

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

STEPHEN WEST,)	
)	
Plaintiff,)	
)	
v.)	No. 3:10-cv-01016
)	JUDGE CAMPBELL
GAYLE RAY, in her official)	
capacity as Tennessee’s Commissioner)	
of Correction, et al.,)	
)	
Defendants.)	

**MOTION TO DISMISS ON BEHALF OF GAYLE RAY, RICKY BELL, DAVID MILLS,
AND REUBEN HODGE**

Defendants Gayle Ray, Ricky Bell, David Mills, and Reuben Hodge, appearing in their official capacities only, pursuant to Fed. R. Civ. P. 12(b)(6), move this Court to dismiss the complaint for failure to state a claim for which relief can be granted.

The grounds for the defendants’ motion are as follows:

1. The plaintiff waived his constitutional claims by effectively choosing lethal injection as his method of execution;
2. The statute of limitations bars the plaintiff’s action;
3. The plaintiff has been dilatory in filing his complaint seeking equitable relief;

4. The Tennessee lethal injection protocol is constitutional under the controlling authority of *Baze v. Rees*, 553 U.S. 35, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) and *Harbison v. Little*, 571 F.3d 531 (6th Cir. 2009); and

5. The plaintiff fails to state any viable legal grounds for declaratory judgment as to the applicability of the Controlled Substances Act and the Federal Food, Drug And Cosmetic Act.

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 November 1, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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