

# [Nightlight Christian Adoptions, et al. v. Thompson, et al. \(2001\)](#) <sup>[1]</sup>

By: Kearl, Megan Keywords: [Stem cells](#) <sup>[2]</sup>

[Nightlight Christian Adoptions](#) <sup>[3]</sup> *et al. v. Thompson et al.* was a lawsuit filed in the United States District Court for the District of Columbia on 8 March 2001. The suit was filed because [Nightlight Christian Adoptions](#) <sup>[3]</sup>, a [frozen embryo](#) <sup>[4]</sup> adoption agency, felt that the [Guidelines for Research Using Human Pluripotent Stem Cells](#) <sup>[5]</sup> published by the National Institutes for Health were unlawful and violated the restrictions on human embryo research put into place by the [Dickey-Wicker Amendment](#) <sup>[6]</sup>. Additional plaintiffs with this suit were the [Christian Medical Association](#) <sup>[7]</sup>, adult stem cell researcher David A. Prentice, and three couples who were clients of Nightlight. The suit was filed against [Tommy G. Thompson](#) <sup>[8]</sup> in his official capacity as Secretary of the Department of Health and Human Services; [Ruth Kirschstein](#) <sup>[9]</sup> in her official capacity as Acting Director of the [National Institutes of Health](#) <sup>[10]</sup>; the Department of Health and Human Services (HHS); and the [National Institutes of Health](#) <sup>[10]</sup> (NIH).

The NIH Guidelines that were the focus of this case were published on 25 August 2000. They permitted the federal funding of research on human [embryonic stem cells](#) <sup>[11]</sup> derived from human embryos, but the [stem cells](#) <sup>[12]</sup> had to be obtained using private funds. The plaintiffs argued that this distinction was arbitrary because the [Dickey-Wicker Amendment](#) <sup>[6]</sup>, signed into law in 2001, prohibited the federal funding of research that subjected embryos to more than [minimal risk](#) <sup>[13]</sup>, or research in which embryos were knowingly destroyed, created, or discarded. Since the original derivation of the human [embryonic stem cells](#) <sup>[11]</sup> required embryo destruction, the plaintiffs claimed that any research conducted using the resulting [stem cells](#) <sup>[12]</sup> was unlawful. One reason for this is that the plaintiffs felt that the NIH provided no concrete evidence or rationale behind the claim that human [embryonic stem cells](#) <sup>[11]</sup> are not embryos. The plaintiffs also felt that the NIH's claim that [adult stem cells](#) <sup>[14]</sup> have a more limited potential than [embryonic stem cells](#) <sup>[11]</sup> was false and not supported by scientific evidence. They also argued that the Guidelines violated long-accepted ethical norms, as well as state and federal laws that protect human subjects in research.

One of the laws that the plaintiffs frequently referenced was 45 CFR 46. 45 CFR 46 is a codification of the federal policy for the protection of human research subjects. The plaintiffs relied heavily on the definition of [minimal risk](#) <sup>[13]</sup> for research subjects in this document, in particular, the restrictions for federal funding of research on human fetuses. The HHS, by law, is only supposed to help fund research that poses no added risk of suffering, injury, or death to the [fetus](#) <sup>[15]</sup> or that increases the fetus's well-being or likelihood of survival. In 45 CFR 46, the [fetus](#) <sup>[15]</sup> is described as the product of [conception](#) <sup>[16]</sup> from [implantation](#) <sup>[17]</sup> to birth. Accordingly, frozen human embryos left over from fertility procedures like [in vitro](#) <sup>[18]</sup> [fertilization](#) <sup>[19]</sup> do not fall into this category because they have not been implanted. Despite that fact, at the point this case was filed no funds had ever been allocated for [human embryo research](#) <sup>[20]</sup>. The plaintiff interpreted this as a de facto ban on [human embryo research](#) <sup>[20]</sup>.

The suit had the effect of creating a moratorium on the federal funding of [embryonic stem cell research](#) <sup>[21]</sup>. The Honorable Royce C. Lamberth issued a stay order on 4 May 2001, suspending the case while the Bush administration reviewed the NIH guidelines. In effect, this suspension also prevented the HHS from reviewing any application for federal funds for [embryonic stem cell research](#) <sup>[21]</sup>. Even after a decision was reached, the stay order would keep the HHS from funding any [embryonic stem cell research](#) <sup>[21]</sup> for thirty days. This moratorium led to [James Thomson](#) <sup>[22]</sup> and six other scientists, as well as three patients, to file as defendants and cross-claimants in this case. Less than a week later they filed their own law suit against the HHS in a case called [Thomson](#) <sup>[23]</sup>, *et al. v. Thompson, et al.*

Ultimately [Nightlight Christian Adoptions v. Thompson](#) <sup>[24]</sup> was never settled in court because of several changes made by the Bush administration. On 9 August 2001 President [George W. Bush](#) <sup>[25]</sup> announced that research using any [embryonic stem cells](#) <sup>[11]</sup> derived before that date would be eligible for federal funding, but any derived after would not. Three months later on 7 November 2001 the HHS withdrew their guidelines. Because of these changes, the plaintiffs voluntarily dismissed the suit on 14 January 2002 after they felt that all of their objectives had been met.

## Sources

1. Department of Health and Human Resources. "45 CFR 46." Department of Health and Human Services. <http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm#46.104> <sup>[26]</sup> (Accessed April 27, 2009).
2. Duffy, Diane T. "Background and Legal Issues Related to Stem Cell Research" [http://www.policyalmanac.org/health/archive/crs\\_stem\\_cell.shtml](http://www.policyalmanac.org/health/archive/crs_stem_cell.shtml) <sup>[27]</sup> (Accessed September 19, 2010).

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## Subject

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