



PROGRAM FOR PUBLIC CONSULTATION

SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND

Americans on War Powers, Authorization for Use of Military Force and Arms Sales

A National Survey of Registered Voters

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OVERVIEW

The question of when the United States should use military force is a profound question. There has been a long-running debate about the role of Congress and the President when it comes to making these decisions. The constitution gives Congress the power to fund the military and declare war, and declares the President as the Commander in Chief of the military. However, there are ambiguities about which branch of government has the power in a number of specific situations related to the use of force and the transfer of arms to another country. Currently there are a number of pieces of Congressional legislation that seek to give Congress greater power.

One proposal seeks to give Congress greater influence over the use of military force outside of the framework of a declaration of war or in response to an attack on the US. Current law, grounded in the War Powers Act of 1973, requires that the President withdraw troops after 60 days unless Congress votes in favor of continuing it. However, since its passage, every President has considered this unconstitutional and many have not abided by it, keeping forces in place without Congressional approval. In order to stop such a military operation, Congress must gather a veto-proof majority, or bring the President to court. Neither has ever happened.

A proposal that has been put forth in Congress is to ‘flip the script’ on this, and automatically cut off funding to such military operations after 60 days, unless Congress actively votes in favor of continuing the operation. (Based on [H.R. 2108](#), [H.R. 5410](#) and [S. 2391](#))

Another proposal deals with the termination of a Congressional authorization to use military force (AUMF). Shortly after the September 11 attacks Congress authorized the President to use military force against those responsible for the attacks, or who have aided those responsible. Since then all presidents have used this AUMF to justify various uses of force that some Members of Congress feel go beyond its original purpose. Currently there is a proposal to terminate this AUMF which requires an act of Congress. (Based on [H.R. 255](#) and [S. 2391](#))

The last proposal seeks to give Congress greater authority over arms sales. Currently, all arms sales must be approved by the President, and Congress can only halt an arms sale with a majority vote, or more realistically a veto-proof majority. Members of Congress believe that it should be easier for Congress to halt an arms sale. They have introduced a proposal that would also ‘flip the script’ in this case by requiring that any arms sale over \$14 million only proceed if Congress votes in favor. (Based on [H.R. 5410](#) and [S. 2391](#))

To bring the American people a voice at the table of the current debate on these various pieces of legislation, the Program for Public Consultation (PPC) has conducted an in-depth on-line survey of 2,702 registered voters with a probability-based sample provided by Nielsen Scarborough.

SURVEY DESIGN

Unlike standard polls that rely on respondents’ existing impressions and information, PPC took respondents through a process called a ‘policymaking simulation’ that seeks to put respondents in the shoes of a policymaker.

Respondents:

- are given a briefing on policy options under consideration;
- evaluate strongly stated arguments both for and against each option; and only then
- make their final recommendation.

The entire text of the survey was reviewed by experts to ensure that the briefings were accurate and balanced, and that the arguments presented were the strongest ones being made. Changes were made in response to their feedback.

FIELDING OF SURVEY

The survey was fielded January 27 - February 28, 2022 online with a national sample of 2,702 registered voters provided by Nielsen Scarborough from its larger sample, which is recruited by telephone and mail from a random sample of households. There is a margin of error of +/- 1.9%.

Responses were weighted by age, income, gender, education, race and geographic region. Benchmarks for weights were obtained from the US Census' Current Populations Survey of Registered Voters. The sample was also weighted by partisan affiliation.

A further analysis was conducted by dividing the sample six ways, depending on the PVI Cook rating of the respondent's Congressional district. This enabled comparison of respondents who live in very red, somewhat red, leaning red, leaning blue, somewhat blue, and very blue districts.

SUMMARY OF KEY FINDINGS

WAR POWERS

A bipartisan six-in-ten favored automatically cutting off funding to President-initiated military operations after 60 days, unless Congress votes in favor of continuing it (outside the framework of a declaration of war or in response to an attack on the US), including six-in-ten Democrats and a bare majority of Republicans.

