

114TH CONGRESS
2D SESSION

S. 3400

To prohibit the conduct of a first-use nuclear strike absent a declaration
of war by Congress.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2016

Mr. MARKEY introduced the following bill; which was read twice and referred
to the Committee on Foreign Relations

A BILL

To prohibit the conduct of a first-use nuclear strike absent
a declaration of war by Congress.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restricting First Use
5 of Nuclear Weapons Act of 2016”.

6 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The Constitution gives Congress the sole
9 power to declare war.

1 (2) The framers of the Constitution understood
2 that the monumental decision to go to war, which
3 can result in massive death and the destruction of
4 civilized society, must be made by the representa-
5 tives of the people and not by a single person.

6 (3) As stated by section 2(c) of the War Powers
7 Resolution (Public Law 93–148; 50 U.S.C. 1541),
8 “the constitutional powers of the President as Com-
9 mander-in-Chief to introduce United States Armed
10 Forces into hostilities, or into situations where im-
11 minent involvement in hostilities is clearly indicated
12 by the circumstances, are exercised only pursuant to
13 (1) a declaration of war, (2) specific statutory au-
14 thorization, or (3) a national emergency created by
15 attack upon the United States, its territories or pos-
16 sessions, or its armed forces”.

17 (4) Nuclear weapons are uniquely powerful
18 weapons that have the capability to instantly kill
19 millions of people, create long-term health and envi-
20 ronmental consequences throughout the world, di-
21 rectly undermine global peace, and put the United
22 States at existential risk from retaliatory nuclear
23 strikes.

1 (5) By any definition of war, a first-use nuclear
 2 strike from the United States would constitute a
 3 major act of war.

4 (6) A first-use nuclear strike conducted absent
 5 a declaration of war by Congress would violate the
 6 Constitution.

7 (b) DECLARATION OF POLICY.—It is the policy of the
 8 United States that no first-use nuclear strike should be
 9 conducted absent a declaration of war by Congress.

10 **SEC. 3. PROHIBITION ON CONDUCT OF FIRST-USE NU-**
 11 **CLEAR STRIKES.**

12 (a) PROHIBITION.—Notwithstanding any other provi-
 13 sion of law, the President may not use the Armed Forces
 14 of the United States to conduct a first-use nuclear strike
 15 unless such strike is conducted pursuant to a declaration
 16 of war by Congress that expressly authorizes such strike.

17 (b) FIRST-USE NUCLEAR STRIKE DEFINED.—In this
 18 section, the term “first-use nuclear strike” means an at-
 19 tack using nuclear weapons against an enemy that is con-
 20 ducted without the President determining that the enemy
 21 has first launched a nuclear strike against the United
 22 States or an ally of the United States.

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