www.pewresearch.org/fact-tank/2019/10/10/working-on-columbus-day-it-depends-on-where-you-live/>.) The list of states that no longer celebrate Columbus Day as a paid holiday range from traditionally progressive states like California and Washington, to more conservative strongholds, including Texas and Florida. (*Ibid.*) Furthermore, the 13 states that now recognize Native American Day or Indigenous Peoples Day as a paid holiday also bridge the political divide. Since the early 1990s, states such as Iowa and South Dakota have recognized these holidays as well as Oregon, Alaska, and Vermont. (*Ibid.*) Several other states, including Hawaii, have moved away from recognizing Columbus Day in favor of their own state-focused holidays. (*Ibid.*) Accordingly, this bill appears to be less of an attempt to “cancel” Christopher Columbus than a well-meaning effort to ensure that California engages in the broader national conversation about Columbus and the nuances his legacy.

It should also be noted that *nothing* in this bill eliminates Columbus Day from the lists of state and court holidays. Notwithstanding this measure, Columbus Day would remain a state (and court) holiday, albeit one in which no state or court employees would receive a paid holiday. This bill simply switches two dates in which court personnel will receive a paid holiday and does so in a manner designed to promote and highlight the contributions of Native Americans to California.

Expanding California’s recognition of Native American Day as a celebration of Native American history and culture. Although this bill is modest in its approach, the author may wish to consider expanding the bill to deal with issues of whether or not Columbus Day should remain as a state holiday. Many note that Columbus did not, in fact, discover America and the holiday was created in order to curtail some of the discrimination being projected at Italian Americans in the early 1900s. (Marsha Mercer, *More States Say Goodbye to Columbus Day*, Stateline (Oct. 11,

2019) available at: <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/10/11/more-states-say-goodbye-to-columbus-day>.) Despite the persistence of highly problematic of portrayals of Italian-Americans in cinema, particularly mafia movies, overall systematic discrimination against Italian Americans has decreased precipitously since the end of the Second World War. In light of the decline of systemic discrimination toward Italian Americans, and the pernicious and ongoing discrimination facing Native Americans, many have sought to move away from celebrating Columbus due to his treatment of Native Americans. Many advocates argue that celebrating a man whose actions eventually lead to the death of nearly 95 percent of all Native Americans living in North America is not conducive to an open and accepting United States. (*Ibid.*) Accordingly, given California's own fraught history regarding European treatment of native populations, as this bill progresses through the Legislature, the author may wish to consider if a true reflection of the values of California necessitates the elimination Columbus Day from the list of court holidays altogether.

ARGUMENTS IN SUPPORT: This bill is sponsored by the Judicial Council of California. In support of eliminating Columbus Day as a judicial holiday the Council writes:

Sponsoring legislation to recognize Native American Day as a judicial holiday furthers the Judicial Council's mission of, embodied in the Strategic Plan, "to remove all barriers to access and fairness by being responsive to the state's cultural, ethnic, socioeconomic, linguistic, physical, gender, and age diversities, and to all people." This bill also supports the Chief Justice's direction to address bias and racism.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council of California

Opposition

None on file

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