

Embryonic Stem Cell Research Background

In 2001 [President Bush established a policy](#) allowing research on embryonic stem cell lines created prior to August 9, 2001. On March 9, 2009, [President Obama issued an executive order](#) overturning the Bush policy and allowing taxpayer funding for research on embryonic stem cell lines created after 2001. ([NIH Guidelines](#) were finalized on July 7, 2009)

Embryo Destructive Research Funding Ban (Dickey-Wicker)

The Labor-HHS appropriations bill includes a ban on research in which human embryos are destroyed or harmed. (*enacted in FYs 1996-2010*)

TEXT: FY10, Division D, Title V, General Provisions

SEC. 509. (a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term “human embryo or embryos” includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Sherley v. Sebelius

On August 23, 2010, the US District Court for the District of Columbia issued a [preliminary injunction](#) in the case *Sherley v. Sebelius*, ruling that there is sufficient evidence to warrant halting funding for embryo-destructive research while the case is under consideration. Specifically, the court found that the plaintiffs presented a strong case that NIH Guidelines for Embryonic Stem Cell Research (ESCR) violate the Dickey-Wicker Amendment—language attached to the annual LHHS appropriations bills since 1996, which prohibits federal funding for “research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death...”

The injunction put NIH funding for embryo-destructive research on hold. District Court Judge Royce C. Lamberth in his ruling stated "(Embryonic stem cell) research is clearly research in which an embryo is destroyed," and "Congress has spoken to the precise question at issue—whether federal funds may be used for research in which an embryo is destroyed. The Dickey-Wicker Amendment provides that *no* federal funds shall be used for ‘research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses *in utero* under 45 C.F.R. § 46.204(b) and section 498(b) of the Public Health

Service Act (42 U.S.C. 289g(b)).’ Pub. L. No. 111-8, § 509(a)(2). **Thus, as demonstrated by the plain language of the statute, the unambiguous intent of Congress is to prohibit the expenditure of federal funds on ‘research in which a human embryo or embryos are destroyed.’”** ([pg 10, 12](#))

The [Court Order](#) stated the Federal government is “enjoined from implementing, applying, or taking any action whatsoever pursuant to the National Institutes of Health Guidelines for Human Stem Cell Research, 74 Fed. Reg. 32,170 (July 7, 2009), or otherwise funding research involving human embryonic stem cells as contemplated in the Guidelines.” On August 31, 2010 the Administration unsuccessfully [appealed](#) Judge Lamberth’s ruling. Also on August 31, 2010 the Administration [filed a motion to stay](#) the preliminary injunction. Judge Lamberth denied the motion, and the administration appealed.

On September 9, 2010 the District Court of Appeals granted an [administrative stay](#) which reads, in part, “The purpose of this administrative stay is to give the court sufficient opportunity to consider the merits of the emergency motion for stay and should not be construed in any way as a ruling on the merits of that motion.” On September 3, 2010, the plaintiffs, [James Sherley](#) and [Theresa Deisher](#) issued declarations and filed a [memorandum](#) in opposition to the motion to stay. The District Court of Appeals made their final decision on April 29, 2011, overturning the preliminary injunction, allowing federal funding of embryo destructive research to continue until the case is decided by the US District Court for the District of Columbia.