

116TH CONGRESS  
2D SESSION

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

To prevent an unconstitutional war with North Korea.

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IN THE SENATE OF THE UNITED STATES

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

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**A BILL**

To prevent an unconstitutional war with 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 War with North Korea Act of 2020”.

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) On April 12, 2018, then-Director of the  
11 Central Intelligence Agency, Mike Pompeo, testified  
12 before the Committee on Foreign Relations of the  
13 Senate that he believed the President had the au-  
14 thority to send United States military forces into ac-  
15 tion even if none of the qualifications of section 2(c)  
16 of the War Powers Resolution are met.

17 (8) On February 13, 2020, a bipartisan major-  
18 ity in the Senate directed the President to remove  
19 Armed Forces from hostilities against Iran or any  
20 part of its government or military, unless otherwise  
21 explicitly authorized by Congress, following passage  
22 of a similar measure in the House of Representa-  
23 tives on January 9, 2020.

24 (9) The United States has approximately  
25 28,500 members of the Armed Forces stationed in

1 Korea, and over 100,000 United States citizens in  
2 total, all of whom would be placed in grave danger  
3 if an active military conflict on the Korean Penin-  
4 sula were to erupt.

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

7 (a) PROHIBITION OF AUTHORIZED MILITARY FORCE  
8 IN OR AGAINST NORTH KOREA.—Except as provided in  
9 subsection (b), no Federal funds may be obligated or ex-  
10 pended for any use of military force in or against North  
11 Korea unless Congress has—

12 (1) declared war; or

13 (2) enacted specific statutory authorization for  
14 such use of military force after the date of the en-  
15 actment of this Act that meets the requirements of  
16 the War Powers Resolution (50 U.S.C. 1541 et  
17 seq.).

18 (b) EXCEPTION.—The prohibition under subsection  
19 (a) shall not apply to a use of military force that is con-  
20 sistent with section 2(c) of the War Powers Resolution.

21 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion may be construed—

23 (1) to prevent the President from using nec-  
24 essary and appropriate force to defend United States  
25 allies and partners if Congress enacts specific statu-

1 tory authorization for such use of force consistent  
2 with the requirements of the War Powers Resolution  
3 (50 U.S.C. 1541 et seq.);

4 (2) to relieve the executive branch of restric-  
5 tions on the use of force, reporting, or consultation  
6 requirements set forth in the War Powers Resolution  
7 (50 U.S.C. 1541 et seq.); or

8 (3) to authorize the use of military force.

9 **SEC. 4. SENSE OF CONGRESS IN SUPPORT OF DIPLOMATIC**  
10 **RESOLUTION TO GROWING TENSIONS WITH**  
11 **NORTH KOREA.**

12 It is the sense of Congress that—

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

23 (2) the President, in coordination with United  
24 States allies, should explore and pursue every fea-  
25 sible opportunity to engage in talks with the Govern-

1       ment of North Korea on concrete steps to reduce  
2       tensions and improve communication, and to reinvig-  
3       orate high-level negotiations aimed at achieving a  
4       diplomatic agreement consistent with the June 12,  
5       2018 Joint Statement of President Donald J.  
6       Trump of the United States of America and Chair-  
7       man Kim Jong Un of the Democratic People's Re-  
8       public of Korea at the Singapore Summit.