

# **EXHIBIT 7**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

CYNTHIA B. SCOTT, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	Case No. 3:12-cv-00036-NKM
v.	)	Sr. Judge Norman K. Moon
	)	
HAROLD W. CLARKE, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

DECLARATION OF VICTOR M. GLASBERG

I, Victor M. Glasberg declare under penalty of perjury that the following is true and based on my personal knowledge:

Professional Background

1. I received my J.D. degree from the University of Pennsylvania Law School in 1976. I also hold a Ph.D. in history from Harvard University, which I received in 1972. My area of specialization was twentieth century race relations in the United States. Upon completing law school I was designated a Reginald Heber Smith Legal Services Fellow, but declined the fellowship in order to accept employment in an Alexandria, Virginia firm doing civil rights work. In March 1982, I resigned from the firm to open my own law practice.

2. From the beginning of my practice in 1976 I have specialized in federal civil rights litigation. I regularly review civil rights decisions and obtain continuing education in civil rights law. Since May 1979, I have served as a volunteer member of the legal panel of the American Civil Liberties Union of Virginia. In this capacity I have participated in reviewing requests for ACLU assistance and in making decisions whether the ACLU will take a proposed case. I am a former chairman of the legal panel. I have also litigated numerous ACLU cases in Alexandria's

federal court. In March, 1991, I testified before the House Subcommittee on Civil & Constitutional Rights, United States Congress, in support of H.R. 1, ultimately enacted into law as the Civil Rights Act of 1991. I also testified before this subcommittee in October, 1986, on civil rights implications of proposed federal legislation, subsequently enacted, regulating the medical profession. In 1985, I served as special counsel to the Alexandria Human Rights Commission relative to a discrimination complaint in relation to which the Alexandria city attorney could not advise the commission. I served the Prince William County Human Rights Commission in the same capacity in 2006. I have testified in court as an expert in the field of civil rights litigation, and have taught continuing legal education in this field. From April 1982 to September 1986, I was president of the board of directors of Legal Services of Northern Virginia, Inc., the publicly funded provider of legal services to the poor. I was LSNV's initial vice president, from February 1980 to April 1982.

3. I have successfully litigated the following civil rights suits, among others, in this court (not including cases reversed on appeal): *Garcia v. Daniel*, 2013 WL 75969 (E.D. Va. 2013)(excessive police force case; offer of judgment accepted after qualified immunity appeal dismissed); *Walker v. Correct Care Solutions, LLC*, #1:10-cv-1012 (E. D. Va. 2011)(prison death case; \$1M offer of judgment accepted); (*Amaechi v. West*, 237 F.3d 356 (4<sup>th</sup> Cir. 2001)(strip search; settled after qualified immunity appeal dismissed); *Noviks-Tucker v. Law School Admissions Council, Inc.*, C.A. #00-1971-A (E.D. Va. 2000) (injunction granted requiring accommodations in law school admissions test for sight-impaired student); (*Warren v. Fairfax County*, 196 F.3d 186 (4th Cir. 2000) (*en banc*) (county's restriction of access to government center public forum to county residents enjoined); *McNew v. Surry Cty. Sch. Bd.*, C.A. #3:99cv381 (E.D. Va. 1999) (following preliminary injunction, public school board drops bar on student

expelled for hair violation); *Alexandria Resident's Council v. Alexandria Housing & Redevel. Auth.*, 153 F.3d 718 (4<sup>th</sup> Cir.1998) (co-counsel) (case of first impression establishing the right of public housing tenants to hold municipal housing authority to federal obligations); *Trinity Baptist Church v. City of Richmond*, C.A. #3:97cv637 (E.D. Va. 1997) (city enjoined from enforcing ordinance restricting charity feeding of the homeless pending rewriting of liberalized ordinance); *Clark v. Virginia Board of Bar Examiners*, 880 F. Supp. 430 (E.D. Va. 1995) (bar examiners' rule violating American With Disabilities Act enjoined); *Gearon v. Loudoun County School Board*, 844 F. Supp. 1097 (E.D. Va. 1993) (public school prayer enjoined); *Gneckow v. Kelso*, C.A. 93-290-A (E.D. Va. 1993) (damages awarded for sex harassment and retaliation); *Steckbeck v. Williams*, C.A. #93-1373-A (E.D. Va. 1994) (DMV censorship of license plate enjoined); *Arlington County Republican C'ee v. Arlington County*, 790 F. Supp. 618 (E.D. Va. 1992), *modified*, 983 F.2d 587 (4th Cir. 1993) (unconstitutional county sign ordinance enjoined); *Barry v. Alexandria School Board*, C.A. #92-296-A (final order entered May 18, 1992) (racially discriminatory procedure for determining admission to full-day kindergarten abandoned); *French Quarter, Inc. v. Hampton*, C.A. #91-1180-A (E.D. Va. 1991) (unconstitutional Virginia statute discriminating against homosexuals enjoined) *Iota Xi Chapter v. George Mason University*, 773 F. Supp. 792 (E.D. Va. 1991) (student discipline violating First Amendment enjoined); *Wilson v. Westgate Apartments Ltd. P'ship* (E.D. Va. 1991) (damages awarded for race discrimination in housing); *No. Va. Chapter ACLU v. Alexandria*, 747 F. Supp. 324 (E.D. Va. 1990) (unconstitutional city loitering ordinance enjoined); *Holland v. First Va. Bank*, 744 F. Supp. 722 (E.D. Va. 1990) (damages for race discrimination under Title VII; separate verdict under §1981 reversed on appeal); *Bradley v. Carydale Enterprises*, 707 F. Supp. 217 (E.D. Va. 1989) (damages awarded against landlord for race discrimination by tenant; case of first impression

