

For Immediate Release
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**Federal District Court Judge Rules All Seniors Receiving Social Security
Must Participate In Medicare Part A
or Forfeit Past and Future Retirement Benefits**

**Plaintiffs Announce Intent to Appeal;
Case Highlights Extent of Bureaucratic Overreach in Healthcare**

Washington, DC – A federal District Court judge [Rosemary Collyer] has dismissed a two-and-a-half year lawsuit charging 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 lawsuit, known as Hall v. Sebelius, was originally filed October 9, 2008.

“Anyone concerned with what will happen when the bureaucrats start writing the thousands of pages of rules that will govern the ‘Patient Protection and Affordable Care Act’ need only look at what has happened in Hall v. Sebelius,” said Kent Masterson Brown, lead attorney in the case. “When they do, they will realize nothing will be optional and there will be no fair, affordable or swift manner to obtain recourse or appeal a decision made by the bureaucracy.”

The plaintiffs announced this morning their intent to appeal the decision “even if it takes them two-and-a-half more years to win the right to make their own healthcare choices, rather than be beholden to a bureaucracy that knows and cares nothing about their individual circumstances,” Brown said.

Judge Collyer’s decision, he said, “provides a novel, new interpretation of what a federal ‘entitlement’ is. Based on her ruling, an entitlement is now an obligation. If an individual is entitled to certain federal benefits, he or she under this decision would now be obligated to accept them. A low-income family, hypothetically, could be required to accept housing and food assistance if that family qualifies – even if the members of that household have objections to accepting public assistance. That, in effect, is the meaning of this ruling.”

The original three plaintiffs in Hall v. Sebelius were seniors 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. Former House Majority Leader Richard K. (“Dick”) Arme and retired Navy civilian engineer John J. Kraus of Plymouth Meeting, Pa., near Philadelphia, joined the lawsuit in an amended complaint filed December 2008.

In their complaints, the plaintiffs alleged that 1993 and 2002 rules added by the Social Security Administration to its “Program Operations Manual” are illegal. Those rules state, in effect, that any retiree who elects to opt out of Medicare Part A will automatically lose his or her Social Security retirement benefits and will be forced to repay any Social Security benefits received prior to opting out of Medicare Part A.

Their lawsuit argues that:

- The Social Security Act and Medicare Act state clearly that applying for Social Security monthly benefits and enrolling in Medicare are *voluntary* and that the applications for each of these programs are not dependent on the application for the other. For the new SSA rules to make enrolling in Medicare mandatory violates the Social Security Act and Medicare Act as well as Article I, Section 1 of the Constitution.
- Forced participation in Medicare infringes on a citizen’s right to privacy and violates that individual’s right to make necessary choices about his or her own health care, and, accordingly, violates the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution.
- The new SSA rules were put into place without undergoing the required “notice” and “comment” rule-making requirements. The policies should have been published in the *Federal Register* and open to comment by the general public prior to implementation. Not doing so violates the federal Administrative Procedure Act.

In dismissing the case, Judge Collyer said “Requiring a mechanism for Plaintiffs and others in their situation to ‘disenroll’ would be contrary to congressional intent, which was to provide ‘mandatory’ benefits under Medicare Part A for those receiving Social Security Retirement benefits.”

“Plaintiffs are trapped in a government program intended for their benefit. They disagree and wish to escape. The Court can find no loophole or requirement that the Secretary provide such a pathway,” she concluded.

“Judge Collyer’s decision is without legal merit and defies all logic,” said Brown. “She says that ‘entitlement’ under Medicare Part A ‘is a different type of entitlement because of its automatic nature.’ I had no idea the word ‘entitlement’ ever meant mandatory. In all the Anglo-American literature and the corpus of judicial opinions throughout this Country’s history, ‘entitled’ has always meant what the dictionary says it means: ‘to qualify or to give a right to or to give proper grounds for seeking or claiming something.’ How can there be ‘a different type of entitlement?’”

Judge Collyer’s 13-page decision is available [here](#) and plaintiffs and legal counsel are available for interviews by request.