

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. BLUMENAUER, 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. CARBAJAL, 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.

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 Strike against North Korea Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

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

21 (4) Alexander Hamilton wrote that “‘The Con-
22 gress shall have the power to declare war’; the plain
23 meaning of which is, that it is the peculiar and ex-
24 clusive duty of Congress, when the nation is at
25 peace, to change that state into a state of war”

1 (Hamilton Papers, Examination Number I, Decem-
2 ber 17, 1801).

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

10 (6) Section 2(c) of the War Powers Resolution
11 (Public Law 93–148; 50 U.S.C. 1541) states that
12 “the constitutional powers of the President as Com-
13 mander-in-Chief to introduce United States Armed
14 Forces into hostilities, or into situations where im-
15 mminent involvement in hostilities is clearly indicated
16 by the circumstances, are exercised only pursuant to
17 (1) a declaration of war, (2) specific statutory au-
18 thorization, or (3) a national emergency created by
19 attack upon the United States, its territories or pos-
20 sessions, or its armed forces”.

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

24 (8) Recent polling demonstrates that more than
25 two-thirds of the American people believe that the

1 United States should attack North Korea only if
2 North Korea attacks first.

3 (9) The United States has approximately
4 28,500 servicemembers stationed in South Korea,
5 who would be placed in grave danger if an active
6 military conflict were to erupt.

7 (10) On August 14, 2017, Chairman of the
8 U.S. Joint Chiefs of Staff, Marine Corps General
9 Joseph Dunford stated that “the United States mili-
10 tary’s priority is to support our government’s efforts
11 to achieve the denuclearization of the Korean Penin-
12 sula through diplomatic and economic pressure”.

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

16 **SEC. 3. SENSE OF CONGRESS IN SUPPORT OF A DIPLO-**
17 **MATIC RESOLUTION TO GROWING TENSIONS**
18 **WITH NORTH KOREA.**

19 It is the sense of Congress that—

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

22 (A) the American people;

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

25 (C) United States interests;

1 (D) United States allies South Korea and
2 Japan;

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

5 (F) global peace and security more broad-
6 ly;

7 (2) actions and statements that increase ten-
8 sions and could lead to miscalculation should be
9 avoided; and

10 (3) the President, in coordination with United
11 States allies, should explore and pursue every fea-
12 sible opportunity to—

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

16 (B) initiate negotiations designed to
17 achieve a diplomatic agreement to halt and
18 eventually reverse North Korea's nuclear and
19 missile pursuits; and

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

22 **SEC. 4. PROHIBITION ON UNCONSTITUTIONAL MILITARY**
23 **STRIKES AGAINST NORTH KOREA.**

24 (a) IN GENERAL.—None of the funds appropriated
25 or otherwise made available to the Department of Defense

1 or to any other Federal department or agency may be used
2 to launch a military strike against North Korea or other-
3 wise introduce the Armed Forces into hostilities in North
4 Korea before the earlier of—

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

7 (2) the date of the enactment of an authoriza-
8 tion described in subsection (b).

9 (b) AUTHORIZATION OF MILITARY STRIKES.—An au-
10 thorization described in this subsection is an authorization
11 that meets the requirements of the War Powers Resolution
12 (50 U.S.C. 1541 et seq.) and that is enacted after the
13 date of the enactment of this Act.

14 (c) EXCEPTIONS.—The prohibition under subsection
15 (a) shall not apply with respect to the introduction of the
16 Armed Forces into hostilities—

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

20 (2) to rescue or remove United States per-
21 sonnel.

22 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion may be construed to affect or alter the requirements
24 of the War Powers Resolution (50 U.S.C. 1541 et seq.)

- 1 or to relieve the executive branch of the restrictions or re-
- 2 porting requirements therein.

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