

**IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

NORMAN TIMBERLAKE,)	
)	
Plaintiff,)	
)	No. 1:06-cv-1859-RLY-WTL
v.)	
)	
J. DAVID DONAHUE and ED BUSS,)	
)	
Defendants.)	

ANSWER AND STATEMENT OF DEFENSES

Defendants Donahue and Buss, by Steve Carter, Attorney General of Indiana, by his deputy, Thomas D. Quigley, Deputy Attorney General, for their answer to the complaint and statement of defenses, state as follows:

ANSWER

For their answer to the material allegations of fact recited in the complaint, the defendants state:

1. The defendants ADMIT the material allegations of paragraph 1 of the complaint.
2. The defendants ADMIT the material allegations of paragraph 2 of the complaint.
3. The defendants ADMIT the material allegations of the first two sentences of paragraph 3 of the complaint but are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.
4. The defendants ADMIT that this Court has jurisdiction over the subject matter of this action and the persons of the defendants.
5. The defendants ADMIT that venue is proper.

6. The defendants DENY the material allegations of paragraph 6 of the complaint.
7. The defendants ADMIT the material allegations of fact in paragraph 7 of the complaint except that they DENY that all details of executions must be reflected in rules adopted according to statute.
8. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 8 of the complaint and accordingly DENY them
9. The defendants ADMIT that correctional officials will follow procedures as averred in the first paragraph of paragraph 9 of the complaint, insofar as those procedures deal with the method of execution, but are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.
10. The defendants ADMIT the material allegations of the first sentence of paragraph 10 of the complaint but are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.
11. The defendants ADMIT the material allegations of the first clause of the first sentence of paragraph 11 of the complaint but DENY the truth of the second clause of that sentence, and are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.
12. The defendants ADMIT the truth of the material allegations of the paragraph 12 of the complaint.
13. The defendants DENY the material allegations of paragraph 13 of the complaint.
14. The defendants ADMIT the material allegations of the second sentence of paragraph 14 of the complaint but DENY the factual allegations of the first sentence of that paragraph.

15. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 15 of the complaint and accordingly DENY them.

16. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 16 of the complaint and accordingly DENY them.

17. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 17 of the complaint and accordingly DENY them.

18. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 18 of the complaint and accordingly DENY them.

19. The defendants ADMIT the truth of the material allegations of the paragraph 19 of the complaint.

20. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 20 of the complaint and accordingly DENY them.

21. The defendants DENY the truth of the material allegations of the paragraph 21 of the complaint.

22. The defendants ADMIT the truth of the material allegations of the paragraph 22 of the complaint.

23. The defendants ADMIT the material allegations of paragraph 23 of the complaint insofar as they describe a Florida moratorium, but are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.

24. The defendants DENY that offenders were conscious as alleged in paragraph 24 of the complaint but are without sufficient information to form a belief as to the truth of the remaining factual allegations of that paragraph and accordingly DENY them.

25. The defendants are without sufficient information to form a belief as to the truth of the factual allegations of paragraph 25 of the complaint and accordingly DENY them.

26. The defendants ADMIT that the minutes referred to in paragraph 26 of the complaint state what the plaintiff avers that they state, insofar as the minutes support the plaintiff's allegations, but DENY the remaining factual allegations of that paragraph.

27. With respect to the material allegations of fact in paragraph 27 of the complaint, the defendants ADMIT that the plaintiff has stated that he had a history of substance abuse, including intravenous drug usage, and has reported anxiety attacks, but they are without sufficient information to form a belief as to the truth of those allegations and accordingly DENY them; the defendants ADMIT that the plaintiff has had hepatitis, is taking prescribed medications including Valium and Pamalar, and that he has been prescribed Sinequan and other prescription drugs to treat his claimed anxiety, but DENY that this was done to induce sleep; they ADMIT that he weighs approximately 150 pounds; they are without sufficient information to form a belief as to the truth of the allegation concerning the concentration of sodium pentathol and accordingly DENY it; and they DENY that it is necessary for a trained clinical anesthesiologist to determine whether the amount of sodium pentathol that will be used administered to the plaintiff will insure that he does not suffer unconstitutionally.

28. The defendants DENY the truth of the material allegations of the paragraph 28 of the complaint.

29. The defendants ADMIT the truth of the material allegations, if any, of the paragraph 29 of the complaint.

30. The defendants ADMIT that they are acting under color of state law, but DENY the truth of the remaining material allegations of the paragraph 30 of the complaint.

31. The defendants DENY the truth of the material allegations of the paragraph 31 of the complaint.

32. The defendants DENY the truth of the material allegations of the paragraph 32 of the complaint.

33. The defendants DENY the truth of the material allegations of the paragraph 33 of the complaint.

34. The defendants DENY the truth of the material allegations of the paragraph 34 of the complaint.

35. The defendants DENY the truth of the material allegations of the paragraph 35 of the complaint.

36. The defendants DENY the truth of the material allegations of the paragraph 36 of the complaint.

37. The defendants DENY the truth of the material allegations of the paragraph 37 of the complaint.

38. The defendants DENY all matters not specifically addressed *supra*.

39. The defendants DENY that the plaintiff is entitled to any of the relief requested or to any other relief from the defendants.

DEFENSES

Without waiving any of the defenses set forth *supra*, or any other defenses available at law and in equity, the defendants, by counsel, assert the following defenses to the allegations of the plaintiff's complaint:

40. The issues raised in this action are not ripe for adjudication.

41. The complaint fails to state a claim upon which the Court can grant relief.
42. The actions of the defendants will not violate any rights, privileges, or immunities secured under the Constitution or laws of the United States.
43. This instant action is dilatory and purely speculative, and the Court should protect the defendants from such an action.
44. The plaintiff's request for relief is barred by the doctrine of laches.
45. The plaintiff is not entitled to a temporary restraining order or a preliminary injunction because he has not requested permanent equitable relief and there is, therefore, no significant possibility that he will succeed on the merits.
46. The equities are with the defendants, and not with the plaintiff, and the plaintiff is accordingly not entitled to equitable relief.
47. This action is time-barred.
48. The defendants reserve the right to amend their list of defenses.

WHEREFORE, Defendants Donahue and Buss pray the Court to enter judgment in their favor and against the plaintiff in this cause.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana

By: *s/Thomas D. Quigley*
Thomas D. Quigley
Deputy Attorney General
email: thomas.quigley@atg.in.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2007, a copy of the foregoing answer and statement of defenses was filed electronically. Notice of this filing will be sent to the following persons by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Brent Westerfeld, Esq.
bwesterfeld@wkelaw.com

Lorinda Meier Youngcourt
lmyoungcourt@earthlink.net

s/ Thomas D. Quigley
Thomas D. Quigley
Deputy Attorney General

Office of Attorney General
I.G.C.S., 5th Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Telephone: (317) 232-6326

hos: 360368