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## APPEALS COURT RULES THAT EMBRYONIC STEM CELL RESEARCH CAN CONTINUE

This week, the U.S. Court of Appeals for the D.C. Circuit ruled that the National Institutes of Health (NIH) could continue to fund human embryonic stem cell research (hESC) while it considers the government's appeal of an injunction that brought federal support for this area of research to a halt. The ruling was one of several recent procedural decisions in the complicated case unfolding simultaneously in the appeals court and a lower U.S. district court. Earlier this month, the appeals court issued a temporary administrative suspension of the district court's August 23<sup>rd</sup> injunction; the more recent ruling extends that suspension until the court makes a final determination in the appeal. The decision followed quickly on the heels of oral arguments before the court in which Department of Justice attorneys representing NIH argued that resuming a ban on hESC funding would irreparably harm researchers.

Prior to the latest legal decision, the University of California (UC) petitioned the Court of Appeals to become a party in the lawsuit. It argued that the ban would have a profoundly negative impact on research and education in the UC system and that its interests are not represented by any of the parties in the case. The appeals court rejected the motion, but did grant the university permission to submit an *amicus curiae* brief supporting the federal government.

In the meantime, the lower court is moving ahead with the original lawsuit challenging the legality of hESC research. Judge Royce C. Lamberth is expected to rule on the substance of that case next month. The plaintiffs – the adult stem cell researchers who brought the suit against NIH – asked the court to rule in their favor without a hearing. Objecting to the motion, the government argued that 1) the plaintiff's interpretation of federal law is inconsistent with that of the last three presidential administrations, 2) NIH did not violate the Administrative Procedures Act (APA) in promulgating the *NIH Guidelines for Human Stem Cell Research* (the plaintiffs contend that NIH violated the APA by not considering thousands of comments it received in

response to the draft guidelines), and 3) even if the court does agree with the plaintiffs, the proper course of action is to ask NIH to revise the guidelines, not outlaw federally-funded hESC research. The Coalition for the Advancement of Medical Research (CAMR), of which FASEB is a member, submitted an *amicus curiae* brief backing the government's opposition to the plaintiffs' motion. This is the second *amicus* that CAMR has filed in this case. The first was submitted on behalf of the government's motion to halt the preliminary injunction.

## INSIDE (THE BELTWAY) SCOOP – JENNIFER ZEITZER

Given new polls in House and Senate races showing that control of both chambers of Congress could switch hands and the increasing level of gridlock in the Senate, it is no surprise that lawmakers exited Washington on Thursday (eight days earlier than originally expected) to return to the campaign trail. The hasty departure left behind a long list of unfinished legislative business, ensuring that members of Congress will be back in the Capitol later this fall for a “[lame-duck](#)” session. Extending the expiring tax cuts enacted in 2001 and 2003, passing the annual defense authorization bill, and finishing work on an “omnibus” measure combining all of the unfinished fiscal year (FY) 2011 appropriations bills into one package are among the issues that will have to be addressed once Congress returns.

Although lawmakers deferred action on most major legislative issues until November, the Senate passed a long-stalled bill increasing financial assistance to small businesses, clearing that measure for President Obama's signature. Both chambers also completed action on a “[continuing resolution](#)” (CR) to keep federal agencies operating until the FY 2011 appropriations bills are completed. The CR (HR 3081) provides funding for government programs, including research supported by the National Institutes of Health and the National Science Foundation, at FY 2010 (e.g. current) levels through December 3, 2010. It passed the Senate by a [vote](#) of 69 -30, with 19 Republicans voting “yes” and Senator Russ Feingold (WI) as the only Democrat who voted against the measure. The House approved the CR [228 - 194](#). During Senate debate on the bill, lawmakers defeated ([39 -60](#)) an amendment from Jim DeMint (R-SC) to extend the CR until February 4, 2011. In addition, the Senate rejected ([48 – 51](#)) an amendment authored by John Thune (R-SD) to reduce discretionary funding levels in the bill by five percent. Signaling that the fight over FY 2011 spending levels will resurface when Congress begins work on assembling an omnibus appropriations bill later this year, Democratic Senators Evan Bayh (IN), Michael Bennett (CO), Russ Feingold (WI), Amy Klobuchar (MN), Blanche Lincoln (AR), Claire McCaskill (MO), Mark Udall (CO), and Jim Webb (VA) voted for the Thune amendment.