nationally); *Budd v. Gondles*, C.A. #88-118-A (final order entered Aug. 16, 1988) (sheriff's deputies reinstated with back pay following unconstitutional demotion); *Bell v. Arlington County*, 673 F. Supp. 767 (E.D. Va. 1987) (vague county criminal ordinance enjoined); *Bryant v. CSN Management Company*, C.A. #86-1264-A (E.D. Va., July 9, 1987) (housing discrimination enjoined); *Culver v. Lineweaver*, C.A. #85-1263-A (E.D. Va., May 19, 1986) (voting redistricting mandated); *Jackson v. McKoy*, C.A. #84-1240-A (E. D. Va, July 25, 1985) (racial discrimination in public accommodations enjoined); *Davenport v. City of Alexandria*, 748 F.2d 208 (4th Cir. 1984) (overbroad city ordinance enjoined); *McElveen v. Prince William County*, 725 F.2d 954 (4th Cir. 1984) (substandard jail ordered closed; inmate class awarded damages by jury); *Rout v. Gen'l Services Admin.*, C.A. #84-491-A (final order entered Sept. 24, 1984) (government agrees to conform to handicap-accessibility standards at the former Alexandria federal courthouse); *Bennet v. City of Alexandria*, C.A. #81-649-AM (final order entered Jan. 17, 1984) (city agrees to upgrade life-safety systems and medical care in former city jail and build new facility under set timetable); *Harrington v. Quintin*, C.A. #82-3296 (final order entered Jan. 3, 1983) (racial discrimination at skating rink enjoined and plaintiffs paid damages) *Fiedler v. Marumsco Christian School*; 631 F.2d 1144 (4th Cir. 1980) (racial discrimination in education enjoined); *Northern Virginia Women's Medical Center v. Balch*, 617 F.2d 1045 (4th Cir. 1980) (civil conspiracy against women's medical facility enjoined).

4. In the District of Columbia I prevailed in *Doe v. United States Postal Service*, 37 FEP Cases 1867 (D.D.C., 1985), awarding damages to a transsexual victimized by employment discrimination, in a case of first impression under the Rehabilitation Act of 1973. In January 1999, without filing suit I obtained \$150,000 in damages for several female inmates of the Arlington County Adult Detention Center, as well as causing the overhaul of policies and

procedures designed to prevent and to deal with sexual abuse of female inmates by guards. I served as appellate counsel in *De'lonta v. Angelone*, 330 F.3d 630 (4th Cir. 2003), securing a reversal of the court's dismissal of a *pro se* transsexual inmate's medical claim, and thereafter negotiated a settlement requiring the Department of Corrections to treat inmates with Gender Identity Disorder. Ten years later I served as appellate counsel for the same inmate, this time securing reversal of the Department's refusal to consider her for sex reassignment surgery. *De'lonta v. Johnson*, 708 F.3d 520 (4th Cir. 2013).

