

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. SHERLEY, *et al.*,

Plaintiffs,

v.

KATHLEEN SEBELIUS, *et al.*,

Defendants.

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) Case Number 1:09-cv-01575-RCL
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**MOTION OF THE COALITION FOR THE ADVANCEMENT OF
MEDICAL RESEARCH FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

The Coalition for the Advancement of Medical Research (“CAMR”) hereby moves, pursuant to LCvR 7, for leave to file the brief amicus curiae submitted herewith in further support of Defendants’ Emergency Motion To Stay Preliminary Injunction Pending Appeal (Dkt. 48). CAMR, a not-for-profit organization under section 501(c)(4) of the Internal Revenue Code, is a coalition of nearly 100 nationally recognized patient organizations, universities, scientific societies, and foundations that engages in advocacy and education regarding breakthrough research and technologies in the field of medical and health research, including stem cell research. CAMR’s members are listed in Exhibit 1 to the amicus brief and Exhibit 1 to the memorandum of points and authorities in support of this motion.

CAMR seeks to file the attached brief amicus curiae to assist the Court in addressing the public interest and harm to other parties components of the four-factor test that the Court must

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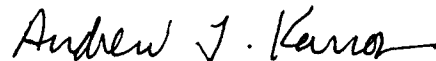
consider in evaluating Defendants' emergency stay motion.¹ As set forth in the brief, the enormous scientific value of embryonic stem cell research, and its potential benefits to patients, are well-recognized in the scientific community. This complex, ongoing research depends on federal government funding provided pursuant to a scientifically rigorous grant-making process. Disruption of that funding pending appeal will inevitably seriously disrupt the pending research, severely burdening the institutions sponsoring it and delaying development of therapies to benefit patients. There is, therefore, an overwhelming public interest in continuing uninterrupted the public funding of embryonic stem cell research and avoiding the widespread disruption to critically important scientific research that will result if the Court's preliminary injunction Order is not stayed pending appeal. CAMR, whose membership includes leading research institutions, scientific societies and patient organizations, is uniquely situated to provide their perspective to the Court.

Pursuant to LCvR 7(m), yesterday counsel for CAMR requested counsel for Plaintiffs and Defendants to consent to this motion. Plaintiffs' counsel declined to consent. Defendants' Counsel have authorized us to state that they have no objection to the filing of the amicus brief.

¹ The familiar four-factor test includes: (1) the movant's likelihood of prevailing on the merits of the appeal, (2) whether the movant will suffer irreparable harm absent a stay, (3) the harm to third parties if a stay is granted, and (4) the public interest. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

WHEREFORE, CAMR prays for entry of an Order granting leave to file the brief amicus curiae submitted herewith.

Respectfully submitted,



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*Attorneys for
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Dated: September 3, 2010

ORIGINAL

Defendants.

Case Number 1:09-cv-01575-RCL

CAMR seeks to file the attached brief amicus curiae to assist the Court in addressing the harm to other parties and public interest components of the four-factor test that the Court must

consider in evaluating Defendants' emergency stay motion.¹ As set forth in the brief, the enormous scientific value of embryonic stem cell research, and its potential benefits to patients suffering from debilitating diseases, are well-recognized in the scientific community. This complex, ongoing research depends on federal government funding provided pursuant to a scientifically rigorous grant-making process. Disruption of that funding pending appeal will inevitably seriously disrupt the pending research, severely burdening the institutions sponsoring it and delaying development of therapies that have the promise of benefitting millions of patients. There is, therefore, an overwhelming public interest in continuing uninterrupted the public funding of embryonic stem cell research and avoiding the widespread disruption to critically important scientific research that will result if the Court's preliminary injunction Order is not stayed pending appeal.

CAMR, whose membership includes leading research institutions, scientific societies and patient organizations, and which therefore represents people and institutions who will be directly affected by the preliminary injunction if it is not stayed pending appeal, is uniquely situated to provide their perspective to the Court. This type of specialized input is precisely the type of information that *amicus curiae* typically provide. "An *amicus* brief should normally be allowed . . . when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Jin v. Ministry of State Security*, 557 F.

¹ The familiar four-factor test includes: (1) the movant's likelihood of prevailing on the merits of the appeal, (2) whether the movant will suffer irreparable harm absent a stay, (3) the harm to third parties if a stay is granted, and (4) the public interest. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Supp. 2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir. 1997)). Here, the input of CAMR's members, including research institutions currently performing research into human embryonic stem cells and patient advocacy groups, is a distinct perspective not provided by either party.

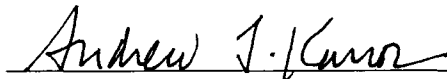
This Court has broad discretion to permit CAMR's participation as an amicus curiae. *See, e.g., National Ass'n of Home Builders v. Army Corps of Eng'rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). In this case, there is no reason to decline CAMR's amicus participation. CAMR has moved promptly to file its motion after Defendants filed their motion for emergency stay of the preliminary injunction pending appeal earlier this week. Consideration of CAMR's amicus brief will not cause undue delay in the progress of this case or the Court's consideration of the pending stay motion. Nor will it prejudice the parties.² As the brief reflects, it is drawing to the Court's attention publicly available information of which the Court may properly take notice.

² CAMR's support for Defendants' stay motion does not constitute grounds for denying leave to participate amicus curiae. *See, e.g., Jin*, 557 F. Supp. 2d at 138 (allowing amicus participation supporting a party's position); *Nat'l Ass'n of Home Builders*, 519 F. Supp. 2d at 93 (allowing amicus "seek[ing] to support the government's arguments in favor of the validity of its action and its interpretation of" the relevant law to participate).

CONCLUSION

The motion should be granted.

Respectfully submitted,

A handwritten signature in black ink, reading "Andrew T. Karron", is written over a horizontal line.

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Medical Research

Dated: September 3, 2010

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2010, I filed the materials listed hereafter with the Clerk of the Court using the generic court email address and at the Clerk's office, and by serving the parties on the service list below in the manner indicated. The materials filed and served are: (i) Motion of the Coalition for the Advancement of Medical Research for Leave to File Brief Amicus Curiae ("Motion"); (ii) Memorandum of Points and Authorities in Support of the Motion; (iii) [Proposed] Brief Amicus Curiae of Coalition for the Advancement of Medical Research in Support of Defendants' Emergency Motion to Stay Preliminary Injunction Pending Appeal and the exhibits thereto); (iv) Exhibit 1 to the Motion; and (v) Proposed Order regarding the Motion.

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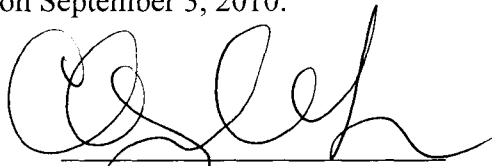
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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 3, 2010.

A handwritten signature in black ink, appearing to read 'Elizabeth Leise', written over a horizontal line.

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