

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
ALACHUA COUNTY, FLORIDA  
CIVIL ACTION**

US RIGHT TO KNOW,

Plaintiff,

v.

CASE NO.: 01-2017-CA-2426

THE UNIVERSITY OF FLORIDA  
BOARD OF TRUSTEES,

Defendant.

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**REPLY IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS**

Plaintiff, US Right to Know, pursuant to this Court's Order dated July 13, 2017, respectfully submits this Reply to the Defendant's Response to Plaintiff's Complaint for Writ of Mandamus and Order to Show Cause.

**The AgBioChatter Group Emails**

The parties appear to agree on the general parameters of the applicable law. Plaintiff has a constitutional and statutory right to access non-exempt records "made or received in connection with the official business" of the University of Florida. Art. I, § 24(a), Fla. Const.; *see also* § 119.011(12), Fla. Stat. (2016). This includes any material "which is intended to perpetuate, communicate, or formalize knowledge of some type." *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). This does not include communications that are "private" or "personal," because such communications are not made or received in connection with official business. *State v. City of Clearwater*, 863 So. 2d 149, 155 (Fla. 2003). Private documents do not become public records solely by being placed on an agency-owned computer. *Id.* at 154.

Plaintiff parts ways with Defendant, however, upon the Defendant's remarkable assertion that the emails between Professor Folta and the AgBioChatter group are "private" or "personal" and therefore fall within the scope of *City of Clearwater* and its progeny. This is a remarkable position in light of these (and many other similar) facts:

- Defendant describes the AgBioChatter group as consisting of "likeminded individuals in the field of agricultural biotechnology." (Response at 10, *see also* 11). Although this description is deliberately vague, the few documents Plaintiff has obtained from the AgBioChatter group disclose that the group includes several current and former advocates of GMOs, current or former employees of at least one large agricultural corporation, and academics. (Exhibit 1). The group discussions relate to such topics as FDA testing, advocacy against labeling, and strategies for responding to negative press about GMOs. As shown below, these people and topics are directly related to Professor Folta's work at the University of Florida.
- Professor Folta often uses his full professional title ("Associate Professor and Chair, Horticultural Sciences Department, Plant Molecular and Cellular Biology Program and Plant Innovation Program") when sending communications to the AgBioChatter Group. Recipients of those communications—and senders of responses and follow-up communications—would reasonably expect to be communicating with Professor Folta in his official professional capacity as a university employee.
- According to Professor Folta's university profile he conducts research in the areas of, among others, "Functional genomics of small fruit crops," "Plant transformation," and "Genetic basis of flavors." (Exhibit 2). These subjects fall within the topic of "agricultural biotechnology," the subject discussed by the AgBioChatter Group.
- Professor Folta's university profile also shows that he conducts research in the area of "Science communication and outreach." He specifically lectures university students on the topic of "Communicating science with a concerned public." (Exhibit 3). These topics directly relate to the topics discussed in the AgBioChatter Group.
- Professor Folta has repeatedly stated that it's part of his job to "integrate with industry" and speak honestly about GMOs. *See* Kevin M. Folta, *Kevin M. Folta: A record of GMO honesty*, The Gainesville Sun, Aug. 30, 2015 ("[H]onesty about GMOs? I'd have it no other way. Despite the hostile words and libelous claims of others, I can say that I always told the truth and *did my job* as a land-grant scientist.") (emphasis added) (Exhibit 4).

*See also, e.g.*, Twitter posts by @kevinfolta on September 6, 2015, September 11, 2015, March 23, 2017, May 7, 2017 (stating that because he works at a Land Grant University, his "*job*" or "*mission*" is to work with industry) (emphasis added) (Exhibit 5).

- The President of the University of Florida, in speaking to the Faculty Senate regarding a controversy that arose when public records revealed that Professor Folta had accepted a grant from a large agricultural company in order to conduct science outreach, vigorously defended Professor Folta's activities: "I support him *in his research* and his eagerness to be an advocate for his position on GMOs, as I would support other faculty who are advocates *in their area of scholarship*." (Exhibit 6) (emphasis added) (available at <http://fora.aa.ufl.edu/docs/78/2015-2016/Faculty%20Senate%20Talking%20Points%2010-15-15.pdf>).
- In the same presentation, the President acknowledged that "[f]or faculty in Florida, the public records law is very broad, with most correspondence and so on fully accessible to the public." He declined to support an effort to narrow public records laws, stating he "believe[s] in the public's right to inquire and to know about publicly funded research at public institutions." (Exhibit 6 at 5).

The Defendant cannot have it both ways. If Professor Folta researches, teaches, and advocates in the areas of biotechnology and science communications, with the knowledge, support and backing of his public employer, then *all* of his communications on those topics are made "in connection with official business" and therefore are public records. While some of the communications may have more direct or immediate application in Professor Folta's work than others, this is not the test. The test is whether the communications are intended to "communicate . . . knowledge of some type." *Shevin*, 379 So. 2d at 640. Of the 5,343 pages of AgBioChatter group emails the Defendant identified as potentially responsive to Plaintiff's first request alone, surely more than 81 pages were sent with the intention of communicating knowledge. Professor Folta may not use the knowledge conveyed in the AgBioChatter Group in his work the very day he receives it, but every such communication adds to his overall store of knowledge and reference material for eventual use in his research, teaching, and advocacy on behalf of the university.

Defendant has not cited, and undersigned counsel has not located, a single case like this one in which the requested communications appear on their face to relate to the subject of the public official's work but the official nevertheless maintains the communications were

“personal” or “private.” Plaintiff submits that no such case exists in Florida because the law has been so clear for so long in this state that this is an untenable position. Since the legislature expanded the definition of “public record” in 1967 to include records made or received “in connection with the transaction of official business by any agency,” Ch. 67-125, § 1, Laws of Fla., this language has been construed broadly to include all documents made or received by public employees in the course of carrying out their government functions. *See, e.g., Times Publishing Co. v. City of St. Petersburg*, 558 So. 2d 487, 492 (Fla. 2d DCA 1990) (describing the right to access public documents as “virtually unfettered”); *City of Gainesville v. State*, 298 So. 2d 478, 480 (Fla. 1st DCA 1974) (document prepared by the city in the “normal” course of its business was public); Op. Att’y Gen. Fla. 77-141 (1977) (letters sent by individual citizens or reporters to mayor in his official capacity are public records). Even if it were a close call, which it is not, it is well settled that the presumption lies in favor of disclosure. *E.g., Morris Publishing Group v. Florida Dep’t of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2014) (“If there is any doubt as to whether a matter is public record subject to disclosure, the doubt is to be resolved in favor of disclosure.”).

Defendant’s refusal to produce the requested documents is not justified by the authorities it relies upon. In *City of Clearwater*, the requester never challenged the public employees’ designation of certain documents as “personal,” because the requester sought a bright-line ruling that even personal email on the City’s computer system was public record. *Times Publishing Co. v. City of Clearwater*, 830 So. 2d 844, 846 (Fla. 2d DCA 2002), *aff’d*, *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003). In *Butler*, the email in question was from the mayor to her friends and supporters attaching articles she had written for a local newspaper. *Butler v. City of Hallandale Beach*, 68 So. 2d 278, 279 (Fla. 4th DCA 2011). Although the articles themselves

may have related to city business, the mayor did not distribute them for any purpose related to city business but rather to inform her personal friends and supporters of their publication. In *Bent*, the records sought were recordings of personal phone calls made by minors from jail while awaiting prosecution. *Bent v. State*, 46 So. 3d 1047, 1048 (Fla. 4th DCA 2010). In *Media General*, as in *City of Clearwater*, the agency's designation of certain call records as "personal" was not challenged. *Media Gen. Operations, Inc. v. Feeney*, 849 So. 2d 3, 6 n.2 (Fla. 1st DCA 2003). And in *Grapski*, the court did not definitively determine that certain records, emails from plaintiff and others concerning the funding of Homecoming events, were not public records. *Grapski v. Machen*, No. 01-2005-CA-4005, Order on Evidentiary Hearing (Fla. Cir. Ct. May 9, 2006),<sup>1</sup> *aff'd per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (table decision). Rather, the court stated that these records "may or may not be 'public records.'" *Id.* at 5. The statement in the order suggesting that it is solely the agency's intent (to the exclusion of the sender's) that determines whether an email received by an agency is a public record, *id.* at 6, is pure dicta which is unnecessary to the court's decision. To Plaintiff's counsel's knowledge, this proposition has never been expressed by any appellate court.

Defendant raises numerous arguments as to why the records sought are not public records, none of which have merit. Defendant repeatedly asserts that the Yahoo Group is a "private" forum (Response at 3, 4, 10), but this is of no moment. It is well-settled that a private entity's designation of records as private cannot alter the terms of Florida's public record laws. *National Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1208-09 (Fla. 1st DCA 2009). "A private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential. The right to examine

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<sup>1</sup> The trial court's decision, relied upon by Defendant, is attached for the court's convenience as Exhibit 7.

these records is a right belonging to the public; it cannot be bargained away by a representative of the government.” *Id.* Therefore, it is irrelevant whether the Yahoo Group considers itself private; the only relevant inquiry before the court is whether the emails Professor Folta exchanged with the AgBioChatter Group were made or received in the course of Professor Folta’s official business for the Defendant.