To ensure passage of the CR, appropriators rejected requests for additional money for programs and agencies, as well as provisions related to policy issues (including a proposal drafted by FASEB that would ensure federal funding for stem cell research could continue while the legal case is appealed). Last month FASEB also issued an action [alert](#) that generated more than 4,000 emails to members of Congress to urge them to approve legislation that will continue federal support for hESC research. Although lawmakers did not take action on the stem cell matter before leaving town, they may have to confront this issue again after the mid-term elections depending on what the appeals court decides with regard to the original lawsuit challenging the government's ability to fund hESC research (see “*Appeals Court Rules That Embryonic Stem*

*Cell Research Can Continue*” above). Given the uncertainty surrounding the legal outcome, FASEB will issue another alert asking scientists to contact their Senators and Representatives in support of passing legislation on stem cell research during the “lame-duck” session.

In addition, Congress also passed a bill (S 3839) to continue the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs that expired on September 30<sup>th</sup>. SBIR and STTR fund research conducted by small businesses by “setting aside” 2.5 percent of the annual budgets of 11 federal agencies (including NIH, NSF, the USDA, and the Department of Energy). S 3839 will provide another short-term extension for both programs, through January 31, 2011, and does not increase the current set-aside level. FASEB opposes a bill pending in the Senate that would raise the amount of funding each agency would be required to devote to SBIR and STTR projects.

Unfortunately, a combination of lack of time and political disputes stalled progress on President Obama’s nominee for a key position in the administration’s budget agency. Despite nearly unanimous votes of support in both the [Senate Homeland Security and Governmental Affairs](#) and [Budget Committees](#) on September 21<sup>st</sup> and 23<sup>rd</sup> respectively, the full Senate was not given the opportunity to confirm Jacob Lew as Director of the Office of Management and Budget. Majority Leader Harry Reid’s (D-NV) attempt to consider Lew’s nomination by unanimous consent (an expedited procedure requiring the support of all 100 Senators) was blocked by Mary Landrieu (D-LA) and Bernard Sanders (I-VT). Senator Landrieu issued a [press release](#) stating that she will oppose the nomination until the Administration’s moratorium on deepwater oil and gas drilling is lifted or significantly modified. In a letter to Senator Reid, Landrieu noted that “Although Mr. Lew clearly possesses the expertise necessary to serve as one of the President’s most important economic advisors, I found that he lacked sufficient concern for the host of economic challenges confronting the Gulf Coast.” Concern about future cuts to Social Security and insufficient responses to questions on trade policy, deregulation of banks, and other issues are the [reasons](#) Senator Sanders does not support Mr. Lew to be budget director. A vote on the nomination is another item that Congress could address later this fall.

Both the House and Senate are scheduled to return to Washington on November 15<sup>th</sup>. However, Congress’s presence in the Capitol will be brief due to the planned Thanksgiving break November 22<sup>nd</sup> – 26<sup>th</sup>. The legislative agenda for the week of November 15<sup>th</sup> has not yet been announced, although Majority Leader Reid indicated the Senate could vote on bills concerning new food safety regulations, enforcement of equal pay laws or incentives for natural gas and electric vehicles. A [press release](#) from Majority Leader Steny Hoyer’s (D-MD) hinted that extending the 2001 and 2003 tax cuts will be the first order of business the House addresses when members come back to work. How long the “lame-duck” session will last is anyone’s guess. Reid previously announced that after recessing for Thanksgiving, the Senate will reconvene on November 29<sup>th</sup> for an unspecified period of time. On September 30<sup>th</sup>, Hoyer’s office [notified](#) House members that they would be in session from November 29<sup>th</sup> to December 3<sup>rd</sup>, a schedule verified by Speaker Nancy Pelosi (D-CA) who told reporters, “Our CR goes to December 3. It would be my hope that we would be finished with our work by then.” Given the amount of unfinished business lawmakers must still address before the end of the year, it seems very likely that final adjournment of the 111<sup>th</sup> Congress will not come until late December.

## SUBRA SURESH APPROVED TO BE DIRECTOR OF THE NATIONAL SCIENCE FOUNDATION

After having been cleared by the Senate Committee on Health, Education, Labor, and Pensions last week, the nomination of Dr. Subra Suresh to be the Director of the National Science Foundation (NSF) was approved by the full Senate on September 29<sup>th</sup>. During his six-year term as director, Dr. Suresh will oversee the agency, which funds science and engineering research nationwide and implements several educational initiatives. Dr. Suresh was nominated to the position in June to replace Dr. Arden Bement, Jr., who departed NSF on June 1<sup>st</sup> to lead Purdue University's new Global Policy Research Institute.

