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

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2017

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 Represent- 
2 atives 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 2017”.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress finds the following:

(1) The Constitution gives Congress the sole power to declare war.
(2) The framers of the Constitution understood that the monumental decision to go to war, which can result in massive death and the destruction of civilized society, must be made by the representatives of the people and not by a single person.

(3) As stated by section 2(e) of the War Powers Resolution (Public Law 93–148; 50 U.S.C. 1541), “the constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces”.

(4) Nuclear weapons are uniquely powerful weapons that have the capability to instantly kill millions of people, create long-term health and environmental consequences throughout the world, directly undermine global peace, and put the United States at existential risk from retaliatory nuclear strikes.
(5) By any definition of war, a first-use nuclear strike from the United States would constitute a major act of war.

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

(b) Declaration of Policy.—It is the policy of the United States that no first-use nuclear strike should be conducted absent a declaration of war by Congress.

SEC. 3. PROHIBITION ON CONDUCT OF FIRST-USE NUCLEAR STRIKES.

(a) Prohibition.—Notwithstanding any other provision of law, the President may not use the Armed Forces of the United States to conduct a first-use nuclear strike unless such strike is conducted pursuant to a declaration of war by Congress that expressly authorizes such strike.

(b) First-Use Nuclear Strike Defined.—In this section, the term “first-use nuclear strike” means an attack using nuclear weapons against an enemy that is conducted without the President determining that the enemy has first launched a nuclear strike against the United States or an ally of the United States.