

# Court Backs Federal Embryonic Stem Cells Funds

Monday, 02 May 2011

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Opponents of human embryonic stem cell research, including many religious conservatives, argue that it is unacceptable because it destroys human embryos.

Such stem cells come from days-old human embryos and can produce any type of cell in the body. Scientists hope to be able to use them to address spinal cord injuries, cancer, diabetes and diseases such as Alzheimer's and Parkinson's.

US District Judge Royce Lamberth last August blocked the taxpayer funding. His decision was put on hold pending appeal so federal money continued to flow after the White House warned research costing millions of dollars would be lost if halted.

A panel of three judges of the US Court of Appeals for the District of Columbia Circuit, all appointed by Republican presidents, voted 2-1 to vacate Lamberth's injunction, saying the challengers were unlikely to win on the merits.

The U.S. law was "ambiguous" and "did not prohibit funding a research project in which an ESC (embryonic stem cell) will be used," the majority opinion said.

"This is a momentous day -- not only for science, but for the hopes of thousands of patients and their families who are relying on NIH-funded scientists to pursue life-saving discoveries and therapies that could come from stem cell research," NIH Director Francis Collins said in a statement.

Shortly after taking office in 2009, President Barack Obama expanded federal funding for research involving human embryonic stem cells in hopes it would lead to cures for diseases.

In a bid to answer critics, Obama directed the NIH to come up with an ethical process for paying for such research, specifically that the embryos come from fertility clinics and were going to be thrown away otherwise.

Since the appeals court ruling was on the injunction Lamberth issued, the focus now turns back to his courtroom where the two sides have been arguing over the specific merits of whether the stem cell guidelines are legal.

The U.S. law on embryonic stem cell research funding prohibits the NIH from funding the creation of human embryos for research or the research in which a human embryo is destroyed, leading the judges to argue over its true intent.

## 'LINGUISTIC JUJITSU'

Judge Douglas Ginsburg, appointed by President Ronald Reagan, wrote that it was "entirely reasonable" for the NIH to interpret the law as "permitting funding for research using cell lines derived without federal funding, even as it bars funding for the derivation of additional lines."

In a dissenting opinion, Judge Karen LeCraft Henderson, appointed by President George H.W. Bush, said the federal law was clear about banning funding for human embryonic stem cell research and that the court majority was engaging in "linguistic jujitsu" to back it.

The case emerged from two researchers who opposed work with embryonic stem cells and sued to block such funding. They argued that they were at risk of being squeezed out of federal grants for their own work with adult stem cells, which do not involve the destruction of embryos.

The researchers, Dr. James Sherley, a biological engineer at Boston Biomedical Research Institute, and Theresa Deisher, of Washington-based AVM Biotechnology, could appeal the ruling to the full appeals court, a lawyer involved in the case said.

Samuel Casey of the Law of Life Project, an attorney involved in the challenge, said he was disappointed but not surprised by the ruling, and was gratified that it was narrow.

Bernard Siegel, executive director of the Genetics Policy Institute and founder of the Stem Cell Action Coalition, hailed the decision as lifting a cloud of uncertainty over research.

"This case is not over by any stretch but this lifts the cloud temporarily," he told Reuters. "This is still fundamental research that needs to take place before we can advance it fully and translate it into cures. For them to hold it back in 2010, 2011 and on into 2012 would be a travesty for patients."

Gary Rabin, chief executive of Advanced Cell Technology, which is developing treatments for two eye diseases using embryonic stem cells and has gotten approval to begin human clinical trials, praised the ruling.

"You're at the very beginning of what will ultimately be a tidal wave of opportunities within the embryonic stem cell community," he said. "We believe this is the first step for us for ensuring that our cell lines will be fundable by the government."

Source: bdnews24.com