

118TH CONGRESS  
1ST SESSION

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

To restrict the first-use strike of nuclear weapons.

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IN THE SENATE OF THE UNITED STATES

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Mr. MARKEY (for himself, Mr. MERKLEY, Ms. WARREN, Mr. MURPHY, Mr. VAN HOLLEN, Ms. SMITH, Mr. WELCH, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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 2023”.

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))).