

117TH CONGRESS
1ST SESSION

S. 1148

To restrict the first-use strike of nuclear weapons.

IN THE SENATE OF THE UNITED STATES

APRIL 15, 2021

Mr. MARKEY (for himself, Mr. MERKLEY, Ms. WARREN, Mr. MURPHY, Mr. VAN HOLLEN, Mr. SCHATZ, Ms. SMITH, Mrs. FEINSTEIN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To restrict the first-use strike of nuclear weapons.

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 2021”.

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.

10 (2) The framers of the Constitution understood
11 that the monumental decision to go to war, which

1 can result in massive death and the destruction of
2 civilized society, must be made by the representa-
3 tives of the people and not by a single person.

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

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

22 (5) A first-use nuclear strike carried out by the
23 United States would constitute a major act of war.

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

4 (7) The President has the sole authority to au-
5 thorize the use of nuclear weapons, an order which
6 military officers of the United States must carry out
7 in accordance with their obligations under the Uni-
8 form Code of Military Justice.

9 (8) Given its exclusive power under the Con-
10 stitution to declare war, Congress must provide
11 meaningful checks and balances to the President's
12 sole authority to authorize the use of a nuclear
13 weapon.

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

17 **SEC. 3. PROHIBITION ON CONDUCT OF FIRST-USE NU-**
18 **CLEAR STRIKES.**

19 (a) PROHIBITION.—No Federal funds may be obli-
20 gated or expended to conduct a first-use nuclear strike un-
21 less such strike is conducted pursuant to a war declared
22 by Congress that expressly authorizes such strike.

23 (b) FIRST-USE NUCLEAR STRIKE DEFINED.—In this
24 section, the term “first-use nuclear strike” means an at-
25 tack using nuclear weapons against an enemy that is con-

1 ducted without the Secretary of Defense and the Chair-
2 man of the Joint Chiefs of Staff first confirming to the
3 President that there has been a nuclear strike against the
4 United States, its territories, or its allies (as specified in
5 section 3(b)(2) of the Arms Export Control Act (22 U.S.C.
6 2753(b)(2))).

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