2001 AUTHORIZATION FOR USE OF MILITARY FORCE (AUMF)

A bipartisan six-in-ten favored repealing the 2001 Authorization for Use of Military Force, which gives the President the authority to use military force against those responsible for the 9/11 attacks, or who have aided those responsible. About two-thirds of Democrats were in favor, as were a bare majority of Republicans.

ARMS SALES

A bipartisan six-in-ten favored requiring that any arms sale over \$14 million be first approved by a simple majority of Congress, including nearly seven-in-ten Democrats and a majority of Republicans.



FINDINGS

WAR POWERS

A bipartisan six in ten favored automatically cutting off funding to President-initiated military operations after 60 days, unless Congress votes in favor of continuing it (outside the framework of a declaration of war or in response to an attack on the US.) Over six-in-ten Democrats were in favor, as were a bare majority of Republicans.

Respondents were asked to evaluate a proposal to give Congress greater power over the President's use of the military, based on the:

- War Powers Enforcement Act (H.R. 2108) by Rep. Sherman (D),
- National Security Reforms and Accountability Act (H.R. 5410) by Rep. James McGovern (D), and
- National Security Powers Act of 2021 (S. 2391) by Sen. Murphy (D).

Respondents were first introduced to the context of the debate over the roles of Congress and the President regarding war powers, as follows:

The Constitution gives both Congress and the President a role in the use of military force:

- *Congress is responsible for funding the military and has the power to declare war.*
- *The President is the Commander in Chief of the military.*



A less clear area is when the President might use military force outside of the framework of a declaration of war.

To answer this question, in 1973 Congress passed the War Powers Act. It states that the President may at times use military force without first getting Congressional approval. But if Congress does not vote in favor of continuing the action within 60 days, the President must stop the military action and withdraw the forces.

Nonetheless, all Presidents since then have taken the position that, though they may ask Congress for approval, because the President is the Commander in Chief, they do not need Congressional approval to use military force.

They were informed that Presidents Reagan, Clinton and Obama had violated the War Powers Acts, and that:

In each case, Congress had the option of taking an action to cut off funding for the military operation. However, if Congress were to do that, the President could veto such an action. Then it would require two thirds of the votes in both houses of Congress to override that veto. This is politically difficult to achieve.

