

AMENDMENT NO. _____ Calendar No. _____

Purpose: To restrict the first-use strike of nuclear weapons.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 2792

To authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MARKEY

Viz:

1 At the end of subtitle C of title XV, add the following:

2 **SEC. 1548. RESTRICTION ON FIRST-USE STRIKE OF NU-**
3 **CLEAR WEAPONS..**

4 (a) FINDINGS AND DECLARATION OF POLICY.—

5 (1) FINDINGS.—Congress finds the following:

6 (A) The Constitution gives Congress the
7 sole power to declare war.

8 (B) The framers of the Constitution under-
9 stood that the monumental decision to go to
10 war, which can result in massive death and the
11 destruction of civilized society, must be made by

1 the representatives of the people and not by a
2 single person.

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

15 (D) Nuclear weapons are uniquely power-
16 ful weapons that have the capability to instantly
17 kill millions of people, create long-term health
18 and environmental consequences throughout the
19 world, directly undermine global peace, and put
20 the United States at existential risk from retal-
21 iatory nuclear strikes.

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

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

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

10 (H) Given its exclusive power under the
11 Constitution to declare war, Congress must pro-
12 vide meaningful checks and balances to the
13 President's sole authority to authorize the use
14 of a nuclear weapon.

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

19 (b) PROHIBITION ON CONDUCT OF FIRST-USE NU-
20 CLEAR STRIKES.—

21 (1) PROHIBITION.—No Federal funds may be
22 obligated or expended to conduct a first-use nuclear
23 strike unless such strike is conducted pursuant to a
24 war declared by Congress that expressly authorizes
25 such strike.

1 (2) FIRST-USE NUCLEAR STRIKE DEFINED.—In
2 this subsection, the term “first-use nuclear strike”
3 means an attack using nuclear weapons against an
4 enemy that is conducted without the Secretary of
5 Defense and the Chairman of the Joint Chiefs of
6 Staff first confirming to the President that there has
7 been a nuclear strike against the United States, its
8 territories, or its allies (as specified in section
9 3(b)(2) of the Arms Export Control Act (22 U.S.C.
10 2753(b)(2))).