Defendant’s other contentions as to why the AgBioChatter Group emails are not public records are similarly irrelevant. It does not matter that Professor Folta was not specifically “assigned” the task of joining the AgBioChatter Group by a superior. Likewise, it is immaterial that the University did not discretely “compensate” Professor Folta to participate in the AgBioChatter Group or “sanction or control” his correspondence with the group. Undoubtedly the majority of a university professor and department chair’s activities are not assigned, discretely compensated, or sanctioned or controlled by a superior. Professors have tremendous autonomy in carrying out their research, teaching, and advocacy roles. But this autonomy does not carry with it the right to unilaterally and subjectively designate selected activities in these areas as “personal” when the facts indicate otherwise.

Similarly, it is not legally significant that Professor Folta “did not open most of the mails” from the AgBioChatter Group. A public official cannot prevent a communication from becoming public by simply refusing to open it. A stack of unopened letters on a public official’s desk is undeniably public record. If it were not, nothing would prevent the official from declining to produce such letters in response to a public record request one day, and opening them the next. Florida’s public record laws cannot be manipulated in this way.

Finally, there is no support for Defendant’s position in the Ninth Circuit’s decision in *Becker v. University of Fla. Bd. of Trustees*, No. 2013-CA-5265-O, Final Order Granting “UCF’s

Motion for Reconsideration and Vacatur of Prior Judge's Orders of November 7 and 13, 2013, and Alternative Motion for Final Order in Favor of UCF" (Fla. Cir. Ct. Apr. 17, 2014), *aff'd per curiam*, 181 So. 3d 504 (Fla. 5th DCA 2015) (unpublished table disposition). The facts of that case are dramatically different than those here. A university professor entered into a personal service contract to provide editorial services to a private journal in exchange for direct personal compensation from the journal's owner. *Id.* at 2. The professor was required to, and did, obtain prior approval to use university resources for outside endeavors such as his work on the journal. *Id.* at 8. The professor's agreement with the journal provided that his work product on the journal was the property of the journal's owner, not his own or the university's. *Id.* at 13-14. All of these facts support the university's contention that communications were not made or received in the course of the university's business. In contrast, as demonstrated above, Professor Folta's participation in the AgBioChatter Group pertains directly to his work for the university, not some separately contracted or compensated engagement.

Furthermore, the court in *Becker* appears to have wrongly applied the "totality of factors" test, and such test clearly has no place in the present case. This test is to be applied when it is asserted that a private entity is "acting on behalf of" a public agency so as to subject the private entity's records to Florida's public records laws. *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group*, 596 So. 2d 1029, 1031 (Fla. 1992) (architectural firm's contract to provide professional services to school board did not render firm subject to public records law). Plaintiff does not contend that the AgBioChatter group is acting on behalf of the University of Florida. The "totality of factors" test is *not* used, as asserted by the court in *Becker*, to determine whether records *held by a public agency* "are private records or public records that are subject to disclosure under Chapter 119." *Id.* at 7. That question is to be

answered by the straightforward determination of whether the requested records were “made or received in connection with the official business” of the agency. Art. I, § 24(a), Fla. Const.; § 119.011(12), Fla. Stat. (2016). Although the court in *Becker* applied the wrong test, it reached the correct result, as the evidence established that the records pertaining to the private journal had no connection with the university’s business. As demonstrated by the foregoing discussion and authorities, the present case calls for precisely the opposite conclusion.

### **The Payne Emails**

The parties again agree on the general parameters of the applicable law. “Records of” the University of Florida Foundation are confidential and exempt from Chapter 119. § 1004.28(5)(b), Florida Statutes (2016). But Plaintiff did not make its public record request to the Foundation. It made the request to Dr. Payne, who is not an employee of the Foundation. Dr. Payne is the Senior Vice President for Agriculture and Natural Resources for the University of Florida. As an employee of the University of Florida, Dr. Payne, just like Professor Folta, must produce email communications sent or received by him in the course of *the university’s* official business.

The burden is on the Defendant to demonstrate its entitlement to an exemption. *Weeks v. Golden*, 764 So. 2d 633, 635 (Fla. 1st DCA 2000). Defendant appears to contend that all documents prepared by a direct support organization remain confidential and exempt even when disclosed outside the DSO. For this proposition, Defendant cites *Environmental Turf, Inc. v. University of Fla. Bd. of Trustees*, 83 So. 3d 1012, 1013 (Fla. 1st DCA 2012) (“We affirm the trial court’s ruling that the documents prepared by [a DSO] are exempt from disclosure because these documents were prepared and disseminated by a DSO.”). But it cannot be gleaned from the Court’s slender opinion that the court intended as broad an application of the DSO exemption



as the Defendant asserts here. Indeed, review of relevant documents from the trial court proceeding reveals that in that case the Defendant actually produced documents that were shared outside the DSO. See Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment at 4, *Environmental Turf, Inc. v. University of Fla. Bd. of Trustees*, No. 01-2006-CA-1573 (Fla. Cir. Ct. Feb. 17, 2014) ("if any [DSO] documents had been shared outside of [the DSO] with UF/IFAS, they were compiled for production unless protected by the research or litigation/attorney-client exemption") (Exhibit 8). In fact, Defendant expressly acknowledged that DSO documents shared with the Past Senior Vice President for Agriculture and Natural Resources, IFAS—the position Dr. Payne now holds—were treated as UF/IFAS documents and disclosed unless otherwise exempt. *Id.*; see also Notice of Filing Affidavit of Leslie Knight at 3 ¶ 9, *Environmental Turf, Inc. v. University of Fla. Bd. of Trustees*, No. 01-2006-CA-1573 (Fla. Cir. Ct. July 6, 2009) (Exhibit 9).

Therefore, the First District's opinion cannot be read as holding that all documents created by a DSO remain exempt from public record no matter to whom they are further disclosed, because this was not the issue presented to the court. It remains the Defendant's obligation to prove that the documents it withheld from Plaintiff fall within the scope of Section 1004.28(5)(b), Florida Statutes. This it failed to do.

### **IN CAMERA REVIEW**

If, following a hearing, the Court believes that some of the documents requested from Professor Folta may not be public records, or that some of the documents requested from Professor Payne may fall within the exemption provided in Paragraph 1004.28(5)(b), Florida Statutes, then Plaintiff respectfully requests that the Court require Defendant to submit such documents to the Court for an *in camera* inspection. *Walton v. Dugger*, 634 So. 2d 1059, 1061-

62 (Fla. 1993). Plaintiff respectfully submits that it would be premature to call for an *in camera* inspection prior to the hearing. *Kline v. University of Fla.*, 200 So. 2d 271 (Fla. 1st DCA 2016).

### **ATTORNEYS' FEES**

The plaintiff is entitled to an award of reasonable attorney's fees and costs, because the Defendant unlawfully failed to permit the requested public records to be inspected or copied. § 119.12, Fla. Stat.; *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 128 (Fla. 2016). Although Defendant contends that it is not liable for attorney's fees because it has responded to Plaintiff's public record requests "in good faith," the Florida Supreme Court has rejected this contention. If a trial court finds that an agency violated a provision of the public records laws, the prevailing party is entitled to statutory attorney's fees regardless of whether or not the agency acted "in good faith." *Bd. of Trustees, Jacksonville Police & Fire Pension Fund*, 189 So. 3d at 128.

### **CONCLUSION**

Wherefore, Plaintiff respectfully requests the Court enter a Writ of Mandamus:

- A. Directing the Defendant to produce the records requested by Plaintiff USRTK;
- B. Awarding Plaintiff its reasonable attorney's fees and costs; and
- C. Granting such other and further relief as the Court deems appropriate.

[Signature on following page]

/s/Lynn C. Hearn

LYNN C. HEARN

Florida Bar No.: 0123633

Email: lhearn@meyerbrookslaw.com

RONALD G. MEYER

Florida Bar No.: 0148248

Email: rmeyer@meyerbrookslaw.com

MEYER, BROOKS, DEMMA AND BLOHM, P.A.