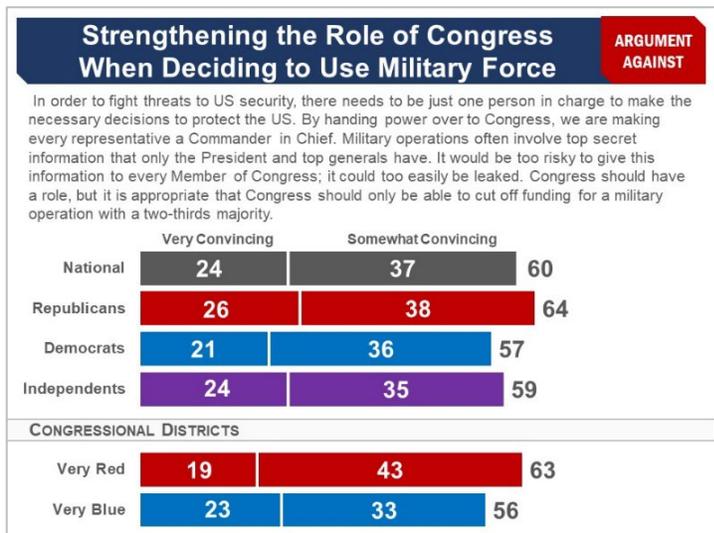
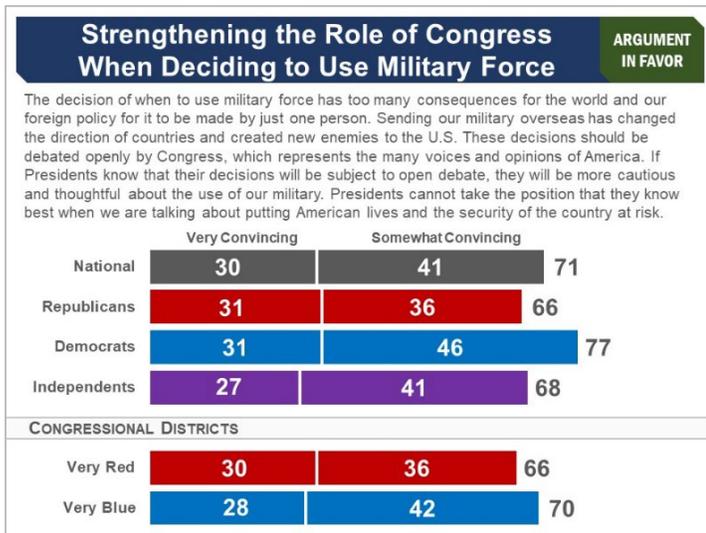
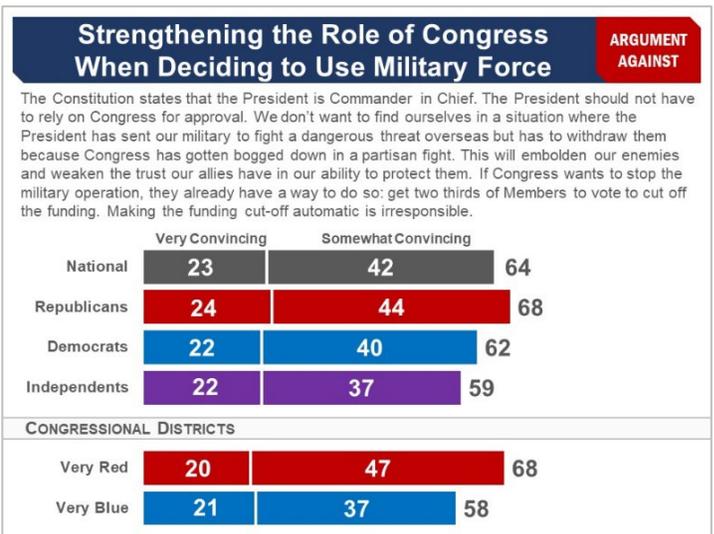
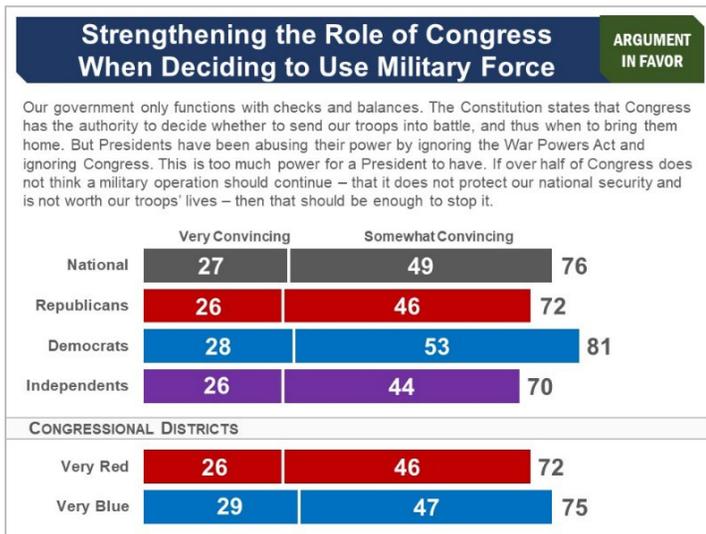
They were then provided the specific proposal:

Currently, there is a proposal that would make it more possible for Congress to stop a President's military operation. Rather than Congress having to vote to stop a military operation – and possibly be

vetoed – the military operation could only continue after 60 days if a majority in Congress were to vote in favor.

If Congress does not vote to continue the operation within the 60 days, funding will be automatically cut off. That way the President could not veto this cut-off. (This would not apply to military actions in response to a direct attack on the US or its military.)

