**Headline:** 34 Attorneys General Call to Bust Gilead’s Pharma Monopoly on COVID Treatment Remdesivir

By Alex Lawson

**Author Bio:** [Alex Lawson](https://www.socialsecurityworks.org/2015/01/22/alex-lawson/) is the executive director of [Social Security Works](https://www.socialsecurityworks.org/), a non-profit advocacy group that supports expanding benefits to address America’s growing retirement security crisis. Lawson has appeared on numerous TV and radio outlets and is a frequent guest host of *The Thom Hartmann Program*, one of the top progressive radio shows in the country.

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**[Article Body:]**

On August 4, nearly three dozen attorneys general representing nearly 60 percent of the U.S. population published an [open letter](https://bit.ly/2PAR6cG) addressing top federal health officials. Even by the standards of an increasingly heated and high-stakes debate over drug prices, the letter is a remarkable document. With clarity and urgency, the signatories push the federal government to take strong and immediate action to lower costs and increase supplies of remdesivir, an antiviral treatment against COVID-19. Remdesivir is produced under patent by the California drug giant Gilead Sciences.

The Trump administration decided that the main way it was going to fight the COVID crisis in this country was to [obfuscate and lie about the magnitude of the crisis.](https://www.theatlantic.com/politics/archive/2020/07/trumps-lies-about-coronavirus/608647/) They don’t want the people to know how few hospital beds are available across this country. So they ripped the data from the Centers for Disease Control and Prevention (CDC) and handed it in a no-bid contract to a private company that has failed to provide the data. Even worse, Gilead [is making it nearly impossible for hospitals](https://www.theatlantic.com/politics/archive/2020/07/trumps-lies-about-coronavirus/608647/) to get the drugs they need.

Remdesivir is the one treatment that we have that could free up hospital beds, but without the data—and with Gilead more concerned with making money than public health—states continue to watch their available hospital beds dwindle.

The letter’s fierce cross-partisan call for government requisition of corporate property reflects the uniqueness of the present moment. A few years ago, activist campaigns against Gilead’s monopoly ownership of new-generation Hepatitis C drugs failed to draw significant political attention or support. But as the COVID-19 pandemic enters its fifth month, Gilead’s monopoly of remdesivir presents an impossible-to-ignore showcase of the depraved but standard functioning of a monopolistic industry. Gilead and other big pharma corporations are built on predatory value extraction at the expense of people and public health, in normal times and during pandemics.

The first issue identified by the AGs is the one every American knows something about: the cost of drugs. In July, Gilead priced remdesivir at $3,100 a course ($520 a vial) for patients with government or private insurance. Even without the pandemic, this represents a scandalous markup over the [estimated production cost of the drug of $10](https://www.statnews.com/2020/05/15/gilead-remdesivir-pricing-coronavirus/#:~:text=Gilead%20hasn't%20disclosed%20how,cents%20for%20a%20day's%20supply.).

The AGs are equally concerned with a second, lesser-known consequence of monopoly medicine: production shortages. Citing Gilead’s publicly announced production data, the letter explains that Gilead’s failure to license out the production of the drug is on track to result in a massive shortfall, leaving millions of Americans without access.

The signatories recommend the government immediately correct these outrages by activating a sleeping dragon of federal power: the right to override private drug patents in the public interest. As lawyers, they know the law, and correctly identify remdesivir in 2020 as a textbook trigger for the public-interest patent-override provisions in U.S. law.

“Gilead has chosen to place its profit margins over the interests of Americans suffering in this pandemic,” they write. “We respectfully urge the federal government to exercise its rights… which will allow the National Institutes of Health (NIH) and the FDA to ensure that Americans can afford and access a sufficient supply of remdesivir during this pandemic.”

Because Gilead benefited from tens of millions of dollars in federal funding at key stages in remdesivir’s development, the AGs’ focus on the “march-in” rights detailed in the fine print of the Patent and Trademark Law Amendments Act of 1980, better known as the Bayh-Dole Act. A watershed bill that heralded the privatization mania of the coming decade, Bayh-Dole expanded and facilitated the ability of private actors to purchase, patent and license the fruits of federally funded scientific research. (Without Bayh-Dole, Gilead would not have been able to make tens of billions of dollars off the patents of Hep C drugs developed in part with government funds at Emory University, resulting in the company’s trademark pricing scandal before remdesivir.)

Like all patent rights, the ones made possible by Bayh-Dole are not absolute, but bestowed and protected at the pleasure, judgment and review of the federal government. The government retains the right to “march in” under the banner of the national interest. As pandemics tick boxes for both public health and national security, remdesivir presents as damning and unanswerable an argument for state action as one can imagine.

[Government powers to break Gilead’s remdesivir patent](https://newrepublic.com/article/149438/big-pharma-captured-one-percent) run deeper than the text of Bayh-Dole. U.S. patent law has long enshrined these powers in Section 1498 of the U.S. Legal Code, which merely requires the government to give the patent holder “reasonable… compensation” in return. The phrase echoes the “just compensation” stipulated in the so-called “takings clause” of the Fifth Amendment of the U.S. Constitution.

Washington has used these rights stingily in the pharmaceutical context. But the 34 attorneys general who signed the recent letter know that they rest on extremely firm legal, political and constitutional grounds. If there was ever an instance where these powers were justified, it is now, during a global pandemic that has caused the deaths of 164,000 Americans and counting.

When the pandemic passes, we would do well to revisit the AGs’ letter and look more deeply into what it describes as Gilead’s “market failure.” The double-crisis caused by remdesivir’s monopoly ownership of a life-saving drug is no “failure” in the eyes of the company’s executives and stockholders. Calling it a failure obscures the fact that Gilead’s course of action on remdesivir is a smashing success by the terms of a highly financialized industry built on monopoly ownership of science.

What big pharma doesn’t want you to know is that what they consider *their* medications are developed with the help of a $43 billion annual federal subsidy distributed through the National Institutes of Health (whose director is one of the recipients of the recent letter). We must keep asking the right questions. And we must maintain the crisis coalition that brought together California’s Xavier Becerra and Louisiana’s Jeff Landry. That’s what’s needed to end the reign of big pharma, and begin the urgent work of aligning drug development and distribution with human needs and public health.