131 North Gadsden Street (32301)

Post Office Box 1547

Tallahassee, Florida 32302-1547

(850) 878-5212

(850) 656-6750 – Facsimile

JOSEPH E. SANDLER

Email: sandler@sandlerreiff.com

District of Columbia Bar No. 255919

Pro Hac Vice No. 1001306

SANDLER, REIFF, LAMB, ROSENSTEIN &  
BIRKENSTOCK PC

1025 Vermont Ave., N.W. Suite 300

Washington, D.C. 20005

(202) 479 -1111

(202) 479-1115 – Facsimile

*Attorneys for Plaintiff US Right to Know*

## **CERTIFICATE OF SERVICE**

Pursuant to Rules 2.516(b)(1) and (f) of the Florida Rules of Judicial Administration, I certify that the foregoing document has been furnished to the following individuals by email via the Florida Courts e-filing Portal this 14<sup>th</sup> day of August, 2017, to:

John A. DeVault, III  
Primary E-mail: jad@bedellfirm.com  
Secondary E-mail: mam@bedellfirm.com  
Courtney A. Williams  
Primary E-mail: caw@bedellfirm.com  
Secondary E-mail: mam@bedellfirm.com  
Bedell, Dittmar, Devault, Pillans & Coxe  
Professional Association  
The Bedell Building  
101 East Adams Street  
Jacksonville, Florida 32202

*Attorneys for Defendant The University of  
Florida Board of Trustees*

Cindy A. Laquidara  
Primary email: cindy.laquidara@akerman.com  
Secondary email: kim.crenier@akerman.com  
Allison M. Stocker  
Primary email: allison.stocker@akerman.com  
Secondary email: maggie.hearon@akerman.com  
Akerman LLP  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202  
and  
Elizabeth M. Hernandez  
Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131  
Email: elizabeth.hernandez@akerman.com  
Secondary Email: [sandra.devarona@akerman.com](mailto:sandra.devarona@akerman.com)

*Attorneys for Movant Drew Kershen*

/s/Lynn C. Hearn

Lynn C. Hearn

## EXHIBIT INDEX

Ex. #	Exhibit Name
1.	Select emails produced by Defendant in response to Plaintiff's request for all emails between Kevin Folta and <a href="mailto:AgBioChatter@yahoogroups.com">AgBioChatter@yahoogroups.com</a> from July 1, 2012 to September 3, 2015
2.	Kevin M. Folta University of Florida Profile
3.	PCB 7922 Journal Colloquium: Professional Development in Plan Molecular and Cellular Biology – Fall 2016
4.	Kevin M. Folta, <i>Kevin M. Folta: A record of GMO honesty</i> , The Gainesville Sun, Aug. 30, 2015
5.	Tweets by @Kevinfolta on September 6, 2015, September 11, 2015, March 23, 2017, and May 7, 2017
6.	University of Florida President Kent Fuch's Talking Points to the Faculty Senate October 15, 2015
7.	<i>Grapski v. Machen</i> , No. 01-2005-CA-4005, Order on Evidentiary Hearing (Fla. Cir. Ct. May 9, 2006)
8.	Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment at 4, <i>Environmental Turf, Inc. v. University of Fla. Bd. of Trustees</i> , No. 01-2006-CA-1573 (Fla. Cir. Ct. Feb. 17, 2014)
9.	Notice of Filing Affidavit of Leslie Knight at 3 ¶ 9, <i>Environmental Turf, Inc. v. University of Fla. Bd. of Trustees</i> , No. 01-2006-CA-1573 (Fla. Cir. Ct. July 6, 2009) (Exhibit 9)

## **EXHIBIT 1**

**From:** Folta, Kevin M.  
**Date:** Fri, 18 Apr 2014 06:44:13 EDT  
**To:** AgBioChatter@yahooogroups.com,  
**CC:**  
**BCC:**  
**Subject:** ... as toxic as ...

---

There was a nice graphic that Prakash posted on *GMO LOL* that had roundup next to a dozen other household compounds in terms of toxicity... can someone repost a hi-red version?

Thanks.

Kevin

Kevin M. Folta  
Associate Professor and Chair  
Horticultural Sciences Department  
Plant Molecular and Cellular Biology Program and  
Plant Innovation Program  
University of Florida  
Gainesville, FL 32611

352-273-4812

*"Don't tell me what can't be done. Tell me what needs to be done, and let me do it."* – Norman Borlaug.

Illumination (blog) <http://kfolta.blogspot.com>  
Twitter @kevinfolta

From: Folla, Kevin M.  
Date: Tue, 12 Aug 2014 22:15:52 EDT  
To:  
CC:  
BCC:  
Subject: Oz.

---

Hi Everyone,

Oz is looking for someone to take on a discussion of Enlist approval.

Aug 20. My gut says losing cause. New herbicide resistance traits don't resonate with his audience, no matter how you address it.

Thoughts?

1. I'm happy to refer them to you.
2. I can take this on if we don't want the crazies to have a one-sided rant. However, I think this is a loser going in.

Feedback appreciated. My sense is that this is not the issue to win hearts and minds.

Kevin

\*\*\*\*\*

Sent from my phone.

On Aug 12, 2014, at 8:16 PM, "Jay Byrne [jay.byrne@v-fluence.com](mailto:jay.byrne@v-fluence.com) [AgBioChatter]" <[AgBioChatter@yahoo.com](mailto:AgBioChatter@yahoo.com)> wrote:

This group claims that contributions to them are tax deductible, but then asks for additional information required for campaign finance disclosure which would not make sense for a tax-exempt, 501c3 organization.  
<https://freedomfrompesticidesalliance.nationbuilder.com/donate>

A quick search on the IRS website does not show any Oregon registered tax-exempt organization by this name; but they are a registered business with the OR Secretary of State.

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
966938-91	ABN	ACT		09-25-2013	09-25-2015	

Entity Name	FREEDOM FROM PESTICIDES ALLIANCE
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Foreign Name	
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Affidavit?	N
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New Search	Printer Friendly	Associated Names
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Type	PPB	PRINCIPAL PLACE OF BUSINESS	
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Addr 1	2021 DEER CREEK ROAD
Addr 2	



CSZ	SELMA	OR	97538	Country	UNITED STATES OF AMERICA
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The Authorized Representative address is the mailing address for this business.

Type	REP	AUTHORIZED REPRESENTATIVE	Start Date	09-25-2013	Resign Date	
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Name	AUDREY	MOORE		
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Addr 1	2021 DEER CREEK ROAD
Addr 2	

CSZ	SELMA	OR	97538	Country	UNITED STATES OF AMERICA
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Type	REG	REGISTRANT		
------	-----	------------	--	--

Name	AUDREY	MOORE		
------	--------	-------	--	--

Addr 1	2021 DEER CREEK ROAD
Addr 2	

CSZ	SELMA	OR	97538	Country	UNITED STATES OF AMERICA
-----	-------	----	-------	---------	--------------------------

<a href="#">New Search</a>	<a href="#">Printer Friendly</a>	<a href="#">Name History</a>
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Business Entity Name	Name Type	Name Status	Start Date	End Date
FREEDOM FROM PESTICIDES ALLIANCE	EN	CUR	09-25-2013	

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	APPLICATION FOR REGISTRATION	09-25-2013		FI	Representative	

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**Counties Filed**  
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Jay Byrne, president

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**From:** [AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com) [<mailto:AgBioChatter@yahoogroups.com>]  
**Sent:** Tuesday, August 12, 2014 3:09 PM  
**To:** [AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)  
**Subject:** Chatter: FW: Freedom from Pesticides Bill of Rights - Josephine County, OR

Dear Friends,

FYI about anti-technology, anti-modernity raging on unabashed.

Drew

Drew L. Kershen

Earl Sneed Centennial Professor of Law (Emeritus)

University of Oklahoma, College of Law

300 West Timberdell Road

Norman, Oklahoma 73019-5081 U.S.A.

p/ 1-405-325-4784

f/ 1-405-325-0389

[dkershen@ou.edu](mailto:dkershen@ou.edu)

<http://law.ou.edu/faculty/kershen/>

<http://works.bepress.com/drew.kershen/>

<http://ssrn.com/author=285854>

---

Posted by: Jay Byrne <[Jay.Byrne@v-fluence.com](mailto:Jay.Byrne@v-fluence.com)>

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**From:** Folta, Kevin M.  
**Date:** Fri, 07 Nov 2014 21:06:56 EST  
**To:** AgBioChatter@yahoogroups.com,  
**CC:**  
**BCC:**  
**Subject:** "Science Center" endorses anti-GMO

---

Hi Folks,

This one makes me want to scream. The South Florida Science Center has invited in a speaker to talk about the "potential dangers of GMOs". Turns out she's a local dietitian that has worked with Food and Water Watch on pushing labeling issues in Florida and GM bans in West Palm Beach.

I notified them of this, and they told me that it is important to show "both sides" of the issue.

If anyone feels like dropping an email, here are the directors:

<https://www.sfsiencecenter.org/team>

here's the ad for the event.

<https://www.facebook.com/sfsiencecenter/photos/a.391712287141.176744.63616787141/10152352769542142/?type=l&theater>

Kevin M. Folta  
Professor and Chairman  
Horticultural Sciences Department  
Plant Molecular and Cellular Biology Program and  
Plant Innovation Program  
University of Florida  
Gainesville, FL 32611

352-273-4812

*"Don't tell me what can't be done. Tell me what needs to be done, and let me do it." – Norman Borlaug.*

Illumination (blog) <http://kfolta.blogspot.com>  
Twitter @kevinfolta

---

**From:** AgBioChatter@yahoogroups.com [AgBioChatter@yahoogroups.com]  
**Sent:** Friday, November 07, 2014 2:57 PM  
**To:** AgBioChatter@yahoogroups.com  
**Subject:** Chatter: A subtle form of the Cartagena protocol

Dear folks,  
yesterday I discovered that international shipment of transgenic material equals to the shipment of dangerous goods. The rule applies only when shipping by plane, but not by train (by the way, I thought the US was a sensible country...).