All of the pro and con arguments were found convincing by bipartisan majorities, but with larger majorities of all partisan groups finding the pro arguments convincing than was the case for the con arguments.

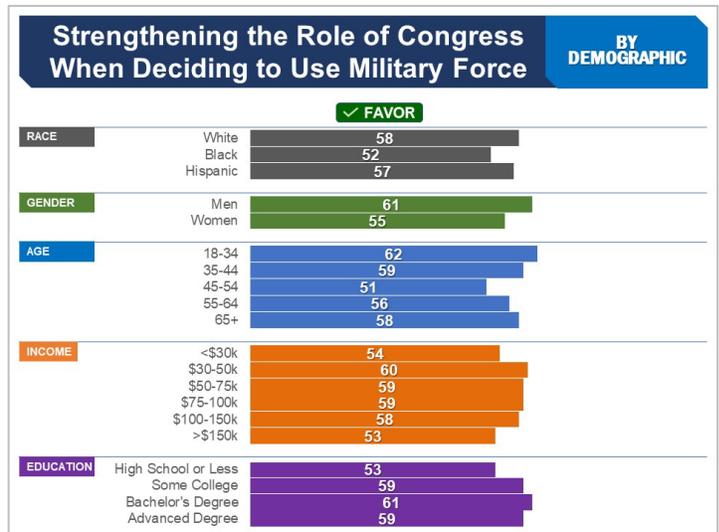
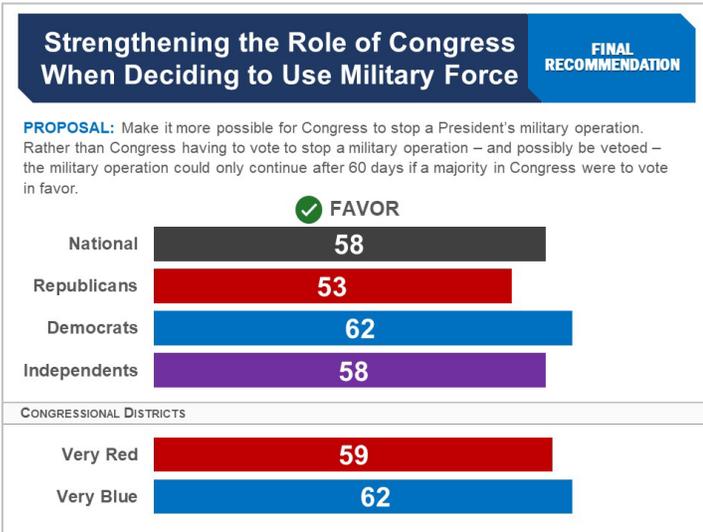


The first pro argument said that our government only functions on checks and balances, and that right now, they are largely absent when it comes to war powers. Seventy-six percent found this convincing (GOP 72%, Dem 81%, Ind 70%). The first con argument rebutted this idea by stating that the Constitution clearly gives the President, as Commander in Chief, full power over military activities. Sixty-four percent found this convincing (GOP 68%, Dem 62%, Ind 59%).

The second pro emphasized that use of the military has too many consequences for our foreign policy to be left in the hands of one person, and was found convincing by 71% (GOP 66%, Dem 77%, Ind 68%). The con

countered by proclaiming that having just one person in charge is necessary to take quick, decisive action to protect US security, and was found convincing by 60% (GOP 64%, Dem 57%, Ind 59%).

In the end, a bipartisan 58% favored the proposal, including 53% of Republicans, 62% of Democrats and 58% of independents. An analysis of voters by congressional district type, broken out using Cook’s PVI ratings, shows that majorities in all types of districts are in favor, from very red (59%) to very blue (62%).



2001 AUTHORIZATION FOR USE OF MILITARY FORCE (AUMF)

A bipartisan six-in-ten favored repealing the 2001 Authorization for Use of Military Force, which gives the President the authority to use military force against those responsible for the 9/11 attacks, or who have aided those responsible. About two-thirds of Democrats were in favor, as were a slight majority of Republicans.

