For Immediate Release **Contact: Jennifer Berkowitz**
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Former House Majority Leader Dick Armey and Retired Navy Civilian Engineer Join Lawsuit Challenging Rules Denying Social Security Benefits to Citizens Who Opt Out of Medicare

WASHINGTON, DC, Dec. 16, 2008: Former House Majority Leader Richard K. ("Dick") Armey and retired Navy civilian engineer John J. Kraus of Plymouth Meeting, Pa., in suburban Montgomery County, near Philadelphia, have joined a lawsuit (*Hall v. Leavitt*) challenging government policies denying Social Security benefits to retirees who refuse to enroll in Medicare or decide to withdraw from Medicare Part A, the hospital insurance program.

In an amended complaint filed late yesterday in U.S. District Court for the District of Columbia, the plaintiffs ask for a restraining order and temporary and permanent injunctions prohibiting the Social Security Administration (SSA) and Department of Health and Human Services (HHS) from enforcing the policies, which were improperly adopted without due process, the plaintiffs claim.

Armey, who represented Texas' 26th Congressional District – near Dallas/Fort Worth – from 1985 to 2003 and served as House Majority Leader from 1995-2003, said his decision to join the other four plaintiffs in the lawsuit was easy. "During my entire life in public office I campaigned for less government intrusion into the lives of Americans," he said, "and these policies are the ultimate intrusion." Armey now resides in Bartonville, Texas, and serves as chairman of the nonprofit organization FreedomWorks.

According to the amended complaint, Armey "has been receiving Social Security monthly benefits since 2003 and was automatically enrolled in Medicare, Part A, in 2006" against his will. Instead, the complaint says, Armey "sought the continuance" of the health benefits he had under the Federal Employee Health Benefits Program (FEHBP), which covers federal government employees and retirees (and their dependants), including members of Congress, administration officials and the congressional and White House staffs.

The complaint says Armey "was unable to keep his previous health coverage because the defendants [SSA and HHS] claimed that receiving his Social Security monthly benefits was predicated upon his enrollment in Medicare, Part A." This is not what the law says, nor has there ever been a formal "rulemaking" establishing such a policy, the lawsuit contends.

A retired federal government engineer formerly employed by the Naval Air Systems Command, Kraus' situation is similar. Kraus' request to withdraw from Medicare Part A was initially denied. He appealed that decision on February 8, 2006, requesting "that the Social Security Administration provide him a hearing before an Administrative Law Judge." Nearly three years after this formal request was made, the request "has gone unanswered," according to the complaint.

"The Federal government has exceeded its constitutional authority in many areas, including this case of rulemaking with following proper procedure, and we must take it upon ourselves to put an end to such arbitrary rulemaking by fiat," he added.

The initial three plaintiffs in the lawsuit, filed in October, were retired federal employee Brian Hall of Catlett, Va., Lewis Randall of Whidbey Island, Wash., near Seattle, and Norman Rogers of Miami, Fla.

All five plaintiffs believe they are adequately prepared to provide for their health care needs during retirement.

In the words of the amended complaint, the plaintiffs – Brian Hall, Lewis Randall, Norman Rogers, John J. Kraus and Richard K. Armey – do not want to apply for Medicare or remain Medicare beneficiaries for the following reasons:

1. because "the health care services provided to Medicare beneficiaries are inferior to those they could obtain privately";

2. because "the health care services provided to Medicare beneficiaries are now and will be, in the future, rationed because of budget constraints," and

3. because the health care services provided to Medicare beneficiaries do not protect the plaintiffs' privacy.

The complaint stresses that the controversial policies in question, which were originated in 1993 during the Clinton administration and strengthened in 2002 by the Bush administration, were improperly implemented in violation of the federal government's Administrative Procedure Act. That law requires all such rules to be published in the Federal Register in advance so interested parties have an opportunity to comment. The policy denying Social Security benefits was implemented in secret and never subject to an official rulemaking, the lawsuit stresses.

The complaint also describes how the policies coerce unwilling participants to accept Medicare, despite the fact that Medicare is meant to be voluntary. For instance, the most recent version of the policy states that:

> "… 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…"

"These rules raise serious legal, due process, constitutional and discrimination issues," said Kent Masterson Brown, legal counsel to the five plaintiffs. "What's more, the rules violate the freedom of individuals to make their own health care choices. We are confident the courts will see this and rule in our favor. This will enable the plaintiffs to make informed health care choices for themselves and enable future retirees to do the same."

Former Representative Armey added: "Patrick Henry's famous saying 'Give me liberty or give me death' applies here. With these rules, those are the only two choices you get with Medicare."

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For more information on *Hall v. Leavitt*, please visit http://www.medicarelawsuit.org.