If you don't believe me, try googling: Shipping genetically modified organism and you'll see several manual from U.S universities detailing the procedure. see for instance:

<http://www.dehs.umn.edu/PDFs/shippingGMO.pdf>

or

<http://ehs.ucsc.edu/shipping/gmmo.html>

It looks like an international agreement, a sort of Cartagena protocol that applies also to research material for contained use (which was exempted by the CP).

Who has created these rules? Could you circumvent them by shipping by sea? Train is not an option to reach Europe from the US, for now.

Best regards, P.

---

Posted by: Piero Morandini <[piero.morandini@unimi.it](mailto:piero.morandini@unimi.it)>

---

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**From:** Folta, Kevin M.  
**Date:** Sun, 09 Nov 2014 08:02:45 EST  
**To:** AgBioChatter@yahooogroups.com,  
**CC:**  
**BCC:**  
**Subject:** Any Schmeisser Experts out there?

---

I read the canola wikipedia entry today. The section on "litigation" seems a little soft. It mentions the Schmeisser case and sends the reader home with the 'few contaminating seeds' feel and does not correctly report actual acreage, etc.

It should be edited. Does someone know all the precise information and sources? I can do it, but would rather give this to someone that already knows the specifics.

<http://en.wikipedia.org/wiki/Canola><http://en.wikipedia.org/wiki/Canola>

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---

**From:** AgBioChatter@yahooogroups.com [AgBioChatter@yahooogroups.com]  
**Sent:** Sunday, November 09, 2014 7:06 AM  
**To:** agbiochatter@yahooogroups.com  
**Subject:** Chatter: Worth a re-read: Facts do not matter when they contradict...

Chris Mooney, who has just joined the Business staff of the Washington Post, is a partisan hack; see <http://news.heartland.org/newspaper-article/2006/05/01/mad-science>. It will behoove us to watch for bias in his columns.

---

Posted by: Henry Miller <[henry.miller@stanford.edu](mailto:henry.miller@stanford.edu)>

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From: Folta, Kevin M.  
Date: Fri, 14 Nov 2014 23:53:00 EST  
To: AgBioChatter@yahooogroups.com,  
CC:  
BCC:  
Subject: South Florida Science Center

---

Hi Everybody,

I'm so disappointed. A "Science Center" in my state just allowed a political labeling event (as predicted) to happen under their name.

The video is here <http://youtu.be/A2pB0fSi2BI> Remember, they said this would be scientific. Check 29-39 min. All labeling.

Check out the Q&A at the end (1:10 min or so) when someone was allowed to rail against Monsanto and Indian suicides, uncontested. Moderator didn't care. Sort of agreed.

If you are compelled, drop a note to the Science Center. They think "teaching the controversy" is just fine.

It is an example of what we all need to be aware of. Activists infiltrating reputable organizations and leeching their credibility.

Kevin

Kevin M. Folta  
Professor and Chairman  
Horticultural Sciences Department  
Plant Molecular and Cellular Biology Program and  
Plant Innovation Program  
University of Florida  
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From: AgBioChatter@yahooogroups.com [AgBioChatter@yahooogroups.com]  
Sent: Friday, November 14, 2014 3:36 PM  
To: AgBioChatter@yahooogroups.com  
Subject: Re: Chatter: RE: Letters from America millionaire celebrity Westwood says eat less if you cannot afford organic

"I have read that French revolutionaries made up the story about Marie Antoinette ("Let them eat cake."), along with other additional slanderous stories about her, for public consumption to justify their show trial of her and her foreordained execution by guillotine. "

I am afraid this is fully true. The 1789 French revolution was inspired (to some extent) by the Enlightenment, but sunk in a criminal and totalitarian system (the Terror, 1793-1794). It took France almost a century to establish a freedom-based political system (the Third Republic), allowing political and civil rights to be gradually established.

The execution of Louis the 16th, Marie-Antoinette and their son (who was left to die in a prison) were horrible crimes. The theorician of the Terror, Robespierre, was inspirational to the XXth century totalitarianism. They executed Lavoisier, one of the father of modern chemistry, claiming that the Revolution does not need scientists. Although I am not sure this is really what was said, it nevertheless shows the criminal nature of this political regime.

MK

"Kershen, Drew L.' [dkershen@ou.edu](mailto:dkershen@ou.edu) [AgBioChatter]" <[AgBioChatter@yahooogroups.com](mailto:AgBioChatter@yahooogroups.com)> a écrit :

Dear Friends,

Read no further if you do not want to read emotive responses. T

The below excerpt – a follow on to the Letter from America, that is interrelated (Jay B. tells us) to the Factor Project in Russia – provoked my emotions.

The Letter from America and the Factor project are simply despicable in several ways. But the comments of Vivienne Westwood “takes the cake” to use a phrase.

While I have not done sufficient historical verification, I have read that French revolutionaries made up the story about Marie Antoinette (“Let them eat cake.”), along with other additional slanderous stories about her, for public consumption to justify their show trial of her and her foreordained execution by guillotine. With the Letter from America and the Factor Project, I have a foreboding of a “show trial” followed by a “public execution.” Yes sadly, Russian ideologues, masquerading as scientists, like the French revolutionaries of the Terror, do show trials followed by public execution quite well.

Drew

Drew L. Kershen

Earl Sneed Centennial Professor of Law (Emeritus)

University of Oklahoma, College of Law

300 West Timberdell Road

Norman, Oklahoma 73019-5081 U.S.A.

p 1-405-325-4784

f 1-405-325-0389

[dkershen@ou.edu](mailto:dkershen@ou.edu)

<http://jw.law.ou.edu/faculty/kershen/>

<http://works.bepress.com/drew.kershen/>

<http://ssrn.com/author=285854>

---

**From:** AgBioChatter@yahoogroups.com [mailto:AgBioChatter@yahoogroups.com]

**Sent:** Friday, November 14, 2014 10:25 AM

**To:** AgBioChatter@yahoogroups.com

**Subject:** Chatter: Letters from America millionaire celebrity Westwood says eat less if you cannot afford organic

And, unbelievably the spin being used now to rationale the statement is that because of Benbrook's study that organic foods give you more nutrition than conventional you can eat less and be healthier...

<http://money.aol.co.uk/2014/11/13/eat-less-says-vivienne-westwood-if-you-cant-afford-organic/>

## Eat less if you can't afford organic - Vivienne Westwood

Is the millionaire fashion designer out of touch?

• By [Emma Woollacott](#), Nov 13, 2014



Peter Byrne/PA WIRE

Marie Antoinette reportedly suggested that starving peasants should eat cake; now, a modern grande dame says that those that [can't afford](#) to buy organic should eat less.

While delivering a petition to Downing Street condemning genetically modified foods, millionaire fashion designer Dame Vivienne Westwood spoke to a BBC Radio 5 Live reporter who pointed out that not everybody can afford organic food.

And her response? That such people should "eat less".

"You've got all these processed foods, which is the main reason people are getting fat. They're not actually good for you - they don't give you strength, they give you weight," she said.

Westwood has expressed similar views in the past, suggesting last year that both clothes and food should cost more than they do: "Something is wrong when you can buy a cooked chicken for £2," she said.

The jury is still out on whether organic food is really healthier than non-organic. In 2009, a Food Standards Agency (FSA) study found no substantial differences or significant nutritional benefits from organic food.

However, more extensive [research](#) from Newcastle University earlier this year found that switching to organic fruits, vegetable and cereals gave people the same amount of extra antioxidants as one or two extra portions of fruit and vegetables a day.

"This study demonstrates that choosing food produced according to organic standards can lead to increased intake of nutritionally desirable antioxidants and reduced exposure to toxic heavy metals," says Professor Carlo Leifert, who led the study.

But what's not in doubt is the extra cost of eating organic - indeed, of eating healthy food at all. Last month, it was revealed consuming 1,000 calories-worth of healthy food costs £7.49, compared with £2.50 for less healthy foods.

And, [according to](#) the University of Cambridge researchers, the gap between healthy and non-healthy is widening.

"The increase in the price difference between more and less healthy foods is a factor that may contribute towards growing food insecurity, increasing health inequalities, and a deterioration in the health of the population," says lead author Nicholas Jones.

**Westwood suggests that eliminating junk food would make organic more affordable, explaining: "If there was a movement to produce more organic food and less of the horrible food, then organic food would obviously be a good value price, wouldn't it?"**

The Soil Association, which campaigns for organic foods, suggests that it is possible to eat organically without breaking the bank. It suggests signing up to an organic box scheme; cooking food from scratch and freezing extra portions; growing your own vegetables and keeping chickens.

However, organic boxes can cost very dear - and chickens don't take too well to windowboxes. Shoppers might be better advised to head for Aldi, which recently launched its own range of organic produce, in some cases costing a quarter of the prices elsewhere.