Respondents were asked to evaluate a proposal to repeal the 2001 AUMF, based on the National Security Powers Act of 2021 (S. 2391) by Sen. Murphy (D), and H.R. 255 by Rep. Lee (D).

Respondents were introduced to the context of the proposal as follows:

As you may recall, shortly after the 9/11 attacks Congress passed a resolution that gave the president (who was then George W. Bush) the authority to use military force against:

- any country, organization or foreign individual that was involved with the 9/11 attacks, or
- has helped the organizations involved with the 9/11 attacks.

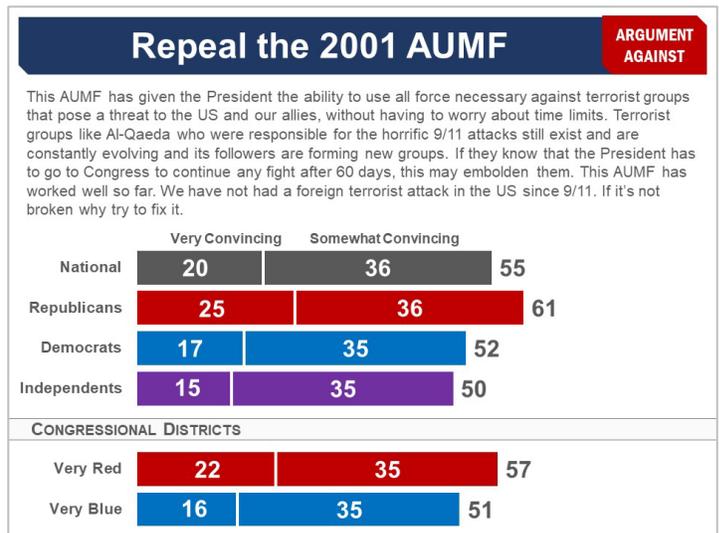
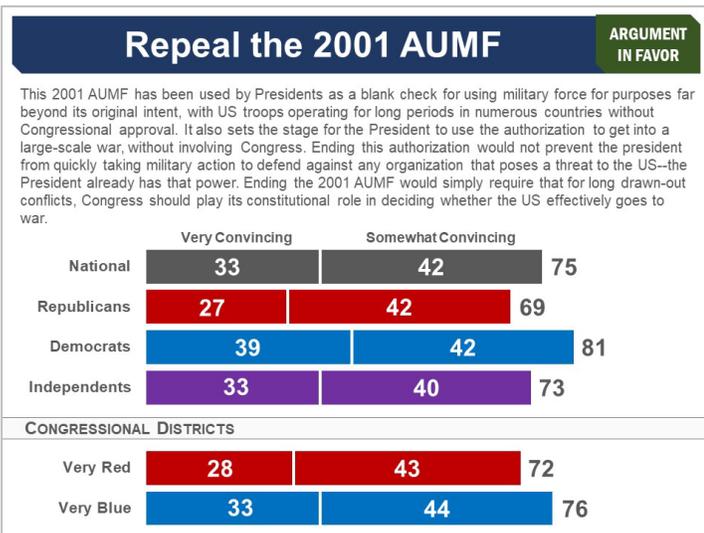
What is controversial is that over the last two decades the 2001 AUMF has been repeatedly used as the legal basis for using military force against organizations that were not involved with 9/11, but have similar beliefs and readiness to use terrorist methods.

Since it was passed, the 2001 AUMF has been used by Presidents Bush, Obama, Trump and Biden as the legal basis for dozens of military operations against various organizations in various countries around the world. These include extended operations (longer than 60 days) in Syria, Somalia, Yemen, Libya, and Iraq.

