

[ORAL ARGUMENT SCHEDULED FOR DECEMBER 6, 2010]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

_____)	
JAMES L. SHERLEY, et al.,)	
)	
Plaintiffs-Appellees,)	No. 10-5287
)	
v.)	
)	[District Court Case
KATHLEEN SEBELIUS, et al.,)	No. 1:09-cv-01575-RCL]
)	
Defendants-Appellants.)	
_____)	

**MOTION OF BOSTON BIOMEDICAL RESEARCH INSTITUTE
FOR LEAVE TO APPEAR AS AMICUS CURIAE AND JOIN IN THE BRIEF FILED BY
AMICI CURIAE STATE OF WISCONSIN, COALITION FOR THE ADVANCEMENT
OF MEDICAL RESEARCH AND THE GENETICS POLICY INSTITUTE, INC.**

Pursuant to Fed. R. App. Proc. 29 and D.C. Cir. R. 29, Boston Biomedical Research Institute (“BBRI”) hereby moves the Court for leave to appear as amicus curiae in the above-captioned matter and join in the brief filed by amici curiae State of Wisconsin, Coalition for the Advancement of Medical Research and The Genetics Policy Institute, Inc. In support of this motion, BBRI states the following:

1. This appeal was docketed in this Court on August 31, 2010. Although this motion is being filed more than sixty days after the date on which the appeal was docketed, the allowance of this motion will not prejudice any party. BBRI does not seek leave to file a separate brief but, rather, seeks leave only to join in the brief which has already been timely filed

by the current amici curiae. Allowance of this motion will not delay any event in this matter or otherwise interfere with the scheduled disposition of the case.

2. BBRI is a non-profit organization under section 501(c)(3) of the Internal Revenue Code which receives grants from the National Institutes of Health (“NIH”) and other sources that fund scientific research. The twenty-five Principal Investigators and other scientists and technicians employed by BBRI participate in innovative research intended to facilitate the development of new and better therapies and potential cures for a variety of human diseases.

3. BBRI’s scientific staff are affected by the preliminary injunction that is the subject of this appeal and will be affected by the outcome thereof. BBRI sponsors a regenerative biology program in which NIH-funded investigators explore the efficacy of using human adult stem cells to promote tissue regeneration. BBRI would expand this research to include the use of human embryonic stem cells, but is restricted by the injunction from doing so. BBRI is therefore severely limited in developing potential treatments for human diseases, and the patients who ultimately would benefit from its research are similarly affected. In addition, the NIH provides funding to BBRI that supports the Senator Paul D. Wellstone Muscular Dystrophy Cooperative Research Center, which conducts research on human muscular dystrophy using, among other things, adult human stem cells. BBRI believes that its ability to use human embryonic stem cells in this research would provide great promise in understanding the pathology of muscular dystrophies and discovering new treatments and cures. A university and a foundation have offered to provide BBRI with human embryonic stem cells with mutations conferring muscular dystrophy for its research, but BBRI has not accepted these materials as a result of the injunction.

4. BBRI seeks to join in the brief filed by the other amici curiae to support the perspective they have offered the Court with respect to the severe adverse impact of the

preliminary injunction on patients who stand to benefit from advances in medical science to be achieved through research that uses previously-derived human embryonic stem cells and on the strong public interest in the continued funding of research using previously-derived human embryonic stem cells.

WHEREFORE, BBRI requests that the Court grant it leave to participate as amicus curiae in the brief filed by the State of Wisconsin and other amici curiae.

Respectfully submitted,

/s/ Jerome C. Muys, Jr.
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*Counsel for
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Dated: November 22, 2010

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_____)	

**DISCLOSURE STATEMENT OF
BOSTON BIOMEDICAL RESEARCH INSTITUTE**

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, amicus curiae Boston Biomedical Research Center states that it has no parent corporation and that no publicly owned corporation owns ten percent (10%) or more of its stock.

Respectfully submitted,

/s/ Jerome C. Muys, Jr.
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Dated: November 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2010, I filed and served the foregoing Motion of Boston Biomedical Research Institute For Leave To Appear As Amicus Curiae and Join In The Brief Filed By Amici Curiae State of Wisconsin, Coalition for the Advancement of Medical Research and The Genetics Policy Institute, Inc. with the Clerk of Court by causing a copy to be electronically filed via the CM/ECF system. I also certify that I delivered the original and four copies to the Clerk.

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