

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DON JOHNSON,

Plaintiff,

vs.

**GEORGE LITTLE, in his official
capacity as Tennessee's Commissioner
of Correction;**

**RICKY BELL, in his official capacity as
Warden, Riverbend Maximum Security
Institution,**

JOHN DOE EXECUTIONERS 1-100,

Defendants.

**No. 3:06-0946
JUDGE CAMPBELL**

**MOTION TO DISMISS
OF DEFENDANTS LITTLE AND BELL**

Defendants George Little and Ricky Bell, appearing in their official capacities only, move, pursuant to Fed. R. Civ. P. 12(b) (6), for this Court to dismiss this case for failure to state a claim for which relief can be granted.

The defendants' motion is further based upon the following;

1. The plaintiff has been dilatory in filing his complaint seeking equitable relief;
2. The statute of limitations bars the plaintiff's action;
3. The plaintiff has waived his constitutional challenge to electrocution by

affirmatively electing electrocution, and electrocution does not constitute cruel and unusual punishment;

4. The plaintiff's challenge to Tennessee's lethal injection protocol is moot;

5. The plaintiff's has failed to state a claim for violation of the equal protection clause.

In support of this motion, the defendants rely upon the memorandum of law filed contemporaneously herewith.

Respectfully submitted,

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s/Mark A. Hudson

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2006, a copy of the foregoing motion was filed electronically. Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt or by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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