

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To prevent an unconstitutional strike against North Korea.

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IN THE SENATE OF THE UNITED STATES

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

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**A BILL**

To prevent an unconstitutional strike against North Korea.

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 “No Unconstitutional  
5 Strike Against North Korea Act of 2017”.

6 **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8           (1) The President is currently prohibited from  
9       initiating a war or launching a first strike without  
10       congressional approval under the United States Con-  
11       stitution and United States law.

1           (2) The Constitution, in Article I, Section 8,  
2 grants Congress the sole power to declare war.

3           (3) George Washington, in a letter to William  
4 Moultrie dated August 28, 1793, wrote, “The con-  
5 stitution vests the power of declaring war in Con-  
6 gress; therefore no offensive expedition of impor-  
7 tance can be undertaken until after they shall have  
8 deliberated upon the subject and authorized such a  
9 measure.”

10          (4) In Examination Number 1 of the Hamilton  
11 Papers, dated December 17, 1801, Alexander Ham-  
12 ilton wrote, “The Congress shall have the power to  
13 declare war’; the plain meaning of which is, that it  
14 is the peculiar and exclusive duty of Congress, when  
15 the nation is at peace, to change that state into a  
16 state of war.”

17          (5) James Madison wrote, in Madison Papers,  
18 Helvidius, Number 4, dated September 14, 1793,  
19 “The power to declare war, including the power of  
20 judging the causes of war, is fully and exclusively  
21 vested in the legislature . . . the executive has no  
22 right, in any case, to decide the question, whether  
23 there is or is not cause for declaring war.”

24          (6) Section 2(c) of the War Powers Resolution  
25 (50 U.S.C. 1541(c)) states that “the constitutional

1 powers of the President as Commander-in-Chief to  
2 introduce United States Armed Forces into hos-  
3 tilities, or into situations where imminent involve-  
4 ment in hostilities is clearly indicated by the cir-  
5 cumstances, are exercised only pursuant to (1) a  
6 declaration of war, (2) specific statutory authoriza-  
7 tion, or (3) a national emergency created by attack  
8 upon the United States, its territories or posses-  
9 sions, or its armed forces”.

10 (7) The American people, United States allies  
11 in Asia, and the entire world have been deeply trou-  
12 bled by escalating tensions on the Korean peninsula.

13 (8) Recent polling demonstrates that more than  
14 two-thirds of people in the United States believe that  
15 the United States should attack North Korea only if  
16 North Korea attacks first.

17 (9) The United States has approximately  
18 28,500 members of the Armed Forces stationed in  
19 Korea who would be placed in grave danger if an ac-  
20 tive military conflict were to erupt.

21 (10) On August 14, 2017, Chairman of the  
22 Joint Chiefs of Staff, Marine Corps General Joseph  
23 Dunford stated, “The United States military’s pri-  
24 ority is to support our government’s efforts to

1           achieve the denuclearization of the Korean Peninsula  
2           through diplomatic and economic pressure.”

3                   (11) On August 10, 2017, Defense Secretary  
4           James Mattis stated that armed conflict with North  
5           Korea “would be catastrophic”.

6   **SEC. 3. PROHIBITION ON UNCONSTITUTIONAL MILITARY**  
7                   **STRIKES AGAINST NORTH KOREA.**

8           (a) IN GENERAL.—None of the funds appropriated  
9           or otherwise made available to the Department of Defense  
10          or to any other Federal department or agency may be used  
11          to launch a military strike against North Korea or intro-  
12          duce the Armed Forces into hostilities in North Korea be-  
13          fore the date on which Congress declares war on North  
14          Korea or enacts an authorization described in subsection  
15          (b).

16          (b) AUTHORIZATION OF MILITARY STRIKES.—An au-  
17          thorization described in this subsection is an authorization  
18          that meets the requirements of the War Powers Resolution  
19          (Public Law 93–148; 50 U.S.C. 1541 et seq.) and that  
20          is enacted after the date of the enactment of this Act.

21          (c) EXCEPTIONS.—The prohibition under subsection  
22          (a) shall not apply with respect to the introduction of the  
23          Armed Forces into hostilities to repel a sudden attack on  
24          the United States, its territories or possessions, the United  
25          States Armed Forces, or United States allies or to the de-

1 ployment of United States Armed Forces to rescue or re-  
2 move United States personnel.

3 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion may be construed to relieve the Executive Branch of  
5 the restrictions on the use of force or the reporting re-  
6 quirements stated in the War Powers Resolution (Public  
7 Law 93–148; 50 U.S.C. 1541 et seq.).

8 **SEC. 4. SENSE OF CONGRESS IN SUPPORT OF A DIPLO-**  
9 **MATIC RESOLUTION TO GROWING TENSIONS**  
10 **WITH NORTH KOREA.**

11 It is the sense of Congress that—

12 (1) a conflict on the Korean peninsula would  
13 have catastrophic consequences for the American  
14 people, for members of the United States Armed  
15 Forces stationed in the region, for United States in-  
16 terests, for United States allies the Republic of  
17 Korea and Japan, for the long-suffering people of  
18 North Korea, and for global peace and security more  
19 broadly, and that actions and statements that in-  
20 crease tensions and could lead to miscalculation  
21 should be avoided; and

22 (2) the President, in coordination with United  
23 States allies, should explore and pursue every fea-  
24 sible opportunity to engage in talks with the Govern-  
25 ment of North Korea on concrete steps to reduce

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1 tensions and improve communication, and to initiate  
2 negotiations designed to achieve a diplomatic agree-  
3 ment to halt and eventually reverse North Korea's  
4 nuclear and missile pursuits and to move toward  
5 denuclearization and a permanent peace in the Ko-  
6 rean peninsula.