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## **Lead Plaintiff in Hall v. Leavitt Asks for a Temporary Restraining Order and Preliminary Injunction Against the Social Security Administration and Department of Health and Human Services**

### **Lawsuit Challenges Rules Denying Social Security Benefits To Citizens Who Opt Out of Medicare**

**Washington, DC** – Brian Hall, lead plaintiff in a lawsuit [[www.medicarelawsuit.org](http://www.medicarelawsuit.org)] challenging controversial government rules that deny senior citizens their Social Security benefits if they choose to opt out of Medicare, Part A, asked the courts yesterday to issue a temporary restraining order and preliminary injunction that would prevent the Social Security Administration (SSA) and Department of Health and Human Services (HHS) from enrolling him in Medicare when he becomes eligible this month. The motions were filed in U.S. District Court for the District of Columbia, where Hall v. Leavitt, his original lawsuit, was filed in October.

“Mr. Hall becomes eligible for Medicare this month, and wants to stop HHS from automatically enrolling him in the entitlement program against his will, which would force him to give up his health savings account and – more important – the right to choose and manage his own medical care,” said Kent Masterson Brown, Hall’s attorney.

The new motions ask the court to grant a temporary restraining order and preliminary injunction that will last until Hall v. Leavitt is adjudicated and the court rules on whether the plaintiff has the right to opt out of Medicare and still receive his Social Security benefits.

The lawsuit, originally filed on October 9, 2008 and amended on Dec. 16, 2008 – when former U.S. House Majority Leader Richard Armey and former civilian Navy engineer John Kraus, joined as plaintiffs – charges SSA and HHS with adopting unlawful policies that deny otherwise eligible retirees their rightful Social Security benefits if those retirees choose not to enroll in Medicare, a voluntary program. The lawsuit additionally charges that the policy was adopted and implemented in an illegal manner, violating the federal Administrative Procedure Act.

Brown said the plaintiff meets the four requirements for the issuance of a temporary restraining order and temporary injunction, which include:

- 1) That the plaintiff possesses a substantial likelihood of success on the merits.

Brown noted that the plaintiff meets this requirement because the “challenged policies are totally contrary to the Social Security and Medicare Acts and other related regulations,” according to the Memorandum of Points and Authorities in Support of the Motions for a Restraining Order and Preliminary Injunction filed in conjunction with the motions.

- 2) That the plaintiff would suffer irreparable harm if the temporary restraining order and preliminary injunction are not granted.

In the Memorandum, Brown demonstrates that Hall will be denied his fundamental right to privacy and his right to determine his own health care, in violation of the Constitution, if the Court fails to grant the temporary restraining order and preliminary injunction.

- 3) That the injunctive relief would not harm either SSA or HHS.

Rather than harming SSA or HHS, Brown argues that the government agencies would be better off financially if Hall was not enrolled in the program.

- 4) That the public interest is served by issuing the restraining order and injunction.

Brown argues that the American public – large numbers of whom are beneficiaries of Social Security and/or Medicare – would be better off if the two programs “not be intertwined by regulation promulgated unlawfully,” which undermines their “freedom to receive their hard-earned Social Security benefits without the needless government intervention into their health care choice.”

“All of the factors necessary for a Court to issue a temporary restraining order and preliminary injunction have been met, to be sure,” Brown said. “We look forward to having a hearing on the matter at the earliest possible date.”

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