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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF OREGON

12 STATE OF OREGON,

13 Plaintiff,

14 &

15 RICHARD HOLMES; KARL STANSELL;
16 JAMES ROMNEY; JANE DOE #1;
17 PETER A. RASMUSSEN, M.D.; and
DAVID MALCOM HOCHHALTER, Rph,

18 Plaintiffs-Intervenors,

19 v.

20 JOHN ASHCROFT, in his official capacity as
United States Attorney General; ASA
21 HUTCHINSON, in his official capacity as
Administrator of the Drug Enforcement
22 Administration; KENNETH W. MAGEE, in his
official capacity as Director of the Drug
23 Enforcement Administration, Portland Office;
UNITED STATES OF AMERICA; UNITED
24 STATES DEPARTMENT OF JUSTICE; and
UNITED STATES DRUG ENFORCEMENT
25 ADMINISTRATION,

26 Defendants.

Case No. CV01-1647-JO

PLAINTIFF STATE OF OREGON'S CONCISE
STATEMENT OF MATERIAL FACTS

1 Pursuant to Local Rule 56.1, plaintiff State of Oregon submits the following concise
2 statement of material facts.

3 **THE OREGON ACT**

4 1. The Oregon Death with Dignity Act (Oregon Act) was enacted through the
5 initiative process, approved by Oregon voters at the November 1994 election. An initiative
6 measure that would have repealed the Oregon Act was rejected by Oregon voters at the
7 November 1997 election. (ORS 127.800 through 127.897; Hedberg Aff., Ex. 2.)

8 2. The Oregon Act went into effect in October 1997. Since that time, the Oregon
9 Act has been utilized by 70 terminally ill Oregonians. All of those persons utilized prescriptions
10 for medications that are listed as controlled substances under the federal Controlled Substances
11 Act. (Hedberg Aff., ¶ 6 and Exs. 2 and 4.)

12 3. The Oregon Department of Human Services, Board of Medical Examiners, and
13 Board of Pharmacy all have legal responsibilities that are affected by the Oregon Act. The
14 directive issued by United States Attorney General John Ashcroft dated November 6, 2001,
15 would, if allowed to take effect, have an impact on each agency's performance of those
16 responsibilities. In addition, as a practical matter, the Oregon Act could not be implemented if
17 the Ashcroft directive were to take effect. (ORS 127.865; 677.188; 677.190; 689.405; OAR 847-
18 010-0081; 855-019-0055; Affidavits of Katrina Hedberg, Kathleen Haley, and Gary Schnabel.)

19 **INITIAL FEDERAL RESPONSES TO THE OREGON ACT**

20 4. On July 27, 1997, Senator Orrin Hatch and Representative Henry Hyde sent a
21 letter to the Administrator of the United States Drug Enforcement Administration (DEA)
22 advocating an interpretation of the Controlled Substances Act that would authorize the DEA to
23 revoke the registrations of physicians and pharmacists who take actions authorized by the
24 Oregon Act. A second letter, which included a supporting legal memorandum was sent on
25 October 27, 1997. (Bushong Aff., Exs. 1 and 2.)

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1 to reexamine the USDOJ interpretation of the CSA in relation to the Oregon Act. The only
2 response was a letter dated April 17, 2001, from an advisor to Ashcroft. That letter assured
3 Myers that there was nothing that would “prompt a review of the Department’s interpretation of
4 the CSA as it relates to physician-assisted suicide.” The letter concluded: “Should such a
5 review be commenced in the future, we would be happy to include your views in that review.”
6 (Bushong Aff., Exs. 7 and 8.)

7 10. On June 27, 2001, Deputy Assistant Attorney General Sheldon Bradshaw and
8 Special Counsel Robert J. Delahunty of the USDOJ Office of Legal Counsel sent a
9 “Memorandum for the Attorney General” (OLC Memorandum) that reexamined the USDOJ
10 interpretation of the CSA in relation to the Oregon Act. The OLC Memorandum states that it
11 was prepared in response to a prior request by Attorney General Ashcroft for an opinion on the
12 issue. Despite his earlier assurance to Oregon Attorney General Myers, Ashcroft did not notify
13 the Oregon Attorney General’s office that he had requested such an opinion, nor did he give
14 Oregon an opportunity to present its views on the issue. The OLC Memorandum was not
15 disclosed to Oregon Attorney General Myers until November 6, 2001. (Bushong Aff., Ex. 9.)

16 11. On November 6, 2001, Ashcroft issued a memorandum to DEA Administrator
17 Asa Hutchinson (the Ashcroft directive). The Ashcroft directive relies on the OLC
18 Memorandum as “the legal basis for my decision.” Ashcroft concludes that “prescribing,
19 dispensing or administering federally controlled substances to assist suicide violates the
20 CSA * * * regardless of whether state law authorizes or permits such conduct[.]” Ashcroft
21 “direct[s] the DEA * * * to enforce and apply this determination” and directs that it be “promptly
22 distributed to appropriate DEA personnel, especially those with enforcement of the CSA in
23 Oregon.” (Bushong Aff., Ex. 10.)

24 12. The Ashcroft directive was published in the Federal Register on November 9,
25 2001. Ashcroft did not consult with Oregon Attorney General Hardy Myers or other Oregon
26 public officials, provide prior notice to Oregon or the public, or provide any opportunity for

1 public comment on the directive before it was issued on November 6. (66 FR 56607
2 (November 9, 2001); Bushong Aff., Ex. 10.)

3 DATED this ____ day of January, 2002.

4 Respectfully submitted,

5 HARDY MYERS
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