

## SETTLEMENT AGREEMENT

Plaintiff Mark Nickolas and Defendants Steven L. Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, Jonathan Miller, in his official capacity as Secretary of the Finance and Administration Cabinet, and Larry Hayes, in his official capacity as Secretary of the Executive Cabinet, agree as follows:

1. This agreement is made in compromise of the lawsuit captioned *Nickolas v. Fletcher, et al.*, Civil Action No. 06-cv-43, in the United States District Court for the Eastern District of Kentucky.

2. This case was filed by Mark Nickolas against Governor Ernie Fletcher, Secretary John Farris, and Secretary Robbie Rudolph in their official capacities to obtain injunctive and declaratory relief against the Commonwealth's policy of blocking access to websites categorized as "blogs" on state-owned computers.

3. The Commonwealth Office of Technology employs software to filter internet usage on state-owned computers. This software provides users the ability to block internet site categories predefined by the vendor. As part of its internet filtering policy, the previous named defendants chose to block several categories, one of which included "newsgroups/blogs." "Newsgroups/blogs" are defined by the vendor as containing "Web sites that enable the sharing of information such as on a bulletin board. Includes Web logs ('blogs') and guest book servers as well."

4. Mr. Nickolas's websites, bluegrassreport.org and bluegrassreport.com, are categorized as "newsgroups/blogs" and therefore users of state computers were blocked from gaining access to them.

5. Governor Fletcher, Secretary Farris, and Secretary Rudolph were succeeded in office on December 11, 2007 by the present defendants, who were automatically substituted as parties pursuant to Federal Rule of Civil Procedure 25(d)(1).

6. Upon taking office and after careful consideration, the Commonwealth has chosen to modify the Commonwealth's internet filtering policy applied to state-owned computers. As part of this new policy, the category "newsgroups/blogs" is no longer blocked by the internet filtering software. Therefore, users of state-owned computers are able to access Mr. Nickolas's websites and other websites containing "blogs." However, the new state internet policy prohibits state employees from posting on said blogs on their state owned computers.

7. The Commonwealth will only block access to "blogs" if pursuant to a reasonable, viewpoint-neutral standard that applies equally to all websites, whether or not those websites can be described as "blogs." Subject to these terms, the Commonwealth fully reserves and retains the right to manage the state internet system, including but not limited to the use of internet filtering software, as it deems appropriate and in the best interests of the Commonwealth. The Plaintiff recognizes, understands and accepts that the Commonwealth provides its employees with the tools that it deems necessary to perform their jobs. The Plaintiff also recognizes, understands and accepts that, subject to the terms of this agreement, the Commonwealth can

unilaterally modify or take away said tools without prior notice to anyone if the Commonwealth deems that they are not being properly utilized.

8. In compromise and settlement of this lawsuit, recognizing the cost of continuing to litigate this matter, the Commonwealth agrees to pay Public Citizen Litigation Group the sum of \$10,000.00 (Ten Thousand Dollars) for its attorneys' fees within ten days of the execution of this agreement. The parties will then file an Agreed Order Dismissing the Case as Settled. Other than what is contained in this paragraph, all parties will be responsible for their own fees and costs associated with the litigation of this case.

8. Mark Nickolas, and his agents, employees, indemnities, successors and assigns, absolutely and unconditionally release and forever discharge the Defendants and the Commonwealth, its officers, directors, agents, representatives, successors and assigns, from any and all actions, claims, demands, damages, executions, judgments, liabilities, expenses, costs, attorney fees, and lawsuits, arising out of, in connection with, or in any manner related to the above styled action, whether past, present, or future, known or unknown, foreseen or unforeseen, existent or nonexistent and disclosed or undisclosed.

9. The undersigned hereby declare that the terms and conditions of this Agreement have been completely read, fully understood, and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement. It is understood and agreed that this settlement is not to be construed as any admission of liability on the part of Defendants, the Commonwealth, and/or Mark Nickolas.

10. The undersigned declare that this Agreement and settlement is made without reliance upon any statement or representation of the parties and their representatives and further declare that this Agreement and settlement is made by them with the advice and consent of their counsel.

11. All parties to this Agreement represent and warrant that they have not assigned or transferred any alleged claim or cause of action, or any interest in any claim or cause of action, encompassed by this Agreement to any third party, and that no other parties have an interest in or rights to said claims or causes of action.

12. This Agreement contains the entire understanding between the parties and supersedes and replaces all prior negotiations, agreements, or representations, whether written or oral.

13. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action brought in connection with this Agreement shall be brought in the United States District Court for the Eastern District of Kentucky.

14. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and this Agreement shall be liberally construed so as to carry out the intent of the parties hereto.

**HAVE SEEN AND AGREE TO:**

**FOR THE PLAINTIFF:**

\_\_\_\_\_  
Mark Nickolas, Plaintiff

\_\_\_\_\_  
Greg Beck  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street, NW  
Washington, DC 20009

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**FOR THE DEFENDANTS:**

\_\_\_\_\_  
Ellen Hesen, General Counsel  
Office of the Governor  
Capitol  
Frankfort, KY 40601

\_\_\_\_\_  
E. Jeffrey Mosley, General Counsel  
Finance and Administration Cabinet  
Room 392, Capitol Annex  
Frankfort, KY 40601

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_