

# Limiting the President's Ability to Start a Nuclear War

Senator Ed Markey (D-MA) and Representative Ted Lieu (D-CA) have introduced the *Restricting First Use of Nuclear Weapons Act of 2017*, which would prohibit the president from launching a first nuclear strike without a declaration of war by Congress. This is an eminently sensible step that would prevent the president, who is the sole individual with the authority to launch nuclear weapons, from unilaterally beginning a nuclear war.

While the question of the president's sole authority to order the use of nuclear weapons gained public attention during the 2016 campaign, the underlying problem is independent of who is in office. No single individual should have the authority to start a nuclear war without extensive discussion, debate, and consideration of all the possible implications. As former Secretary of Defense William Perry has said, "a decision that momentous for all of civilization should have the kinds of checks and balances on Executive powers called for by our Constitution" (Markey-Lieu Press Release).

## Current Situation

Currently, there is no check on the president's authority to order the use of nuclear weapons, either as a first strike or in response to an adversary's attack. Former Vice President Dick Cheney in a 2008 interview said the president "could launch the kind of devastating attack the world has never seen. He doesn't have to check with anybody, he doesn't have to call Congress, he doesn't have to check with the courts" (Fox News, 2008).

If the president decided to launch a nuclear strike tomorrow, he would simply notify the military of this decision. He would likely consult with military and other advisers first, but there is no requirement for him to do so. Using a card, often called the "biscuit," that he or an aide carries at all times, the president would read a code to authenticate his identity to the senior officer on duty in the Pentagon's "war room." The war room would then prepare the order to send to launch crews on submarines or at command centers for land-based missiles. The time from when the president gives the launch order to when the crews receive it would be only minutes. Land-based missiles would be launched within about five minutes of the president's order, while it might take about

fifteen minutes for submarine-based missiles to launch. Once launched, these missiles cannot be recalled (Merrill 2017).

In 1974, President Richard Nixon noted, "I can go back into my office and pick up the telephone and in 25 minutes 70 million people will be dead" (Scarry 2014, p. 39). Later that year in the thick of the Watergate scandal Nixon was emotionally unstable and drinking heavily, leading Secretary of Defense James Schlesinger to instruct the Joint Chiefs of Staff that "any emergency order coming from the president"—

***The decision to use nuclear weapons should be undertaken only with the utmost caution and—especially in a democracy—should not be left up to any single individual.***

such as a nuclear launch order—should go through him or Secretary of State Henry Kissinger first (McFadden, 2014). Schlesinger had no real authority to do so, however, and it is not clear what might have happened if such an order had actually come. The same would be true today—there is no military or civilian official or group with the authority to countermand a presidential order to launch nuclear weapons.

## What Does the Bill Do?

The Markey-Lieu bill states that "Notwithstanding any other provision of law, the President may not use the Armed Forces of the United States to conduct a first-use nuclear strike unless such strike is conducted pursuant to a declaration of war by Congress that expressly authorizes such strike." The bill defines a first-use nuclear strike as "an attack using nuclear weapons against an enemy that is conducted without the President determining that the enemy has first launched a nuclear strike against the United States or an ally of the United States."

## Why Does the President Have Sole Authority?

The main reason the president has had sole authority to launch a nuclear strike is the perceived need to ensure a swift

response to an incoming nuclear attack. During the Cold War, U.S. leaders feared a “bolt from the blue” attack by the Soviet Union, which might require a decision about whether to launch a retaliatory strike in the ten minutes or so between the time the attack was detected, analyzed and conveyed to the president, and when it landed. The nuclear command system was therefore designed for speed rather than deliberation. Its main purpose was to allow the president to launch U.S. nuclear weapons quickly, before they could be destroyed on the ground. The Markey-Lieu bill intentionally and specifically does not restrict the president’s ability to immediately order the use of U.S. nuclear weapons in response to a nuclear attack.

The situation the bill addresses is the decision to launch a first strike—when the United States is the first to use nuclear weapons against an adversary. In this case time constraints on decision making do not apply, so the streamlined decision process used in a retaliatory strike is not required. Regardless of whether the decision is to unleash a nuclear first strike as the first move in a conflict, or to use nuclear weapons first in escalating an ongoing conflict, the president would have time to consult with advisers and Congress before making such a potentially world-altering decision.

## A Nuclear First Strike Is an Act of War

Nuclear weapons have unparalleled destructive power. As the bill states, “By any definition of war, a first-use nuclear strike from the United States would constitute a major act of war.” The Constitution clearly establishes that the power to declare war belongs to the Congress alone. Therefore, this bill simply makes explicit an existing Constitutional requirement on the president.

Moreover, bringing Congress into the process would lessen the chance that such a decision could be made irrationally or impulsively. The decision to use nuclear

weapons is potentially the most important decision this nation could make, with grave consequences for every citizen of the United States and the world. It should be undertaken only with the utmost caution and—especially in a democracy—should not be left up to any single individual.

## REFERENCES

Fox News. 2008. “Transcript: Vice President Cheney on ‘FOX News Sunday’.” December 22. Online at <http://www.foxnews.com/story/2008/12/22/transcript-vice-president-cheney-on-fox-news-sunday.html>.

H.R. 669. 2017. Restricting first use of nuclear weapons act of 2017. 115th Congress. Online at <https://www.congress.gov/bill/115th-congress/house-bill/20669?q=%7B%22search%22%3A%5B%22hr+669%22%5D%7D&r=1>.

McFadden. R.T. 2014. “James R. Schlesinger, willful aide to three presidents, is dead at 85,” New York Times. March 27. Online at [https://www.nytimes.com/2014/03/28/us/politics/james-r-schlesinger-cold-war-hard-liner-dies-at-85.html?\\_r=0](https://www.nytimes.com/2014/03/28/us/politics/james-r-schlesinger-cold-war-hard-liner-dies-at-85.html?_r=0).

Merrill, D., N. Syeed, and B. Harris. 2017. To launch a nuclear strike, Donald Trump would follow these steps. Bloomberg.com. January 20. Online at <https://www.bloomberg.com/politics/graphics/2016-nuclear-weapon-launch>.

Scarry, E. 2014. *Thermonuclear monarchy: choosing between democracy and doom*. New York: W. W. Norton & Company.

Senator Markey and Rep. Lieu introduce the Restricting First Use of Nuclear Weapons Act (Markey-Lieu Press Release). 2017. Press release. January 24. Online at <https://www.markey.senate.gov/news/press-releases/senator-markey-and-rep-lieu-introduce-the-restricting-first-use-of-nuclear-weapons-act>.



For more information contact Stephen Young (202-331-5429) or Eryn MacDonald (617-301-8017).

FIND THIS DOCUMENT ONLINE: [www.ucsusa.org/nofirststrike](http://www.ucsusa.org/nofirststrike)

*The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.*

### NATIONAL HEADQUARTERS

Two Brattle Square  
Cambridge, MA 02138-3780  
Phone: (617) 547-5552  
Fax: (617) 864-9405

### WASHINGTON, DC, OFFICE

1825 K St. NW, Suite 800  
Washington, DC 20006-1232  
Phone: (202) 223-6133  
Fax: (202) 223-6162

### WEST COAST OFFICE

500 12th St., Suite 340  
Oakland, CA 94607-4087  
Phone: (510) 843-1872  
Fax: (510) 843-3785

### MIDWEST OFFICE

One N. LaSalle St., Suite 1904  
Chicago, IL 60602-4064  
Phone: (312) 578-1750  
Fax: (312) 578-1751