Jay Byrne, president

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SKYPE: Jay\_Byrne

=====

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Marcel KUNTZ

<http://www.marcel-kuntz-ogm.fr/>

Laboratoire de Physiologie Cellulaire Végétale

UMR 5168 CEA CNRS INRA UJF

Institut de Recherches en Technologies et Sciences pour le Vivant (iRTSV)

CEA Grenoble - Bât C2

04.38.78.41.84

[marcel.kuntz@ujf-grenoble.fr](mailto:marcel.kuntz@ujf-grenoble.fr) / [marcel.kuntz@cea.fr](mailto:marcel.kuntz@cea.fr)

adresse postale

CEA

LPCV

17 rue des Martyrs

F-38054 Grenoble cedex 9 - France

Posted by: [marcelkuntz@ujf-grenoble.fr](mailto:marcelkuntz@ujf-grenoble.fr)

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From: Folta, Kevin M.  
Date: Thu, 20 Nov 2014 06:40:30 EST  
To: AgBioChatter@yahoogroups.com,  
CC:  
BCC:  
Subject: RE: Chatter: Updates to GE Crops Committee Membership - three additional members

---

Val,

Amasino is as solid as they get. He knows the drill, he knows the issues, he'll be great.

What should piss off everyone is that Harry Klee (a colleague of mine here at UF and also a NAS member) was invited to be on this panel.

He was then UN-INVITED because he used to work for Monsanto until 1995, and the organizers thought it would be an issue.

Now here's a guy that is a decorated expert and public scientist, that was disqualified because he left corporate ag to work in the public sector.

Too bad bringing in Smith, Benbrook and others is not evaluated with the same lens.

Really bad.

Kevin

Kevin M. Folta  
Professor and Chairman  
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352-273-4812

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Illumination (blog) <http://Molta.blogspot.com>  
Twitter @kevinfolta

---

From: AgBioChatter@yahoogroups.com [AgBioChatter@yahoogroups.com]  
Sent: Thursday, November 20, 2014 5:53 AM  
To: AgBioChatter@yahoogroups.com  
Subject: RE: Chatter: Updates to GE Crops Committee Membership - three additional members

is he politically astute as well as scientifically sound?

---

To: AgBioChatter@yahoogroups.com  
From: AgBioChatter@yahoogroups.com  
Date: Wed, 19 Nov 2014 12:48:02 -0600  
Subject: Re: Chatter: Updates to GE Crops Committee Membership - three additional members

Definitely a thumbs-up on Rick Amasino. I've met with him on a couple of occasions.

Karl

On 11/19/2014 12:33 PM, [andy.hedgecock@pioneer.com](mailto:andy.hedgecock@pioneer.com) [AgBioChatter] wrote:

What are the group's thoughts on the three additional members?

### Updates to GE Crops Committee Membership and Statement of Task

The Chairman of the National Research Council (NRC) has provisionally appointed three additional members to the Committee on Genetically Engineered Crops: Past Experience and Future Prospects:

- Richard M. Amasino, Professor of Biochemistry, University of Wisconsin–Madison
- Leland L. Glenna, Associate Professor of Rural Sociology, Pennsylvania State University
- Elizabeth P. Ransom, Associate Professor of Sociology, University of Richmond

The new appointees to the committee were identified after the consideration of comments received about the committee composition during the initial public comment period as well as consideration of the full range of expertise and experience needed to address the study's statement of task. The public may submit comments to the NRC about the revised committee composition for the next 20 days. To view the committee membership, click [here](#). To provide a comment on the committee's composition, click [here](#).

---

Posted by: Val Giddings <[lv@g@outlook.com](mailto:lv@g@outlook.com)>

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**From:** "Folta, Kevin M." <kfolta@ufl.edu [AgBioChatter]> <AgBioChatter@yahoogroups.com>  
**Date:** Mon, 12 Jan 2015 19:23:44 EST  
**To:** "AgBioChatter@yahoogroups.com" <AgBioChatter@yahoogroups.com>  
**CC:**  
**BCC:**  
**Subject:** Chatter: RE: Loading

---

Chillingly stupid. Seneff is on fire, citing Wakefield and Huber as credible information. Enjoy.  
Get ready for "neuron burnout"

<https://www.facebook.com/video.php?v=929462363752750&set=vb.488353241197000&type=2&theater>

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---

**From:** AgBioChatter@yahoogroups.com <AgBioChatter@yahoogroups.com> on behalf of Chris Leaver [chris.leaver@plants.ox.ac.uk](mailto:chris.leaver@plants.ox.ac.uk)  
[AgBioChatter] <AgBioChatter@yahoogroups.com>  
**Sent:** Monday, January 12, 2015 6:22 PM  
**To:** AgBioChatter@yahoogroups.com  
**Subject:** Chatter: Loading

<http://weburbanist.com/2015/01/11/worlds-largest-indoor-farm-is-100-times-more-productive/>

Chris Leaver

---

Posted by: "Folta, Kevin M." <kfolta@ufl.edu>

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**From:** "Folta, Kevin M." <kfolta@ufl.edu [AgBioChatter]> <AgBioChatter@yahoogroups.com>  
**Date:** Mon, 09 Feb 2015 15:41:26 EST  
**To:** "AgBioChatter@yahoogroups.com" <AgBioChatter@yahoogroups.com>  
**CC:**  
**BCC:**  
**Subject:** RE: Chatter: \$3.3M for U Florida to fight an unpronounceable citrus disease to develop GM citrus that is 'free of GM-signatures'

---

This was not me, not sure who it was.

My proposal was based on some x-ray treated resistant materials and some sequencing to find mutagenized genes conferring resistance.

Kevin

Monsanto - Bayer - Dow - Ketchum - BIO - JPK - Rowell - Crashed Saucer - Syngenta - chemtrails - GMO Answers

---

**From:** AgBioChatter@yahoogroups.com [mailto:AgBioChatter@yahoogroups.com]  
**Sent:** Monday, February 09, 2015 2:34 PM  
**To:** AgBioChatter  
**Subject:** Re: Chatter: \$3.3M for U Florida to fight an unpronounceable citrus disease to develop GM citrus that is 'free of GM-signatures'

Bruce

I respectfully disagree. I was making fun of USDA but this project is scientifically very sound. I just dug this up. see

<http://portal.nifa.usda.gov/web/crisprojectpages/1005657-determining-the-roles-of-candidate-genes-in-citrus-hlb-interactions-and-creating-hlb-resistant-citrus-cultivars.html>

This is a very well thought of project, and by people who know exactly what they are talking about. I don't blame them for trying to circumvent the burdensome regulation and all the baggage that now goes with anything "GMO" but use the cutting-edge science to develop a product that can actually reach the consumer instead of sitting on the shelf

See more from the project below.

Prakash

Finally, they should be developed using contemporary genetic technologies and approaches in such a way that the cultivars will be free of GMO signatures, thus removing the impediments to their utilization and commercialization associated with regulatory requirements or consumer concerns and reluctance to purchase GMO citrus fruit or juice products. Achieving this goal will support the continued existence and expansion of the US industry, thus avoiding the calamities described above and ensuring an abundant and inexpensive supply of nutritious citrus fruits and juice for the public. Objectives: 1. Validate candidate gene expression in inoculated citrus through RNAseq. 2. Identify sequence polymorphisms in candidate genes from citrus accessions with different responses to HLB and dissect the gene structure and genomic organizations of candidate genes. 3. Understand the roles of candidate genes by over-expressing them in HLB-susceptible citrus cultivars. 4. Develop CRISPR-mediated technologies for development of non-transgenic HLB-resistant citrus. 5. Precision editing of candidate genes for producing HLB-resistant citrus. 6. Outreach and disseminate project results to stakeholders and the public.

On Mon, Feb 9, 2015 at 1:24 PM, Bruce Chassy <bchassy@icloud.com [AgBioChatter]> <AgBioChatter@yahoogroups.com> wrote:

let's resurrect the Proxmire Golden Fleece Awards for this grant. As I understand it there is already a good GM solution to this problem.

USDA needs a house-cleaning and the person who came up with this one needs to be shot, but reassigned or discharged would be good enough.

DISCLAIMER: Henry Miller did not write this comment or even advise me—I'm that angry about this one without any help from Henry. How can we put some heat on the USDA for this nonsense?

Bruce

On Feb 9, 2015, at 10:13 AM, 'Prakash, Channapatna S.' [prakash@mvtu.tuskegee.edu](mailto:prakash@mvtu.tuskegee.edu) [AgBioChatter] <[AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)> wrote:

Akin to DNA fingerprints left in the crime scene by dangerous folks.

Like that 'Starlink' signature that cost \$1B to Aventis!

Prakash

On Mon, Feb 9, 2015 at 12:00 PM, Karl Haro von Mogel [karl@inoculatedmind.com](mailto:karl@inoculatedmind.com) [AgBioChatter] <[AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)> wrote:

Frank N. Foode's autograph for an adoring fan!

