

U.S. Judge Rules Against Obama's Stem Cell Policy

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WASHINGTON — A federal district judge on Monday blocked [President Obama](#)'s 2009 executive order that expanded embryonic [stem cell](#) research, saying it violated a ban on federal money being used to destroy embryos.

The [ruling](#) came as a shock to scientists at the [National Institutes of Health](#) and at universities across the country, which had viewed the Obama administration's new policy and the grants provided under it as settled law. Scientists scrambled Monday evening to assess the ruling's immediate impact on their work.

"I have had to tell everyone in my lab that when they feed their cells tomorrow morning, they better use media that has not been funded by the federal government," said Dr. George Q. Daley, director of the stem cell transplantation program at Children's Hospital Boston, referring to food given to cells. "This ruling means an immediate disruption of dozens of labs doing this work since the Obama administration made its order."

In his ruling, Chief Judge [Royce C. Lamberth](#) of Federal District Court for the District of Columbia wrote that his temporary injunction returned federal policy to the "status quo," but few officials, scientists or lawyers in the case were sure Monday night what that meant.

Dr. Daley was among those who said they believed that it meant that work financed under the new rules had to stop immediately; others said it meant that the health institutes had to use Bush administration rules for future grants.

Steven H. Aden, senior counsel for the Alliance Defense Fund, which sued to stop the Obama administration rules, said the judge's ruling "means that for now the N.I.H. cannot issue funding grants to embryonic stem cell research projects without any further order from the court."

Officials at the health institutes said that lawyers at the Department of Justice would interpret the ruling for them. Tracy Schmalzer, a spokeswoman for the Justice Department, wrote in an e-mail, "We're reviewing the decision."

The judge ruled that the Obama administration's policy was illegal because the administration's distinction between work that leads to the destruction of embryos — which cannot be financed by the federal government under the current policy — and the

financing of work using stem cells created through embryonic destruction was meaningless. In his ruling, he referred to embryonic stem cell research as E.S.C.

“If one step or ‘piece of research’ of an E.S.C. research project results in the destruction of an embryo, the entire project is precluded from receiving federal funding,” wrote Judge Lamberth, who was appointed to the federal bench in 1987 by President [Ronald Reagan](#).

In other words, the neat lines that the government had drawn between the process of embryonic destruction and the results of that destruction are not valid, the judge ruled.

For scientists, the problem with the judge’s reasoning is that it may render all scientific work regarding embryonic stem cells illegal — including work allowed under the more restrictive policy adopted by President [George W. Bush](#) in 2001.

For years, private financing has been used to create embryonic stem cell lines, mostly from discarded embryos from fertility clinics. The process destroys the embryos. President Bush agreed to finance embryonic stem cell research, but limited federally financed research to 21 cell lines already in existence by 2001.

Under the Obama administration, private money was still needed to obtain the embryonic stem cells, but federal money could be used to conduct research on hundreds more stem cell lines, as long as donors of embryos signed consent forms and complied with other rules.

Ron Stoddart, executive director of Nightlight Christian Adoptions, an agency that was one of the original plaintiffs in the lawsuit that led to Monday’s ruling, said he was pleased with the judge’s ruling.

“We do not want to see stem cell research that would destroy embryos,” Mr. Stoddart said. “Embryos are preborn human life that should be protected and not destroyed. If there was a way of extracting the stem cells without destroying them, I would not be opposed to it.”

Mr. Stoddart said he would be surprised if the judge’s ruling led to a complete ban on embryonic stem cell research. Rather, he said his group hoped the government’s policy would return to the balance struck by President Bush.

Mr. Aden, the plaintiff’s lawyer, said Judge Lamberth would have to clarify whether President Bush’s rules were legal.

Dr. Irving L. Weissman, director of the Stanford Institute for Stem Cell Biology and Regenerative Medicine, said the ruling was “devastating to the hopes of researchers and patients who have been waiting so long for the promise of stem cell therapies.” Dr. Weissman said he hoped that the judge’s ruling would be overturned.

The lawsuit at issue was brought last year on behalf of the adoption agency; two stem cell scientists, Dr. James L. Sherley and Dr. Theresa Deisher; embryos; and others. The judge dismissed the suit last year, ruling that the plaintiffs lacked standing, meaning they were not materially affected by the rule change.

But the Court of Appeals reversed that ruling last year, saying the two researchers could be harmed by the new policy since they worked exclusively with adult stem cells and would face increased competition for federal financing under the new policy. After the appeals court ruling, all but Dr. Sherley and Dr. Deisher were dropped as plaintiffs to the suit.

With the case back in his court, Judge Lamberth ruled that the administration’s policy violated the clear language of the Dickey-Wicker Amendment, a law passed annually by Congress that bans federal financing for any “research in which a human embryo or embryos are destroyed, discarded or knowingly subjected to risk of injury or death.”

In rules announced last year, the administration allowed financing of research into any embryonic stem cell lines that either were allowed by the Bush administration or had been created using embryos discarded after fertilization procedures and in which unpaid donors had given clear consent for the embryos to be used for research purposes.

The Obama administration said that its rules abided by the Dickey-Wicker Amendment because the federal money would be used only once the embryonic stem cells were created but would not finance the process by which embryos were destroyed. The judge disagreed, writing that embryonic stem cell research “necessarily depends upon the destruction of a human embryo.”

Dr. Leonard I. Zon, director of the stem cell program at Children’s Hospital Boston, said he was surprised by the ruling. “The Obama administration’s permission to use federal funds is critical for embryonic stem cell research to move forward and has set a great standard for the United States,” he said.

Mr. Aden said he hoped the ruling would lead to increased financing of adult stem cell research, which his clients have argued is more scientifically promising than embryonic stem cell research anyway.