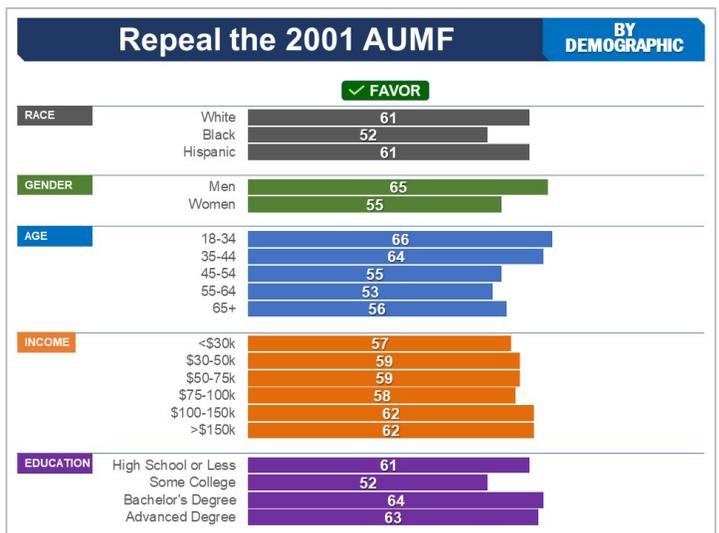
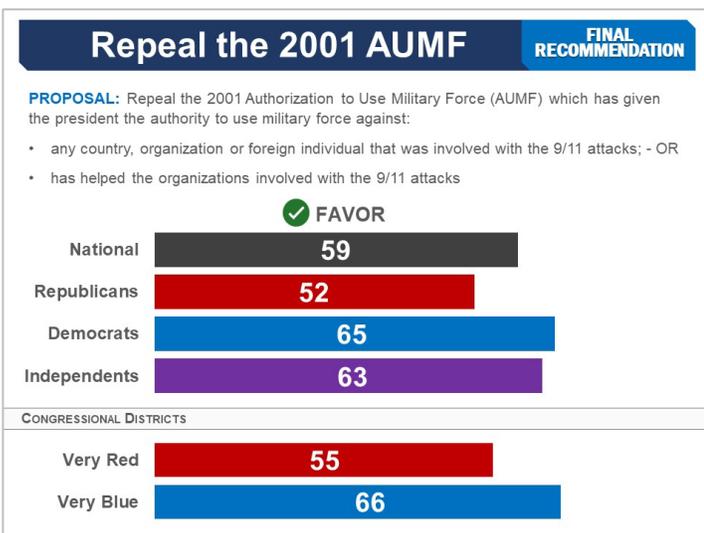
The proposal was then presented:

A proposal has been put forward to repeal the 2001 AUMF. As discussed above, the President would still have the power to use military force to defend against organizations deemed an imminent threat. But to have an operation that would last longer than 60 days the President would need to get a new AUMF from Congress.

The pro argument did substantially better than the con, although both were found convincing by bipartisan majorities. The pro argument proclaimed that the 2001 AUMF has been a “blank check” for warfare and has been used beyond its original intent, and was found convincing by three-in-four (GOP 69%, Dem 81%, Ind 73%). The con argument declared that this AUMF has been a necessary tool for defending the US against terrorist forces, and was found convincing by 55%, including 61% of Republicans and a slight majority of Democrats (52%). Independents were divided.



Finally, six-in-ten favored repealing the 2001 AUMF (59%), including 65% of Democrats, 63% of independents, and a slight majority of Republicans (52%), Majorities of voters in very red (55%) to very blue (66%) congressional districts were in favor.



ARMS SALES

A bipartisan six-in-ten favored requiring that any arms sale over \$14 million be first approved by a simple majority of Congress, including nearly seven-in-ten Democrats and a majority of Republicans.

Respondents evaluated a proposal to give Congress greater power over large arms sales, based on the National Security Powers Act of 2021 (S. 2391) by Sen. Murphy (D) and the National Security Reforms and Accountability Act (H.R. 5410) by Rep. James McGovern (D).

First, they were introduced to the current laws dictating the roles of Congress and the President when it comes to arms sales:

Now let's turn to another issue: the sale of US-made military equipment – such as planes, missiles, tanks and military computer technologies – to foreign governments.

