

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DR. JAMES L. SHERLEY, et al.,)	
Plaintiffs,)	
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)	
v.)	Civil Action
)	No. 09-CV-01575-RCL
)	
KATHLEEN SEBELIUS, et al.,)	
Defendants.)	
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**PLAINTIFFS’ NOTICE OF D.C. CIRCUIT’S DECISION AND
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEFS**

Plaintiffs, through undersigned counsel, respectfully provide notice that the United States Court of Appeals for the D.C. Circuit filed an opinion and judgment in this case on April 29, 2011. Plaintiffs hereby move for leave to file supplemental briefs in light of the D.C. Circuit’s opinion, consistent with the following dates and page limits:

- Plaintiffs’ Supplemental Brief: Due on or before June 3, 2011, and limited to 10 pages.
- Defendants’ Response to Plaintiffs’ Supplemental Brief: Due on or before June 24, 2011, and limited to 10 pages.
- Plaintiffs’ Reply to Defendants’ Response: Due on or before July 6, 2011, and limited to 5 pages.

The supplemental briefs would aid the Court in addressing Plaintiffs' September 9, 2010 Motion For Summary Judgment and Defendants' September 27, 2010 Motion For Summary Judgment, which were fully briefed as of October 28, 2010.

Counsel for both parties have conferred pursuant to Local Civil Rule 7(m). Defendants oppose this Motion because they feel it is unnecessary. If this Motion is granted, Defendants feel that Plaintiffs and Defendants should each file one brief.

Dated: May 9, 2011

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFS**

This case involves the federal funding of human embryonic stem cell research. On August 23, 2010, this Court granted Plaintiffs’ motion for a preliminary injunction, ordering “that defendants and their officers, employees, and agents are 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.” Aug. 23, 2010 Order (Dkt. #45). On September 9, 2010, Plaintiffs moved for summary judgment, after which Defendants filed an opposition and moved for summary judgment on September 27, 2010. *See* Dkt. # 55, 57-58. Briefing on the summary judgment motions was

completed as of October 28, 2010. *See* Dkt. #70, 72-73. The summary judgment motions remain pending before this Court.

On April 29, 2011, a divided panel of the D.C. Circuit filed an opinion and judgment that vacated the preliminary injunction but expressly left numerous issues unresolved. *Sherley v. Sebelius*, No. 10-5287, 2011 WL 1599685 (D.C. Cir. Apr. 29, 2011). In light of the D.C. Circuit's opinion and the summary judgment motions that are currently pending before this Court, Plaintiffs hereby move for leave to file concise supplemental briefs to aid the Court in addressing the pending motions for summary judgment. Plaintiffs propose the following schedule and page limits:

- Plaintiffs' Supplemental Brief: Due on or before June 3, 2011, and limited to 10 pages.
- Defendants' Response to Plaintiffs' Supplemental Brief: Due on or before June 24, 2011, and limited to 10 pages.
- Plaintiffs' Reply to Defendants' Response: Due on or before July 6, 2011, and limited to 5 pages.

Dated: May 9, 2011

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2011, I caused true and correct copies of the foregoing Notice Of D.C. Circuit's Decision And Motion For Leave To File Supplemental Briefs, as well as the accompanying Memorandum In Support thereof, to be served on Defendants' counsel electronically by means of the Court's ECF system.

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**[PROPOSED] ORDER ON PLAINTIFFS’ MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFS**

Plaintiffs’ Motion For Leave To File Supplemental Briefs is hereby **GRANTED**. It is therefore

ORDERED that the briefing schedule be entered as follows:

- Plaintiffs’ Supplemental Brief: Due on or before June 3, 2011, and limited to 10 pages.
- Defendants’ Response to Plaintiffs’ Supplemental Brief: Due on or before June 24, 2011, and limited to 10 pages.
- Plaintiffs’ Reply to Defendants’ Response: Due on or before July 6, 2011, and limited to 5 pages.

SO ORDERED.

Date: _____

ROYCE C. LAMBERTH
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2011, I caused a true and correct copy of the foregoing [Proposed] Order to be served on Defendants' counsel electronically by means of the Court's ECF system.

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