5. I have on a few occasions represented defendants in cases with civil rights, particularly First Amendment, overtones favoring the defense: *1007 LLC v. The Alexandria City Council*, Ch. #4001399 (Cir. Ct. Alexandria, 2005) (lawsuit against homeowners' association for having petitioned city council dismissed; sanctions awarded); *Gibson v. City of Alexandria*, C.A. #94-373-A (E.D. Va. 1994) (dismissal on First Amendment grounds of claim for allegedly wrongful lobbying of city council); *Taylor v. Kuckro*, Law #970848 (Cir. Ct. Alex., Oct. 21, 1998) (dismissal on First Amendment grounds of lawsuit against television political commentators). I served as chief defense counsel to C.B.S., Inc. and Chrysler Corporation in *Delaware Chapter, Ukrainian Congress C'ee v. C.B.S., Inc.*, C.A. #87-306-JJF (D. Del., dismissal order entered Sep. 13, 1988), a federal civil rights challenge to a nationally telecast screenplay recounting an escape from a Nazi death camp. Also: *United States v. Shoupe*, Crim. #85-287 (E.D. Va., order entered March 6, 1987) (government dropped demand that federal probationer marry his girlfriend as condition of probation); *United States v. Rein*, Special Court Martial, United States Navy, Atlantic Judicial Circuit (charges withdrawn, Feb. 3, 1981) (charges against sailor for having posed nude in *Playboy* magazine dismissed); *United States v. Berrigan*, Crim. #97176-77 (Super. Ct. D.C. 1978) (pacifist demonstrators acquitted of White House trespass charge). I have on a few occasions also

successfully represented defendants in bogus employment discrimination claims, *e.g.*, *Jarvis v. The Christmas Attic*, #1:12-cv-1010 (E. D. Va. 2012); *Pratt v. Walmer Enterprises, Inc.*, C.A. #98-1588-A (E.D. Va. 1999) (sanctions imposed). I have also written *amicus curiae* briefs for the Virginia ACLU in civil rights cases, *e.g.*, *Cord v. Gibb*, 219 Va. 1019, 254 S.E.2d 7 (1979) (cohabitation held no basis for exclusion from state bar), and have served as local counsel in this court on other major First Amendment cases, *e.g.*, *American Booksellers Assn., Inc. v. Strobel*, 617 F. Supp. 699 (E.D.Va. 1985), *rev'd* 882 F.2d 127 (4<sup>th</sup> Cir. 1985) (unsuccessful First Amendment challenge to statute regulating display of material deemed harmful to juveniles), and *El Masri v. Tenet*, 437 F.Supp. 2d 530 (E.D. Va. 2006), *aff'd* 479 F.3d 296 (4<sup>th</sup> Cir. 2007)(unsuccessful challenge to government torture and rendition policy).

6. I have successfully represented inmates in suits challenging conditions of their confinements or seeking damages for injuries incurred while incarcerated. These cases include *De'lonta v. Angelone* and *De'lonta v. Johnson, supra*, *Walker v. Correct Care Solutions, L.L.C.*, and *Bennet v. City of Alexandria, supra*. I currently represent four inmates on Virginia's Death Row in a challenge to their having been kept in solitary confinement 23 hours day, every, for years on end. *Porter v. Clarke*, Case No. 1:14-cv-1588 (E.D. Va. Alexandria) (LMB/IDD). I have also intervened on behalf of numerous inmates to secure appropriate relief without litigation (*e.g.*, securing the release from solitary confinement of inmates placed in solitary solely because of physical impairments (New River Regional Jail, Dublin, Va., June 2015). From these cases and from my ongoing exposure to jail and prison law I am well acquainted with the procedural and substantive challenges posed by this type of litigation, and well aware that few lawyers are prepared to undertake this work.

### Review of Counsel's Work in The Instant Case

7. I have read the declarations of Abigail Turner, Alex Gulotta, April Wimberley, Brenda Castañeda, Catherine Martin, Mary Bauer, Erin Trodden, Angela Ciolfi, Helen Trainor, Ivy Finkenstadt, Sami Natour, and Deborah Golden, and also viewed summaries of the overall time spent litigating this case provided by Washington Lawyers Committee and Legal Aid Justice Center. In my judgment, these declarations depict work properly and necessarily done in this complex, difficult, and apparently strenuously defended case.

8. In my experience, there are very few private attorneys who are willing and able to take cases like this one. The clients are very difficult to communicate with because they are incarcerated, and cases like this are time-consuming and expensive to litigate. Moreover, as this case illustrates, the likelihood of compensation comes almost entirely from the prospect of an award of attorney's fees, which depends entirely on success on the merits and comes only after the litigation has been concluded, often years after it is filed. Thus, it extremely rare for a private lawyer to agree to represent plaintiffs in a case such as this.

9. Here, the Plaintiffs have obtained through proposed settlement a wholesale revision of the medical procedures at the Fluvanna County Correctional Center, with a new set of operating procedures, accommodation of disabilities, and systematic monitoring of compliance with this new regime. Memorandum of Law in Support of Plaintiffs' Consent Motion for Approval of Settlement Agreement at 3-6. Framing and negotiating such a complex agreement itself required a significant investment of time and expertise by Plaintiffs' counsel and it demonstrates how much they succeeded in accomplishing on behalf of their clients.