Since 2007, Dr. Suresh has served as the Dean of the School of Engineering at the Massachusetts Institute of Technology (MIT), where his most recent research has been in the field of nanobiomechanics. Under Dr. Suresh's leadership, the School of Engineering recruited over 50 new faculty members and began several new programs. With an academic background studying the mechanical properties of materials, Dr. Suresh joined MIT in 1993 and served as the head of the MIT Department of Materials Science and Engineering from 2000 to 2006. He is also a member of the Biomedical Engineering Society.

House Committee on Science and Technology Chairman Bart Gordon (D-TN) praised the confirmation of Dr. Suresh in a [press release](#) saying, "NSF will benefit from having an accomplished engineer at the helm, in particular with experience in some of the fast-growing fields of materials science, nanotechnology and the life sciences." FASEB plans to send a letter congratulating Dr. Suresh on his appointment.

## CATHERINE WOTEKI CONFIRMED TO OVERSEE USDA RESEARCH

Last week the Senate approved the nomination of Dr. Catherine Woteki to be the Undersecretary for Research, Education, and Economics (REE) at the United States Department of Agriculture (USDA). In her new position, Dr. Woteki will oversee the National Institute of Food and Agriculture and its Agriculture and Food Research Initiative, as well as other USDA agencies including the Agricultural Research Service, the Economic Research Service, and the National Agricultural Statistics Service. She replaces Dr. Rajiv Shah, who left the USDA to head the United States Agency for International Development.

Until her current appointment, Dr. Woteki was the Global Director for Scientific Affairs at Mars, Incorporated where she managed the company's scientific policies and nutrition research. Dr. Woteki has prior experience working at the USDA, having served as the Undersecretary for Food Safety and the Deputy Undersecretary for REE during the Clinton Administration. From 2002 to 2005, she was Dean of Agriculture and Professor of Human Nutrition at Iowa State University. A member of the American Society for Nutrition, Dr. Woteki has contributed to past FASEB reports and statements on USDA research. FASEB President Dr. William Talman recently sent Dr. Woteki a letter of congratulations on behalf of the federation.

## HOUSE OF REPRESENTATIVES RECOGNIZES POSTDOCTORAL RESEARCHERS

Postdoctoral researchers were officially recognized by the House of Representatives for the support they provide to the U.S. science and engineering enterprise. [House Resolution 1545](#) designated the week beginning with the third Monday in September as “National Postdoc Appreciation Week” in recognition of “the accomplishments and contributions postdocs make to relevant departments, institutions, fields, and communities around the United States and the world.”

The National Postdoctoral Association (NPA), which led the advocacy campaign for the resolution, launched the first ever “National Postdoc Appreciation Day” last September as a way to “increase awareness and appreciation of postdocs' contributions to U.S. research.” Following its 2009 success, NPA expanded the initiative, dedicating an entire week to postdoctoral researchers. Dozens of institutions and professional societies across the U.S. and Canada participated, hosting poster sessions, career development workshops, and social events celebrating their postdocs.

The resolution notes that “postdocs make up one of the most substantial driving forces for innovation and research,” yet they work in a “complex transition period” as both trainees and paid professionals. In addition to lauding postdocs for their achievements, the House encouraged the improvement of research training and career opportunities at all levels.

## NIH RELEASES BIENNIAL DIRECTOR'S REPORT

On September 22<sup>nd</sup>, the National Institutes of Health (NIH) released the [Biennial Report of the Director](#) for fiscal years 2008 and 2009. The report provides a consolidated portrait of NIH research activities and centers of excellence, making it easy for Congress, advocates, patient groups, and the general public to understand the many functions of the agency. Five separate chapters describe the operating structure of the 27 institutes and centers, summarize research on specific diseases and disorders, and discuss tools and training programs funded by NIH. Cancer, neuroscience and disorders of the nervous system, infectious diseases, and minority health are highlighted in the section on research projects. The report also includes appendices outlining priorities supported by the Office of the Director, as well as a strategic planning report about the Common Fund, a statement on how the agency is monitoring compliance with the NIH policy on inclusion of women and minority subjects in clinical research, and data on research training and graduate medical education.

Mandated by the *NIH Reform Act* passed by Congress in 2006, the Director's Report is intended to replace the many disparate documents previously produced by individual institutes. In a [press release](#) accompanying the report, NIH Director Dr. Francis Collins stated “When I began my tenure as NIH director a little more than one year ago, I restated our collective commitment to be as transparent as possible. We have worked to make the NIH Biennial Report a key resource for NIH's partners, collaborators and constituents to help keep them informed about what the agency

is doing and why we are doing it.” An electronic version of the [document](#) is available on the NIH website. Print copies of the report will be available in the fall. Members of the public can visit the agency website to provide [feedback](#) on ways to enhance the report to improve NIH transparency and accountability.