

Appeals Court Overturns Stem Cell Ban

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On April 29th, in **Sherley v. Sebelius**, the U.S. Court of Appeals for the D.C. Cir., overturned the injunction imposed by the district court, which had blocked the implementation of the [2009 NIH Guidelines](#) on finding research using human embryonic stem cells. [74 Fed. Reg. 32170\(2009\)](#). The Guidelines, in turn, had been formulated to implement [President Obama's executive order 13505](#) that lifted President Bush's executive order banning such funding. The suit, brought by two researchers working with adult stem cells, argued that the Guidelines were in conflict with the 1996 Dickey-Wicker Act, which banned funding for both research that would create human embryos for research purposes or would destroy human embryos. For more background, see my post of [Sept. 1, 2010](#).

The Court found that preliminary injunction was improperly granted "because **Dickey-Wicker** is ambiguous and the NIH seems reasonably to have concluded that, although [D-W] bars funding for the destructive act of deriving an ESC from an embryo, it does not prohibit funding a research project in which an ESC will be used." In other words, if some other unfunded entity disassembles an unwanted embryo obtained with informed consent of the donor from an in vitro fertilization clinic and provides the ESCs to a researcher, the researcher can obtain federal funding to study them. Since establishing the Guidelines, the NIH has approved additional ESC lines for federal funding. While this is good news for researchers working with embryonic stem cell lines approved under the NIH Guidelines, the underlying suit will continue to threaten the administration's more liberal view of stem cell research.

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