Karl

On 2/9/2015 11:49 AM, Val Giddings [lvq@outlook.com](mailto:lvq@outlook.com) [AgBioChatter] wrote:

I would like to know what, exactly, comprises a "GMO" signature.

---

To: [AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)  
From: [AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)  
Date: Mon, 9 Feb 2015 11:40:20 -0600  
Subject: Re: Chatter: \$3.3M for U Florida to fight an unpronounceable citrus disease to develop GM citrus that is 'free of GM-signatures'! [1 Attachment]

[Attachment(s) from Prakash, Channapatna S. included below]

The said funding to UF. - Brilliant! - "Free of GMO Signatures"

Is that for you Kevin? I know you work on strawberry. Perhaps folks at Lake Alfred?

<Mail Attachment.png>

On Mon, Feb 9, 2015 at 11:30 AM, 'Prakash, Channapatna S.' [prakash@mvtu.tuskegee.edu](mailto:prakash@mvtu.tuskegee.edu) [AgBioChatter] <[AgBioChatter@yahoogroups.com](mailto:AgBioChatter@yahoogroups.com)> wrote:

Folks (Especially Drew!)

Even USDA gets it! See funding for Florida to develop GMO citrus that is free of GM-signatures! This is where gene-editing is going to take us!

Prakash

<http://www.usda.gov/documents/citrus-greening-awardees-fact-sheet.pdf>

----- Forwarded message -----

From: **USDA Office of Communications** <[usda@public.govdelivery.com](mailto:usda@public.govdelivery.com)>

Date: Mon, Feb 9, 2015 at 10:47 AM

Subject: Vilsack Announces \$30 Million to Fight Citrus Disease

To: [prakash@mytu.tuskegee.edu](mailto:prakash@mytu.tuskegee.edu)

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United States Department of Agriculture

**Office of Communications**

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# Press Release

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## Vilsack Announces \$30 Million to Fight Citrus Disease

*USDA Targets Citrus Greening with Promising Tools and Long Term Solutions*

WASHINGTON, Feb. 9, 2015 - Agriculture Secretary Tom Vilsack announced \$30 million in funding today for 22 projects to help citrus producers combat *Huanglongbing* (HLB), also known as citrus greening, a devastating citrus disease that threatens U.S. citrus production. The money will fund promising projects that could offer near-term solutions as well as research funding that may develop long-term solutions. The promising near-term tools and solutions are funded through the HLB Multiagency Coordination Group while the research projects are funded through the Specialty Crop Research Initiative Citrus Disease Research and Education (CDRE) program, which is made available through the Agricultural Act of 2014 (Farm Bill).

"Our HLB Multi-Agency Coordination Group has worked closely with the citrus industry to select and fund projects that we think will make a real difference for growers against HLB," said Vilsack. "Funding these projects through cooperative agreements puts us one step closer to putting real tools to fight this disease into the hands of citrus growers." Vilsack continued, "Through the CDRE research we are announcing today, we are also investing in long-term solutions to diseases that threaten the long-term survival of the citrus industry."

USDA's HLB Multi-Agency Coordination Group funded fifteen projects that support thermotherapy, best management practices, early detection, and pest control efforts for a total of more than \$7 million. All of them are designed to provide near-term tools and solutions to help the citrus industry fight HLB. The projects include: *Two projects to provide improved delivery of thermotherapy to HLB infected trees, a promising treatment that has shown to help infected trees regain productivity after treatment. One of these projects will test thermotherapy on a grove-wide scale.*

*Six projects to provide citrus producers with best management practices in Florida citrus groves.*

One project will focus on lowering the pH of the irrigation water and soil to strengthen the root systems of citrus trees to help them better tolerate HLB infection.

Three projects will support different combinations of integrated management approaches for sustaining production in trees in different stages of infection.

Two projects will test strategies for preventing tree death due to HLB infection. One of those will field test rootstocks that have shown ability to tolerate HLB infection. The other will use technologies to rapidly propagate the tolerant material for field use by the industry.

*Three projects to increase early detection of HLB.*

One project will train dogs to detect HLB infected trees. Detector dogs have proven to be highly adept at detecting citrus canker and early results suggest they will be an effective early detection tool for HLB.

One project will develop a root sampling and testing strategy.

One project will compare several promising early detection tests.

*Four projects to provide tools to kill the Asian citrus psyllid (ACP), the vector of HLB.*

One will produce and release the insect *Diaphorocytus aligarhensis* as a second biological control agent in California.

One project will use a biocontrol fungus to kill ACP adults.

One project will use a trap to attract and kill ACP adults.

One project will increase the use of field cages for the production of the insect *Tamarixia radiata* in residential areas, especially those that are adjacent to commercial groves in Texas. *Tamarixia* has already proven to be an effective biological control agent for ACP. Using field cages will enable the wider use of this effective ACP control.

In addition to these projects, USDA's National Institute of Food and Agriculture funded more than \$23 million dollars for research and education project to find lasting solutions to citrus greening disease. Examples of funded projects include developing HLB-resistant citrus cultivars, the development of field detection system for HLB, using heat as a treatment for prolonging productivity in infected citrus trees, creating a new antimicrobial treatment, among others. A [fact sheet with a complete list of awardees and project descriptions](#) (PDF, 316KB) is available on the USDA website. Fiscal year 2014 grants have been awarded to:

- University of California, Davis, Calif., \$4,579,067
- University of California, Riverside, Calif., \$1,683,429
- University of Florida, Gainesville, Fla., \$4,613,838
- University of Florida, Gainesville, Fla., \$3,495,832
- University of Florida, Gainesville, Fla., \$3,338,248
- University of Florida, Gainesville, Fla., \$2,096,540
- Kansas State University, Manhattan, Kan., \$3,734,480

CDRE is a supplement to the Specialty Crop Research Initiative (SCRI). The focus of this year's funding was specifically on citrus greening disease. Because there are wide differences in the occurrence and progression of HLB among the states, there were regional as well as national priorities for CDRE. These priorities, recommended by the Citrus Disease Subcommittee, fall within four categories: 1) priorities that deal with the pathogen; 2) those that deal with the insect vector; 3) those that deal with citrus orchard production systems; and 4) those that deal with non-agricultural citrus tree owners.

The Farm Bill builds on historic economic gains in rural America over the past six years, while achieving meaningful reform and billions of dollars in savings for taxpayers. Since enactment, USDA has made significant progress to implement each provision of this critical legislation, including providing disaster relief to farmers and ranchers; strengthening risk management tools; expanding access to rural credit; funding critical research; establishing innovative public-private conservation partnerships; developing new markets for rural-made products; and investing in infrastructure, housing and community facilities to help improve quality of life in rural America. For more information, visit [www.usda.gov/farmbill](http://www.usda.gov/farmbill).

#

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Posted by: "Folta, Kevin M." <kfolta@UFL.EDU>

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## **EXHIBIT 2**

# Horticultural Sciences Department

NEWS &amp; EVENTS

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## Dr. Kevin M. Folta



PCB6528- Plant Cell and Developmental Biology

**Professor and Chairman**

### Areas of Research

- Functional genomics of small fruit crops
- Plant transformation
- Photomorphogenesis and flowering
- Genetic basis of flavors
- Science communication and outreach

### Educational Background

- Ph.D. – 1998; Molecular Biology, University of Illinois at Chicago
- M.S. – 1992; Biology, Northern Illinois University
- B.S. – 1989; Biology, Northern Illinois University

### Teaching Responsibilities

- FRC1010- Fruit for Fun and Profit
- **Office:** 2339 Fifield Hall
- **Phone:** 352-273-4812
- **E-mail:** [kfolta@ufl.edu](mailto:kfolta@ufl.edu)

[Dr. Folta's Podcast - Talking Biotech](#)

[Folta's Laboratory Website](#)

### Work and International Experiences

- December 2012- Present: Department Chair, Horticultural Sciences Department, University of Florida, Gainesville, FL
- May 2012- May 2017: Visiting Scientist, Shanghai Academy for Agricultural Sciences, Shanghai China
- July 2011 – December 2012: Graduate Coordinator, Plant Molecular and Cellular Biology, University of Florida, Gainesville, FL
- July 2008- present: Associate Professor, Horticultural Sciences Department, University of Florida, Gainesville, FL

## Honors and Awards

- University of Florida Postdoctoral Mentoring Award
- University of Florida Foundation Research Professor, 2010
- Northern Illinois University LA&S Golden Alumni Award (top 50 distinguished graduates) 2009
- NSF CAREER Award, 2008
- Howard Hughes Medical Institute Distinguished Mentor of Undergraduate Research, 2007.

## Program Personnel

- Postdoctoral Research Associates
  - Dr. Sofia Carvalho
  - Dr. Kevin O'Grady
  - Dr. Raquel Fonseca Carvalho
- Senior Biological Scientist
  - Maureen Clancy
- Graduate Students
  - Christopher Barbey
  - Fadhli Mad Atari

## Edited Books

- Folta, K.M., Gardiner, S.E.(2009) Genetics and Genomics of Rosaceae. R. Jorgensen Series Ed. Springer, New York, 600 pp.
- Folta, K.M., (2011) Genetics, Genomics and Breeding of Berries. In Genetics and Genomics of Crop Plants. C. Kole Series Ed. Science Publishers, Manchester NH, 207pp.

