

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

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**BRIAN HALL**  
2481 Tenerife Road  
Catlett, Virginia 20119

**LEWIS RANDALL**  
5147 S. Bercot Road  
Freeland, Washington 98249  
and

**NORMAN ROGERS**  
2627 S. Bayshore Drive, Apt. 1204  
Miami, FL 33133

**Plaintiffs**

**v.**

**MICHAEL LEAVITT, SECRETARY of**  
**the UNITED STATES DEPARTMENT**  
**OF HEALTH AND HUMAN SERVICES**  
615F Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, D.C. 20201  
and

**MICHAEL J. ASTRUE, COMMISSIONER of**  
**the SOCIAL SECURITY ADMINISTRATION**  
6401 Security Boulevard  
Baltimore, MD 21235-7703

**Defendants.**

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**CIVIL ACTION NO. \_\_\_\_\_**

**AFFIDAVIT OF  
DAVID A. NELSON**

Now comes the Affiant, DAVID A. NELSON, and, after being duly sworn, deposes and says:

1. This Affiant was born on June 24, 1930, in Ann Arbor, Michigan, and is currently a resident of 840 Oak Street, Junction City, Oregon 97448.

2. This Affiant became eligible for Retirement Insurance Benefits (“RIB”) in 1992 at age 62. On or about February 28, 1995, I duly applied for RIB at the local Social Security Administration (“SSA”) office in Albany, Oregon, but made it clear to the employee assisting me that I did not desire to be enrolled in Medicare, Part A. On the SSA application form, I lined through and initialed all the language that pertained to Medicare, Part A.

3. This Affiant orally indicated to the SSA employee who received my application that I did not wish to participate in Medicare, Part A; I reiterated that in two telephone calls I received from SSA employees, both of whom tried to get me to change my mind and withdraw my refusal to enroll in Medicare, Part A.

4. This Affiant never received any written notice from the SSA or the United States Department of Health and Human Services (“HHS”) addressing my refusal to apply for benefits under Medicare, Part A.

5. Because I received no written response from the SSA or HHS regarding my refusal to apply for benefits under Medicare, Part A, I requested the Institute for Health Freedom, 1155 Connecticut Ave NW, Suite 300, Washington, D.C., and its counsel to represent me and demand that the SSA and HHS make a determination regarding my refusal to enroll in Medicare, Part A. I properly executed Form SSA-1696-U4, Appointment of Representative.

6. By letter dated June 24, 1999 from the Institute For Health Freedom, by Guy S. Mahaffey, III, Esq., a licensed practicing attorney at law in Washington, D.C., I formally

requested of the SSA office in Albany, Oregon, pursuant to 42 USC § 405(a) through (h) and 42 USC § 1395ff, that the Commissioner of SSA make a determination regarding my refusal to apply for benefits under Medicare, Part A. A true and correct copy of the foregoing letter from Guy S. Mahaffey, III, Esq., and the Institute For Health Freedom, dated June 24, 1999, to the SSA is marked Exhibit A, attached hereto and made a part hereof as if set out at length herein.

7. No reply having been received from the SSA to the June 24, 1999 letter aforesaid, Guy S. Mahaffey, III, Esq., and the Institute For Health Freedom, on October 4, 1999, wrote to Harriet S. Rabb, Esq., General Counsel, HHS, Sherree R. Kanner, Esq., Associate General Counsel for the Health Care Financing Administration of the HHS, and Arthur J. Fried, Esq., General Counsel, SSA, noting that no determination had been made by the Commissioner of SSA or the Secretary of HHS in response to my June 24, 1999 letter or to my application for RIB whereon I refused to apply for Medicare, Part A benefits. In that letter, Mr. Mahaffey reminded the aforementioned addressees that the Secretary of HHS and the Commissioner of SSA had not made their determination pursuant to 42 USC § 405(g) through (h) and 42 USC § 1395ff. A true and correct copy of the foregoing letter from Guy S. Mahaffey, III, Esq., and the Institute For Health Freedom to Harriet S. Rabb, Esq., Sherree R. Kanner, Esq. and Arthur J. Fried, Esq, aforesaid, dated October 4, 1999, is attached hereto and made a part hereof as though set out at length herein and marked, for purposes of identification, as Exhibit B.

8. On the same date that Guy S. Mahaffey, III, Esq. and the Institute For Health Freedom wrote to Harriet S. Rabb, Esq., Sherree R. Kanner, Esq. and Arthur J. Fried, Esq., as set forth aforesaid, they also forwarded a letter to the local SSA office in Albany, Oregon asking that office to facilitate my receipt of a determination by the Commissioner of SSA and the Secretary of HHS. A true and correct copy of the October 4, 1999 letter from Guy S. Mahaffey, III, Esq.

and the Institute For Health Freedom to the SSA office in Albany, Oregon is attached hereto and made a part hereof as though set out at length herein and marked, for purposes of identification, as Exhibit C.

9. Finally, on October 25, 1999, Sherree R. Kanner, Esq., Associate General Counsel for HHS, forwarded a letter to Guy S. Mahaffey, III, Esq., and the Institute For Health Freedom, acknowledging receipt of the letters of June 24, 1999 and October 4, 1999. In her letter, Ms. Kanner asserted that, because my entitlement to Medicare, Part A, was a result of my entitlement to RIB and “not a result of a successful application for Medicare, Part A benefits,” “the Secretary [of HHS] has not made, and will not make, an initial determination with respect to [my] Part A entitlement.” My Medicare, Part A, entitlement, in other words, was automatic, and not as a result of an application; 42 USC § 405(g) through (h) and 42 USC § 1395ff were not applicable to my request. She stated that if I wished to end my Medicare, Part A, entitlement, I could do so “by withdrawing my application for [RIB].” Thus, I would have to withdraw my application for RIB if I did not want Medicare, Part A, benefits. A true and correct copy of the foregoing letter from Sherree R. Kanner, Esq. to Guy S. Mahaffey, III, Esq. and the Institute For Health Freedom, dated October 25, 1999 is attached hereto and made a part hereof as though set out at length herein and marked, for purposes of identification, as Exhibit D.

10. Even though I had instructed the SSA and HHS that I did not want to enroll in Medicare, Part A, and went so far as to line out all references to Medicare, Part A, in my application for RIB benefits – and appealed to the Commissioner of SSA and the Secretary of HHS to make a determination regarding my refusal to enroll in Medicare, Part A - I was totally frustrated; there has been no response from the Commissioner of SSA to this date, and the Secretary of HHS refuses to make any determination whatsoever, claiming I am automatically

enrolled in Medicare, Part A, and cannot withdraw unless I surrender all of my RIB benefits. HHS has since then forwarded to me a Medicare card, and I regularly receive Medicare bulletins, even though the Commissioner of SSA and the Secretary of HHS are aware that I did not, and do not, desire to become a beneficiary of Medicare, Part A, benefits which I understand are wholly voluntary.

Further the Affiant sayeth naught.

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DAVID A. NELSON

STATE OF OREGON

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me on this the \_\_\_\_\_ day of August, 2008, by David A. Nelson.

My Commission expires: \_\_\_\_\_.

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Notary Public, State At Large, Oregon