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Top state court clears way for stem cell bonds

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California's \$3 billion stem cell program survived a legal challenge Wednesday when the state Supreme Court rejected appeals by opponents of embryonic cell research, removing the last obstacle to bond sales that state voters approved in 2004.

The justices denied review of an appellate ruling in February that upheld the program against claims that the agency created to distribute the money suffered from built-in conflicts of interest and a lack of state supervision. Only Justice Joyce Kennard voted to grant a hearing, with four votes needed for review by the seven-member court.

"The future for the next decade is assured for California and for medical research on the stem cell frontier," said Robert Klein, author of the November 2004 initiative, Proposition 71, and chairman of the funding board, called the Independent Citizens Oversight Committee.

Gov. Arnold Schwarzenegger, who approved a \$150 million state loan last year to get the research started while the bonds were tied up, said the court action "reaffirms voters' will to keep California on the forefront of embryonic stem cell research. ... Potentially life-saving science can continue without a shadow of a legal doubt."

Lawyers for Prop. 71's opponents said the state Supreme Court had been their last hope.

"This establishes a precedent for well-meaning but misdirected rich people to invade the public treasury for projects of their own and parlay a few million dollars (of campaign expenses) into a few billion dollars of wasted taxpayer money," said Terry Thompson, attorney for People's Advocate and the National Tax Limitation Foundation.

The program was also challenged by the California Family Bioethics Council, which is loosely affiliated with Focus on the Family, a conservative religious organization. The California council's lawyer, David Llewellyn, said he had hoped that the state's high court would "step back from all the cultural issues ... and look at a government structural problem" in the initiative.

Prop. 71, the first stem cell research program financed by any state, was proposed after President Bush put tight restrictions on federal funding, citing moral objections to research on human embryos.

The money is to come from bonds issued over 10 years, but no bonds could be sold while lawsuits challenging the validity of the program were pending. Klein said the first \$250 million in bonds, to be issued in July or August, will mostly go to repay the state loan and \$45 million in bond anticipation notes bought by wealthy supporters who risked losing their money if Prop. 71 was struck down.

So far, he said, the state has approved \$158.8 million in research grants, which makes California the world's leading financing entity of embryonic stem cell research. The total could exceed \$300 million by the end of the year, Klein said.

The lawsuits that the court rejected did not challenge the research, but said there were legal flaws in Prop. 71 and the structure of the agency in charge of the bond money.

The 29-member committee headed by Klein includes representatives of universities and research centers that are eligible to apply for Prop. 71 grants, as well as advocates for treatment of particular diseases.

Committee members are barred from voting on grants to their own institutions or their private interests. But opponents say members still face inherent conflicts because they can approve each other's projects and vote for categories of research that will ultimately benefit them.

In a Feb. 26 ruling, the First District Court of Appeal in San Francisco said Prop. 71 struck a reasonable balance.

"The voters have determined that the advantages of permitting particularly knowledgeable persons to decide which research projects to fund outweigh any

concerns that these decisions may be influenced by the personal or professional interests of those members," as long as they are barred from voting on their own projects, the court said.

The court also said the initiative does not violate a state constitutional requirement that the state supervise any agency that distributes state funds. It noted that state elected officials appoint 24 of the 29 committee members, and that the other five are named by University of California chancellors.

The Supreme Court case is California Family Bioethics Council vs. California Institute for Regenerative Medicine, S151574.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/05/17/STEMCELL.TMP>

This article appeared on page B - 1 of the San Francisco Chronicle