## Selected Publications

- Carvalho, S.D. Folta, K.M. (2014) Sequential light programs to affect kale sprout appearance and nutrition. *Horticultural Research* 1: 8.Wang, Y., Folta, K.M. (2013) Contributions of green light to plant growth and development. *Am. J. Bot.* 100: 70-78
- Carvalho, S.D., Folta, K.M. (2014) Environmentally-modified organisms: Expanding plant genetic potential with light. *Critical Reviews in Plant Science*. 33:486-508
- Chambers, A.H., Plotto, A., Bai, J., Whitaker, V.M., Folta, K.M.(2014) Identification of a strawberry flavor gene using an integrated genetic-genomic-analytical chemistry approach. *BMC Genomics* 15: 217
- Zhang, Q., **Folta, K.M.**, Davis, T.M. (2014) Somatic embryogenesis, tetraploidy, and variant leaf morphology in transgenic diploid strawberry (*Fragaria vesca* subspecies *vesca* 'Hawaii 4') *BMC Plant Science* 14: 14-232
- Chambers, A.H., Evans, S.A., Folta, K.M. (2014) Methyl anthranilate and  $\gamma$ -decalactone inhibit strawberry pathogen growth and achene germination. *Journal of Agricultural and*



- 
- fingerprinting platform for strawberry (*Fragaria* L.). *Molecular Breeding* : 1-15
- Wang, Y., Maruhnich, S.A., Mageroy, M.H., Justice, J.R., Folta, K.M. (2013) Phototropin 1 and cryptochrome action in response to green light in combination with other wavelengths. 237:225-237.
  - Folta, K.M. (2012) Functionalizing the Strawberry Genome. *Int'l J. Fruit Science* 13: 162-174
  - Chambers, A., Whitaker, V.M., Gibbs, B., Plotto, A., Folta, K.M. (2012) Detection of the linalool-producing NES1 variant across diverse strawberry (*Fragaria* spp.) accessions. *Plant Breeding* 131, 437-443.
  - Jung, S., Cestaro, A., Troggio, A., Main, D., Zheng, P., Cho, I., Folta, K.M., Sosinski, B., Abbott, A., Celton, J-M., Arus, P., Shulaev, V., Verde, I., Morgante, M., Rokhsar, D.S., Velasco, R., Sargent, D.J. (2012) Whole genome comparisons of *Fragaria*, *Prunus* and *Malus* reveal different modes of evolution between Rosaceous subfamilies. *BMC Genomics* 13:
  - Colquhoun, T.A., Levin, L.A., Moskowitz, H.R., Whitaker, V.M., Clark, D.G., Folta, K.M. (2012) Framing the perfect strawberry: An exercise in consumer-assisted selection of fruit crops *Berry Res. J.* 2: 45-61.
  - Rahemi, A., Fatahi, R., Ebadi, A., Taghavi, T., Hassani, D., Gradziel, T., Folta, K.M., Chaparro, J. (2012) Genetic diversity of some wild almonds and related *Prunus* species revealed by SSR and EST-SSR molecular markers. *Plant Systematics and Evolution*. 298:173-192.
  - Zhang, T., Folta, K.M. (2012) Green light signaling and adaptive response. *Plant Signaling and Behavior*. 7: 1-4.
  - Chatterjee M., Bermudez-Lozano, C.L., Clancy, M.A., Davis, T.M., Folta, K.M. (2011) A Strawberry KNOX Gene Regulates Leaf, Flower and Meristem Architecture *PLoS One*. 9:e24792.
  - Zhang, T., Maruhnich, S.A., Folta, K.M. (2011) Green Light Induces Shade Avoidance Symptoms. *Plant Physiol.* 157: 1528-1536.
  - Sargent, D.J., Kuchta, P., Lopez-Girona E., Zhang, H., Davis, T.M., Celton, J-M, Marchese, A., Korbin, M., Folta, K.M., Shulaev, V. and Simpson, D.W. (2011) Simple Sequence Repeat Marker Development and Mapping Targeted to Previously Unmapped Regions of the Strawberry Genome Sequence. *Plant Genome*. 4:165-177.
  - Gao, J., Wang, Y., Folta, K.M., Krishna, V., Bai, W., Indeglia, P., Georgieva, A., Nakamura, H., Koopman, B., Moudgil, B. (2011) Polyhydroxy Fullerenes: Beneficial effects on growth and lifespan in diverse biological models. *PLoS One*.
  - Shulaev V. et al., (75 authors, Folta contributing) (2011) The genome of woodland strawberry (*F. vesca*). *Nature Genetics* 43:109-U51
  - Rivarola, M., Chan, A.P., Liebke, E.D., Melake-Berhan, A., Quan, H., Cheung, F., Ouyang, S., Folta, K.M., Slovin, J.P., Rabinowicz, P.D. (2011). Abiotic stress related sequence tags from the diploid strawberry *Fragaria vesca*. *The Plant Genome* 4: 12-23.
  - Wu, JA, Zhang, YL, Zhang, HQ, Huang, H, Folta, K.M., Lu, JA, (2010) Whole-genome wide expression profiles of *Vitis amurens* grape responding to downy mildew using Solexa sequencing technology. *BMC-Plant Biology* 10: article 234
  - Hamner-Mageroy, M., Hemmingway, C., Folta, K.M., Shinkle, J. (2010) Physiological evidence of phototropin action in response to UV-C irradiation. *Plant Signaling and Behavior* 5:10-20
  - Folta, K.M., Clancy, M.A., Chamala, S., Dhingra, A., Brunings, A.M., Gomide, Leandro, Kulathinal, R.J., Peres, N.A., Davis, T.M., Barbazuk, W.B. (2010) A Transcript Accounting

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- A.C., Wang, H., Yao, Q., SanMiguel, P., Folta, K.M. (2010) [An examination of targeted gene neighborhoods in strawberry](#). *BMC Plant Biology*, 10:81+
- Brunings, A., Moyer, C., Peres, N., Folta, K.M. (2010) Implementation of simple sequence repeat markers to genotype Florida strawberry varieties. *Euphytica* 173:63-65.
  - Stewart, P.J., Folta, K.M. (2010) The history of photoperiodic flowering research in strawberry (*Fragaria spp.*). *Critical Reviews in Plant Sciences* 1:1-13
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## **EXHIBIT 3**





**PCB 7922 Journal Colloquium:  
Professional Development in Plant Molecular and Cellular Biology  
Fall 2016**

**Course Registration**

1 credit, departmentally controlled

Request registration with Eliana Kampf ([elianak@ufl.edu](mailto:elianak@ufl.edu))

**Meeting Time and Place**

2318 Fifield Hall, Wednesdays, period 6 (12:50 to 1:40 p.m.), beginning August 24.

Please note: *we will have class on September 22, Thursday, period 6 instead of September 21.*

**Course Summary**

Graduate students face challenges and opportunities that frequently require skills that extend beyond those covered in traditional classrooms. Increasingly important skills among researchers include communicating ideas with non-experts, networking with individuals and institutions within and outside their chosen field, seeking funding from conventional and unconventional sources, providing leadership within their organizations and communities, among other.

This course will feature presentations by the instructor and several invited speakers on professional development topics such as grantsmanship, funding opportunities, alternative science careers, intellectual property, entrepreneurship, leadership, and written and oral communication skills. Graduate students will gain information, insights and skills, which can be used in their graduate and professional careers.

As a seminar course, the class is designed to give each student an opportunity to discuss and exchange ideas with speakers. Students are expected to fully engage in discussions and come prepared with questions. Students are also expected to make a 3MT<sup>®</sup> style presentation at the end of the semester.

