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POLICY LEVER

Strengthen the Bayh-Dole Act

This policy memo is part of Data for Progress and National Wildlife Federation's Made Clean in America series, which features analysis and polling on federal investments to build American clean industrial capacity, tackle the climate crisis, and create high-quality manufacturing jobs.

Science in HD/Unsplash

The federal government is constantly conducting research to tackle big challenges, like public health crises or climate change or space exploration. To ensure innovative technologies emerge from federally-funded research and are taken up by U.S. companies, there is an entire set of activities known as "technology transfer." These activities provide the ability for government agencies and entities, ranging from DOE's national labs to the NIH to the Small Business Administration, to engage with entrepreneurs, universities, and companies during the research and development (R&D) cycle, and to quickly transfer intellectual property to private companies for beneficial use in the real world.

The Bayh-Dole Act seeks to ease this transfer process, but to do so in a manner that ensures the commercialization of technologies funded by federal R&D generates domestic benefit. It provides "march-in rights" for the government to force businesses that license important technologies to use them, rather than sitting on them, or to enforce domestic manufacturing requirements. March-in rights have also been floated, but never used, as a solution to exorbitant pharmaceutical prices -- forcing companies who gladly benefit from taxpayer-funded research, then turn around to impose unreasonable costs on Americans, to manufacture and sell drugs at attainable prices.

In its current form, Bayh-Dole has several weaknesses that have led to offshoring in the clean energy and semiconductor industries. First, the Bayh-Dole requirement for substantial U.S. manufacturing is only for U.S. sales, but could be expanded to include all worldwide use and sales, creating a presumption that federal IP should always drive U.S. manufacturing, even if much of the uptake of the relevant

product would occur overseas. Second, and perhaps the largest historical loophole, is the tendency to sub-license technologies many times over and evade domestic manufacturing requirements down the chain; Bayh-Dole could be strengthened to apply to all contractors, assignees, and licensees.

In the absence of updates, agencies will have to go it alone, as the Department of Energy has done in the past. Legislation that tightens Bayh-Dole can ensure that all federal R&D is leading to investment in domestic supply chains and manufacturing, while guiding the technology transfer process back to its original purpose: Benefitting Americans and strengthening U.S. competitiveness.

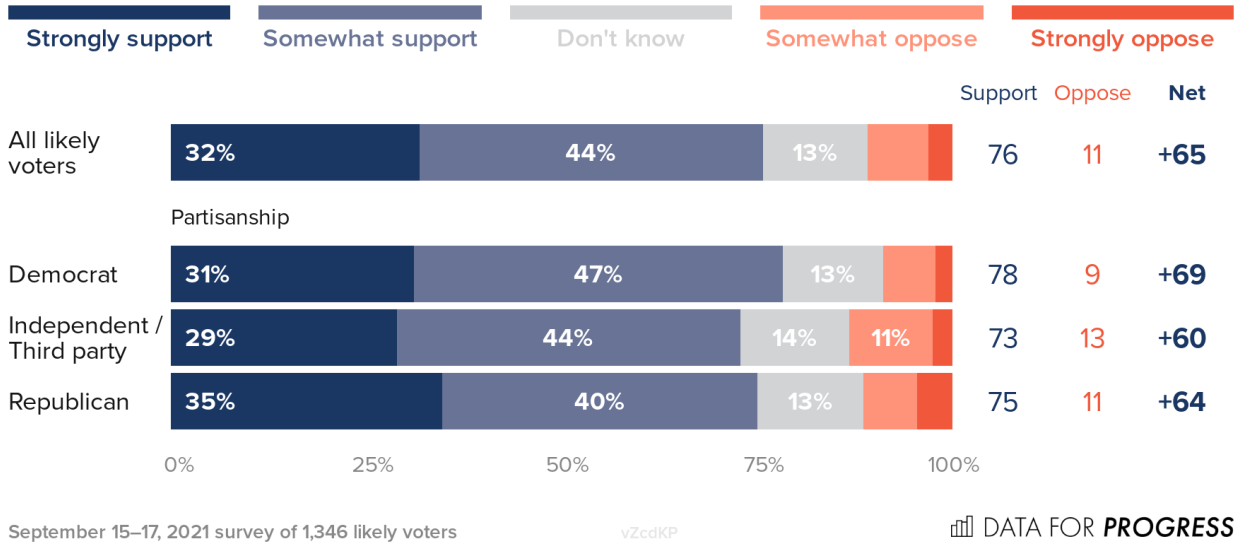
Polling

Voters also widely support the federal government enforcing its intellectual property rights to strengthen domestic manufacturing and ensure taxpayer-funded inventions are made in America. By a +65-point margin, voters support strengthening the Bayh-Dole Act to ensure products developed using federal research funding are made in America. There is bipartisan consensus: A majority of Democrats (78 percent), Independents (73 percent), and Republicans (75 percent) all support this measure to support American innovation and manufacturing.

A Majority of Voters Support Strengthening the Bayh-Dole Act to Promote Domestic Manufacturing

The federal government currently funds research projects at universities, non-profit institutions, and small businesses. The Bayh-Dole Act allows these groups to own and license the rights to the products they made using federal dollars, so long as they commercialize the products for public use.

Would you support or oppose strengthening the Bayh-Dole Act to ensure products developed using federal research funding are made in America?



September 15–17, 2021 survey of 1,346 likely voters

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From September 15 to 17, 2021, Data for Progress conducted a survey of 1,346 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is ±3 percentage points.