10. Litigating a case such as this one is very complicated because all of the clients and class members and most of the witnesses were incarcerated at the Fluvanna Correctional Center



for Women. As I know from my own work with Fluvanna inmates, communications and visits with such clients are far more complicated and time consuming than for other clients. Visits must be scheduled for limited times only. Access to telephones is closely circumscribed. In this case, the need for detailed knowledge of the clients' medical conditions further complicated the factual investigation in this case. Because the central allegations of the complaint concerned deliberate indifference to serious medical needs of prisoners under *Estelle v. Gamble*, 429 U.S. 97 (1975), the case took on aspects of a medical malpractice case superimposed on a civil rights case. The standard from *Estelle* demands far more by way of proof than simple negligence. That feature of the case also increased the burden on Plaintiffs' counsel to assemble evidence to prevail on the merits or obtain a favorable settlement.

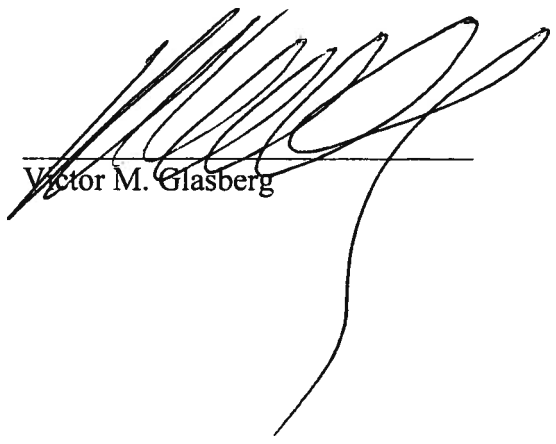
11. I believe that the hours Plaintiffs' counsel expended on this case were reasonably and necessarily incurred. This is due to several considerations: 1) the difficulty of cultivating potential plaintiffs who were willing and qualified to act as class representatives, 2) exhausting administrative procedures as required under the Prison Litigation Reform Act on a sufficiently broad range of complaints to support an action challenging the provision of medical care on a class-wide basis, 3) the substantial nature of the motions practice in the case, 4) the breadth and duration of discovery and time spent reviewing tens of thousands of pages of discovery including medical records, 6) the time spent advising and consulting with the class representatives, 7) the amount of time spent preparing for the class action trial, set to begin just a few days after the settlement was reached, 8) the time spent in settlement negotiations, and 9) the time spent preparing the motion papers seeking approval of the settlement. This Court has dealt with the arguments of Defendants in opposition to certification of a class and satisfaction of the requirements for exhaustion of administrative remedies, observing "This case has a long

procedural history.” Memorandum Opinion of November 24, 2014, at 1 n.1. That opinion, running to 47 pages, also scheduled a two-week bench trial in this case. This fact alone indicates the factual intricacies of the Plaintiffs’ claims. *Id.* at 46. This Court also issued a 33-page opinion certifying the class in this case, again indicative of the complexities of the case.

12. Because most of my work is done on fee-shifting civil rights claims for clients who cannot afford to pay for legal services, I make it my business to keep abreast of current hourly rates and local case law addressing those rates. Virtually all of my practice is in the Alexandria federal court, and I am familiar with local billing rates and fee awards in that court. (I have little experience in the Charlottesville federal court.) I have prepared affidavits and sworn declarations on behalf of counsel seeking awards of fees under federal civil rights fee shifting statutes, and have also testified on such matters in court. My standard hourly rate for hourly-paying clients is \$550/hour. This rate is well within the rates charged by federal litigators and having the background and years of experience that I have in my chosen field of law. *See generally, Taylor v. Republic Services, Inc.*, #1:12-cv-0523 (E.D. Va. Jan 29, 2014); *Slaby v. Holder*, #1:12-cv-01235 (E. D. Va., April 24, 2014)(Doc. #348); *Vienna Metro LLC v. Pulte Home Corp.*, #1:10-cv-502 (E.D. Va. 2011) (Doc. #263 (unsealed)); *Mitile Ltd. v. Hasbro Inc.*, #1:13-cv-451, 2013 WL 5525685 (E.D. Va. 2013), *Tech Sys., Inc. v. Pyles*, 2013 WL 4033650, at \*6 n.4 (E.D. Va. Aug. 6, 2013).

12. I am aware of the limitation imposed by the Prison Litigation Reform Act on the award of attorney’s fees in cases such as these. These limitations nullify any need to assess the appropriateness of the hourly rates claimed by counsel. Given their credentials and experience, it is clear that their fees awardable pursuant to rates permissible under the act are low by any reasonable standard.

October 19, 2015



Victor M. Glasberg