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To prohibit actions to terminate or withdraw the United States from international treaties without affirmative approval from both Houses of Congress, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Markey introduced the following bill; which was read twice and referred to the Committee on [Committee Name]

A BILL

To prohibit actions to terminate or withdraw the United States from international treaties without affirmative approval from both Houses of Congress, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Actions Undermining Security without Endorsement Act” or the “PAUSE Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:
(1) The COVID–19 global pandemic has highlighted the need for United States leadership to address the full range of international security challenges, which the Government of the United States can do by reaffirming its steadfast commitment to those mutually beneficial treaties and agreements forged with its European and Indo-Pacific allies, along with other states parties.

(2) For more than 70 years, the United States has shown a bipartisan commitment to the North Atlantic Treaty Organization (NATO), specifically to the principle of collective defense enshrined in Article 5 of the North Atlantic Treaty, signed at Washington April 4, 1949.

(3) Section 1242 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) prohibited the use of funds for the United States withdrawal from the North Atlantic Treaty in recognition that the NATO alliance remains a cornerstone for peace and prosperity throughout the world.

(4) On January 22, 2019, the House of Representatives passed H.R. 676 (116th Congress) on a 357–22 vote, prohibiting the use of funds for the United States withdrawal from the North Atlantic
Treaty, and on December 17, 2019, the Committee on Foreign Relations of the Senate reported out S.J.Res. 4 (116th Congress), which if enacted into law, would require approval of two-thirds of the Senate, or both Houses of Congress, before the President could withdraw the United States from the treaty.

(5) The Treaty on Open Skies, signed at Helsinki March 24, 1992, provides a critical confidence-building measure for Euro-Atlantic security to the mutual benefit of the 34 States Parties to the treaty, and the Open Skies Consultative Commission (OSCC) is one of the few remaining operational diplomatic forums from which the United States can engage with the Russian Federation.

(6) Although the Government of the United States is right to diplomatically press the Government of the Russian Federation to return to full compliance with its obligations under the Treaty on Open Skies, withdrawal or termination of the treaty would deprive United States allies and partners of the benefits derived from observation missions over Russian territory and Russian occupied Eastern Ukraine, missions that have vastly outnumbered
Russian overflights of United States territory since entry into force of the treaty.

(7) The Mutual Defense Treaty Between the United States and the Republic of Korea, signed at Washington October 1, 1953, the ratification of which the Senate advised and consented to on January 26, 1954, was born from mutual sacrifice during the Korean War, is based on shared values and interests, and remains critical to the national security of the United States nearly 7 decades after its signing.

(8) A February 2020 report from the Department of State confirmed, in part, that verifiable limits on “Russia’s strategic nuclear force” under the New START Treaty “currently contribute to the national security of the United States”.

(9) A decision by the President to allow the New START Treaty to expire on February 5, 2021, without the United States having first successfully concluded a verifiable and binding agreement in its place, would lead to the United States losing visibility into the location, movement, and disposition of the strategic arsenal of the Russian Federation to the detriment of the national security of the United States and its allies.
(10) The Constitution of the United States provides Congress an important role in the treaty process, requiring the advice and consent of two-thirds of the Senate for approval of a resolution of ratification.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the President should refrain from taking any action to withdraw or terminate any international treaty to which the Senate has given its advice and consent to ratification without proper consultation with, and affirmative approval from, Congress;

(2) the 1979 Supreme Court decision in Goldwater v. Carter, 444 U.S. 996 (1979), is not controlling legal precedent with respect to the role of Congress in the withdrawal or termination of the United States from an international treaty, as the Court directed the lower court to dismiss the complaint and did not address the constitutionality of the decision by President Carter to terminate the Mutual Defense Treaty between the United States of America and the Republic of China, signed at Washington December 2, 1954 (commonly referred to as the “Sino-American Mutual Defense Treaty”); and
(3) the United States should take every action
to reinforce its global reputation as a country that
fully complies with its obligations under the inter-
national treaties to which it is a party.

SEC. 4. AFFIRMATIVE CONGRESSIONAL APPROVAL FOR
TERMINATION OR WITHDRAWAL FROM AN
INTERNATIONAL TREATY.

No action to terminate or withdraw the United States
from any international treaty to which the Senate has
given its advice and consent to ratification may occur un-
less—

(1) the Secretary of Defense and the Secretary
of State meet the requirements under section 5; and

(2) there is enacted into law a joint resolution
that approves such action.

SEC. 5. JUSTIFICATION, CERTIFICATIONS, DETERMINA-
TION, AND STRATEGY ON ACTIONS TO TERMI-
NATE OR WITHDRAW THE UNITED STATES
FROM AN INTERNATIONAL TREATY.

(a) In General.—Not later than 180 days before
the provision of notice of intent to terminate or withdraw
the United States from any international treaty to which
the Senate has given its advice and consent to ratification,
the Secretary of Defense and the Secretary of State, in
consultation with the Director of National Intelligence,
shall each submit to the appropriate committees of Congress—

(1) a detailed justification for the withdrawal from or termination of the treaty;

(2) if the justification described in paragraph (1) includes that a state party to the treaty is in material breach of one or more obligations under the treaty, a detailed explanation of the steps taken by that state party to return to compliance with such obligations;

(3) a certification that all other state parties to the treaty have been consulted with respect to the justification described in paragraph (1);

(4) a certification that withdrawal from or termination of the treaty would be in the best national interests of the United States; and

(5) a comprehensive strategy to mitigate against lost capacity of benefits, including potential new bilateral or multilateral confidence-building measures.

(b) FORM.—The submission required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(c) APPLICABILITY TO NEW STRATEGIC ARMS REDUCTION TREATY.—This section shall apply to a decision
by the President to not renew the New START Treaty for up to an additional 5 years.

SEC. 6. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.