As you may know, Congress passed a law in 1976 that gave the President the power to approve all such arms sales. This law states that Congress can disapprove of a sale of military equipment over \$14 million dollars. But the President can veto such an action. Then it would require a two-thirds vote in both houses of Congress to override the veto.

In fact, Congress has never succeeded in stopping an arms sale.

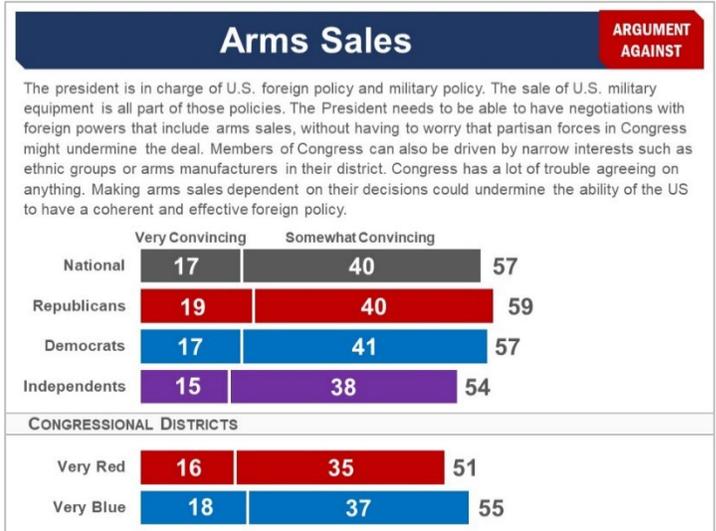
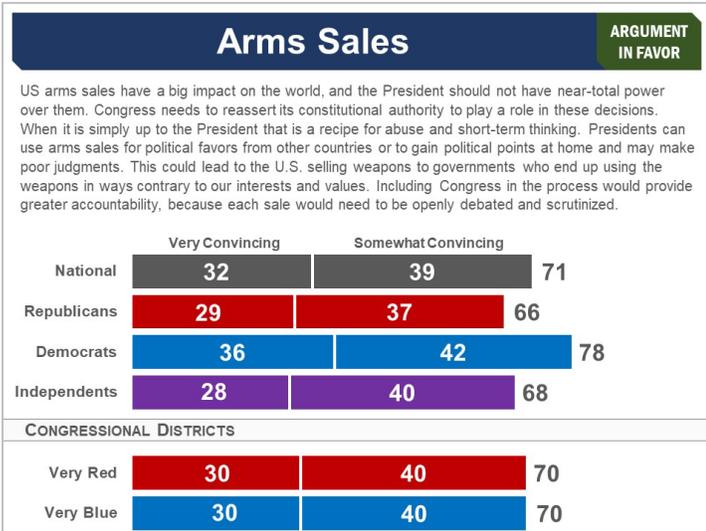
The proposal was then presented:

Currently, there is a proposal that would make it more possible for Congress to stop an arms sale over \$14 million. Rather than Congress having the power to vote to stop an arms sale – and possibly be vetoed – arms sales could only occur if a majority in Congress were to vote in favor of the sale.

This would mean that Congress could stop a sale with 51% of votes in both houses of Congress, while currently it could require two-thirds of both houses.



The pro argument was better received, but both pro and con were found convincing by a bipartisan majority. The pro argument voiced the concern that, since arms sales have such a big impact on foreign policy, they should not be left up to one person. Seventy-one percent found this convincing (GOP 66%, Dem 78%, Ind 68%). The con argument countered that partisan fighting in Congress would undermine the ability of the US to have a coherent and effective foreign policy. Fifty-seven percent found this convincing, with little partisan difference (GOP 59%, Dem 57%, Ind 54%).



In the end, a bipartisan 61% favored the proposal, including 56% of Republicans, 68% of Democrats and 61% of independents. Majorities in very red (57%) to very blue (61%) congressional districts were in favor.

