For Immediate Release **Contact: Jennifer Berkowitz**

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LAWSUIT AGAINST SOCIAL SECURITY ADMINISTRATION AND HHS FILED TODAY

AGENCIES ILLEGALLY CONFISCATE SOCIAL SECURITY BENEFITS FROM CITIZENS WHO WANT TO PAY FOR OWN HEALTH CARE RATHER THAN ENROLL IN MEDICARE

*Plaintiffs Include Former HUD Employee, E*Trade Board Member, and Retired Rabbit Semiconductor Founder and CEO*

WASHINGTON, DC: A lawsuit filed today in U.S. District Court for the District of Columbia charges the Social Security Administration (SSA) and Department of Health and Human Services (HHS) with adopting policies that deny otherwise eligible retirees their rightful Social Security benefits if those retirees choose not to enroll in Medicare. The plaintiffs have asked the Courts to temporarily and permanently prohibit SSA and HHS from enforcing the policies, which were improperly adopted, the plaintiffs say, without required public notice and hearings.

The plaintiffs in the lawsuit are Brian Hall of Catlett, Va., a retired employee of the Department of Housing and Urban Development (HUD); Lewis Randall of Whidbey Island, Wash., near Seattle, a member of the board of directors of E*Trade; and Norman Rogers of Miami, Fla., retired founder and CEO of Rabbit Semiconductor, Davis, Calif.

Despite having paid thousands of dollars each in Social Security and Medicare taxes during their working lives, Hall, Randall and Rogers have been told by Social Security officials that they must forfeit their Social Security benefits if they wish to withdraw from or not enroll in Medicare. The Social Security Administration policy, put in place in 1993 during the Clinton administration and strengthened in 2002 by the Bush administration, is unlawful, the plaintiffs say, and was improperly implemented in violation of the government's Administrative Procedure Act because it has never been subject to an official "rulemaking."

The plaintiffs all believe they have adequate health care coverage and enough money to pay privately for their health care needs and want to voluntarily forgo Medicare, saving the taxpayers money.

"Not only have these agencies granted themselves permission to seize a retiree's Social Security benefits should they opt out of Medicare, but HHS has provided no effective procedure by which an individual can request to opt out of Medicare in the first place," said the plaintiffs' legal counsel Kent Masterson Brown of Webster, Chamberlain & Bean. "If the plaintiffs wish to pay for their own health care without forfeiting their Social Security benefits, they have no other option than to pursue legal action."

Past experience, Brown said, has shown that there are no viable procedures for individuals to begin the opt-out process. "Some have tried and gotten nowhere," he said, receiving notification that SSA is "not going to make a determination" concerning withdrawal.

Designed to assist those in need, Medicare was never intended to be forced upon Americans, especially those who want to provide for their own health care during retirement.

Under the Medicare Act, signed into law by President Lyndon Johnson in 1965, participation in Medicare Part A—the hospital insurance program—requires both eligibility and the filling out of an application. "There is nothing in the law, or the Social Security statute, that says a retired individual who chooses not to apply for Medicare coverage will be stripped of his or her Social Security benefits," Brown said. However, subsequent rules and procedures improperly enacted by SSA and HHS severely punish any citizen desiring to pay for his or her own care. These rules essentially trap retirees into participating. If you don't want the government's health insurance policy, they say, then you can say goodbye to your Social Security benefits too.

Two of the rules that coerce unwilling participants to accept Medicare were adopted by the Social Security Administration in August 1993. The third rule was added a decade later. That rule says:

> "… a claimant who is entitled to monthly RSI [retirement income] benefits **cannot** [emphasis added] withdraw HI [Medicare, Part A] coverage only since entitlement to HI [Medicare, Part A] is based on entitlement to monthly RSI benefits…"

The plaintiffs in *Brian Hall et al v. Michael Leavitt et al* say the Clinton and Bush administrations initiated the improper policies without following the Administrative Procedure Act, which requires "notice" of proposed rule-makings in the Federal Register and appropriate "comment" periods so both the general public and interested parties can study and comment on the proposed changes and their likely impact prior to implementation.

"Not only are the rules illegal, but they were illegally adopted," said Brown.

Restoring voluntary participation in Medicare not only is the right thing to do, Brown said, but it's good for Medicare as well, which is facing insolvency in a decade or less.

If just a small percentage of Medicare-eligible retirees were to voluntarily opt out of the program it would save billions of dollars each year, relieving some of the financial pressure on the fiscally ailing program. If just 1 percent of current retirees chose not to participate in Medicare, Medicare expenditures would decrease by about $1.5 billion per year immediately and by approximately $3.4 billion per year by 2017. Program cost savings would continue to increase by greater amounts for several decades as the "Baby Boomers" retire.

"Why the federal government would penalize somebody for opting out of Medicare, and in the process penalize itself by unnecessarily increasing program costs, is a complete mystery," said Brown. "It is also contrary to the spirit and letter of the law. We hope the Courts will agree and will stop this illegal practice."

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