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115TH CONGRESS
1ST SESSION

H. R. 4140

To prohibit the introduction of the Armed Forces into hostilities in North Korea without a declaration of war or explicit statutory authorization, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2017

Mr. CONYERS (for himself, Mr. MASSIE, Mr. KHANNA, Mr. JONES, Mr. POCAN, Mr. McGovern, Ms. LEE, Mr. TED LIEU of California, Ms. NORTON, Mr. DOGGETT, Mr. NOLAN, Mr. WELCH, Mr. ELLISON, Mr. PALLONE, Ms. SLAUGHTER, Mr. BEYER, Mr. NADLER, Mr. GRIJALVA, Ms. HANABUSA, Mr. RASKIN, Ms. SCHAKOWSKY, Ms. JAYAPAL, Mr. COHEN, Ms. JACKSON Lee, Ms. MOORE, Mr. EVANS, Mr. RUSH, Mr. BLUMENTHAL, Mr. JOHNSON of Georgia, Ms. GABBARD, Mr. Gutiérrez, Ms. PINGREE, Ms. LOFGREN, Ms. CLARKE of New York, Mr. CLEAVER, Mr. DANNY K. DAVIS of Illinois, Mr. PAYNE, Mrs. WATSON COLEMAN, Ms. WILSON of Florida, Mr. CAPUANO, Mr. CICILLINE, Mr. GARAMENDI, Ms. BARRAGÁN, Ms. MCCOLLUM, Mr. DESAULNIER, Mrs. BEATTY, Mr. LEWIS of Georgia, Ms. CLARK of Massachusetts, Ms. BONAMICI, Mrs. NAPOLITANO, Ms. JUDY CHU of California, Mr. HUFFMAN, Ms. VELÁZQUEZ, Mr. DEFAZIO, Mr. SHERMAN, Mr. SERRANO, Ms. TSONGAS, Mr. CARRAJAL, Ms. MAXINE WATERS of California, Ms. ESHOO, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit the introduction of the Armed Forces into hostilities in North Korea without a declaration of war or explicit statutory authorization, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “No Unconstitutional
Strike against North Korea Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The President is currently prohibited from
initiating a war or launching a first strike without
congressional approval under the Constitution and
Federal law.

(2) The Constitution, in article I, section 8,
grants Congress the sole power to declare war.

(3) George Washington wrote that “The con-
stitution vests the power of declaring war in Con-
gress; therefore no offensive expedition of impor-
tance can be undertaken until after they shall have
deliberated upon the subject and authorized such a
measure” (Letter from George Washington to Wil-
liam Moultrie, August 28, 1793).

(4) Alexander Hamilton wrote that “‘The Con-
gress shall have the power to declare war’; the plain
meaning of which is, that it is the peculiar and ex-
clusive duty of Congress, when the nation is at
peace, to change that state into a state of war”
(Hamilton Papers, Examination Number I, December 17, 1801).

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

(6) Section 2(c) of the War Powers Resolution (Public Law 93–148; 50 U.S.C. 1541) states that “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”.

(7) The American people, America’s allies in Asia, and the entire world have been deeply troubled by escalating tensions on the Korean peninsula.

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

(9) The United States has approximately 28,500 servicemembers stationed in South Korea, who would be placed in grave danger if an active military conflict were to erupt.

(10) On August 14, 2017, Chairman of the U.S. Joint Chiefs of Staff, Marine Corps General Joseph Dunford stated that “the United States military’s priority is to support our government’s efforts to achieve the denuclearization of the Korean Peninsula through diplomatic and economic pressure”.

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

SEC. 3. SENSE OF CONGRESS IN SUPPORT OF A DIPLOMATIC RESOLUTION TO GROWING TENSIONS WITH NORTH KOREA.

It is the sense of Congress that—

(1) a conflict on the Korean peninsula would have catastrophic consequences for—

(A) the American people;

(B) members of the United States Armed Forces stationed in the region;

(C) United States interests;
(D) United States allies South Korea and Japan;

(E) the long-suffering people of North Korea; and

(F) global peace and security more broadly;

(2) actions and statements that increase tensions and could lead to miscalculation should be avoided; and

(3) the President, in coordination with United States allies, should explore and pursue every feasible opportunity to—

(A) engage in talks with North Korea on concrete steps to reduce tensions and improve communication;

(B) initiate negotiations designed to achieve a diplomatic agreement to halt and eventually reverse North Korea’s nuclear and missile pursuits; and

(C) move toward denuclearization and a permanent peace in the Korean peninsula.

SEC. 4. PROHIBITION ON UNCONSTITUTIONAL MILITARY STRIKES AGAINST NORTH KOREA.

(a) IN GENERAL.—None of the funds appropriated or otherwise made available to the Department of Defense
or to any other Federal department or agency may be used to launch a military strike against North Korea or otherwise introduce the Armed Forces into hostilities in North Korea before the earlier of—

(1) the date on which Congress declares war on North Korea; or

(2) the date of the enactment of an authorization described in subsection (b).

(b) Authorization of Military Strikes.—An authorization described in this subsection is an authorization that meets the requirements of the War Powers Resolution (50 U.S.C. 1541 et seq.) and that is enacted after the date of the enactment of this Act.

(e) Exceptions.—The prohibition under subsection (a) shall not apply with respect to the introduction of the Armed Forces into hostilities—

(1) to repel a sudden attack on the United States, its territories or possessions, or its Armed Forces, or its allies; or

(2) to rescue or remove United States personnel.

(d) Rule of Construction.—Nothing in this section may be construed to affect or alter the requirements of the War Powers Resolution (50 U.S.C. 1541 et seq.)
or to relieve the executive branch of the restrictions or re-
porting requirements therein.