**Objectives**

- Introduce students to on-campus and off-campus resources that will support their professional development skills
- Gain proficiency in skills such as grantsmanship, leadership, and written and oral communication
- Practice oral communication skills for non-academic audiences

**Instructor**

Matias Kirst

[mkirst@ufl.edu](mailto:mkirst@ufl.edu)

352- 846-0900

Office hours on an individual basis by appointment

**Course Coordinator**

Eliana Kampf

1509 Fifield Hall

[elianak@ufl.edu](mailto:elianak@ufl.edu)

Office hours on an individual basis by appointment

## Schedule of Classes

Date	Topic	Instructors and Invited Speakers
08/24	Introduction, course overview, and pre-evaluation	Matias Kirst/Eliana Kampf
08/31	Teaching skills and latest developments in teaching	<b>Christine Davis</b> , Undergraduate Coordinator and Lecturer, Department of Biology, UF
09/07	Leadership 1	<b>Alexa Lamm</b> , Assistant Professor of Agricultural Education and Communication, Associate Director of Center for Public Issues Education, UF
09/14	Alternative science careers ( <i>via Skype</i> )	<b>Diane Okamuro</b> , Program Director of the Plant Genome Research Program, Directorate for Biological Sciences, National Science Foundation
09/22*	Communicating science with a concerned public	<b>Kevin Folta</b> , Professor and Chairman, Horticultural Sciences Department, UF
09/28	Leadership 2	<b>Alexa Lamm</b> , Assistant Professor of Agricultural Education and Communication, Associate Director of Center for Public Issues Education, UF
10/05	Exploring funding opportunities	<b>Sobha Jaishankar</b> , Assistant Vice President, UF Office of Research
10/12	Perspectives on creating your own biotech business	<b>Márcio Resende</b> , Chief Executive Officer and Co-Founder, RAPiD Genomics, Gainesville, FL
10/19	Intellectual property and Plant protection	<b>John Byatt</b> , UF Office of Technology Licensing and <b>John Watson</b> , Licensing Associate, UF/IFAS Germplasm Office
10/26	Grant writing 1	<b>Svetlana Folimonova</b> , Assistant Professor, Plant Pathology Department, UF
11/02	Grant writing 2	<b>Svetlana Folimonova</b> , Assistant Professor, Plant Pathology Department, UF
11/09	Oral presentation/Intro to 3MT	Matias Kirst
11/16	3MT practice 1	Matias Kirst
11/23	No class – Thanksgiving	n/a
11/30	3MT practice 2	Matias Kirst
12/07	Course post-evaluation	Matias Kirst/Eliana Kampf

\* this class will be offered on Thursday instead of Wednesday.

## Course Requirements

Students are expected to fully engage in all activities and assignments. Students must participate in class discussions and come prepared with questions. Active participation is required. It is not enough to just listen.

Students are also required to make an individual presentation at the end of the semester. This presentation will be based on the Three Minute Thesis (3MT), a research communication competition developed by the University of Queensland in Australia. It challenges graduate students to make a compelling presentation on their research topic and its significance to a non-academic audience in just three minutes. This exercise will help students develop communication skills and the capacity to explain their research succinctly and clearly to the general public. Skills and methods learned throughout the semester will be critical in developing a compelling presentation.

Students are expected to attend all scheduled class meetings. If you must miss a class, please inform the instructor in advance. Two or more absences from the class will constitute a failing grade for the course unless there are clear extenuating circumstances.

## Grading

Grades will be assigned based on quality of presentations (50%), attendance and active participation in discussions (50%). Information on current UF grading policies can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>

## Professionalism Statement

Scientists are professionals guided by specific values and behaviors. These values and behaviors include respect, cooperation, active participation, intellectual inquiry, integrity, timeliness, and attendance. In addition to your performance on the graded materials, you will be evaluated on your growth as a professional. Professional characteristics include punctuality, attendance, participation, collegial attitude, and willingness to help others learn. Your attendance at all classes is a firm expectation, but if you are ill or an emergency occurs, contacts your instructor PRIOR TO the scheduled class time.

## Academic Honesty

As a student at the University of Florida, you have committed yourself to uphold the Honor Code, which includes the following pledge: *"We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity."* You are expected to exhibit behavior consistent with this commitment to the UF academic community, and on all work submitted for credit at the University of Florida, the following pledge is either required or implied: *"On my honor, I have neither given nor received unauthorized aid in doing this assignment."*

It is assumed that you will complete all work independently in each course unless the instructor provides explicit permission for you to collaborate on course tasks (e.g. assignments, papers, quizzes, exams). Furthermore, as part of your obligation to uphold the Honor Code, you should report any condition that facilitates academic misconduct to appropriate personnel. It is your individual responsibility to know and comply with all university policies and procedures regarding academic integrity and the Student Honor Code. Violations of the Honor Code at the University of Florida will not be tolerated. Violations will be reported to the Dean of Students Office for consideration of disciplinary action. For more information regarding the Student Honor Code, please see:

<http://www.dso.ufl.edu/SCCR/honorcodes/honorcode.php>

## **Software Use**

All faculty, staff and students of the university are required and expected to obey the laws and legal agreements governing software use. Failure to do so can lead to monetary damages and/or criminal penalties for the individual violator. Because such violations are also against university policies and rules, disciplinary action will be taken as appropriate.

## **Campus Helping Resources**

Students experiencing crises or personal problems that interfere with their general well-being are encouraged to utilize the university's counseling resources. The Counseling & Wellness Center provides confidential counseling services at no cost for currently enrolled students. Resources are available on campus for students having personal problems or lacking clear career or academic goals, which interfere with their academic performance.

- *University Counseling & Wellness Center, 3190 Radio Road, 352-392-1575, [www.counseling.ufl.edu/cwc](http://www.counseling.ufl.edu/cwc)*
  - Counseling Services
  - Groups and Workshops
  - Outreach and Consultation
  - Self-Help Library
  - Training Programs
  - Community Provider Database
- *Career Resource Center, First Floor JWRU, 392-1601, [www.crc.ufl.edu](http://www.crc.ufl.edu)*

## **Services for Students with Disabilities**

The Disability Resource Center coordinates the needed accommodations of students with disabilities. This includes registering disabilities, recommending academic accommodations within the classroom, accessing special adaptive computer equipment, providing interpretation services and mediating faculty-student disability related issues. Students requesting classroom accommodation must first register with the Dean of Students Office. The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Instructor when requesting accommodation.

- *Dean of Students, 001 Reid Hall, 352-392-8565, [www.dso.ufl.edu/drc](http://www.dso.ufl.edu/drc)*

## **EXHIBIT 4**

## **Kevin M. Folta: A record of GMO honesty**

By Kevin M. Folta / Special to The Sun

Posted Aug 30, 2015 at 12:01 AM

I'm the scientist at the University of Florida that has been getting quite a bit of press, mostly because I have drawn the ire of those that oppose agricultural biotechnology, or GMOs. I'm grateful for the opportunity to respond to The Sun's Aug. 25 editorial.

I'm the scientist at the University of Florida that has been getting quite a bit of press, mostly because I have drawn the ire of those that oppose agricultural biotechnology, or GMOs. I'm grateful for the opportunity to respond to The Sun's Aug. 25 editorial.

My research examines how we use light as a non-chemical treatment to improve fruit quality, nutrition and shelf life. We also study the genes associated with flavor, and use genomics tools to guide UF's traditional breeding efforts in strawberry. We do no GMO production toward commercialization, and certainly there are few GMO crops grown in Florida. I have never had research support from Monsanto.

I got involved in the GMO public discussion because I've been studying the topic for 30 years. Consumers are concerned. I'm not surprised. Food Babes, Oz doctors and burrito slingers are screaming warnings of a population being poisoned. But these warnings are not supported by the vetted scientific literature I am sworn to follow. I'd like to add honest science to that divide.

While a multi-billion dollar industry has emerged around promoting food fear, I get excited about the technology. I dream of ways to decrease environmental impacts of farming, and create new solutions to help Florida farmers. We know biotech can help feed those in desperate need worldwide. This is valuable technology that can do good things, of course with a balance of risk and benefit.

But scientists are not always the best communicators. We're often dismissive and even harsh when addressing the food concerns of a nervous public. I devised an outreach program to teach scientists how to talk about ag biotechnology ([www.talkingbiotech.com](http://www.talkingbiotech.com)). The program presents science from peer-reviewed literature, strengths and weaknesses, good things and bad, and provides training on how to effectively engage a skeptical audience.

I volunteer my time. I rely on donations to fund facility costs, a projector, travel, and

doughnuts and coffee at the science literacy workshops, which take about half a day of student and faculty time.

In August 2014, I was elated to learn that the Monsanto Corp. would provide UF the funds to support additional national workshops and a student conference. It was a chance for me to spread science literacy — on someone else's dime. I was grateful for that support.

The Sun editorial accused me of "failing to disclose" this information, yet the donation was fully disclosed. I thank the sponsors of the workshops and certainly am glad to talk about any donations, which are peanuts compared to my research budget.

No matter what you'd think about Monsanto, news of their support for a science communication program would be a good thing, right? Instead, the Internet exploded, calling me a liar, a shill, a criminal. The Sun's claims of "failing to disclose" didn't help. Social media became wallpapered with false claims, implied threats, my address, my salary and damaging comments that are now a permanent part of my internet history. Craigslist Gainesville featured vulgar comments about my wife, and named my deceased mother, saying I've shamed her memory.

Because of the damaging words and potential danger, the university and I decided that the donation should be returned. The company has no mechanism to take back gifts, so they will go to a charitable program inside UF. This in no way an admission of guilt or anything negative about the company. The company did the right thing. I just can't risk harm to people or property close to me.

As a faculty member at a land-grant university, part of my job is to integrate with industry. I'm glad to speak for any company, and do frequently on GMOs, communication and how we can grow crops using LED light. If a company invites me to talk, they cover my expenses. We don't have special funding for such travels. I've taken great heat in the press for being reimbursed for travel, but this is normal and customary.

I rest easy because while being attacked in the media, nobody has questioned anything I've ever published or anything I've ever said. This is an ad hominem indictment, a way to defile the earned credibility of a scientist that teaches an inconvenient truth, based upon the best evidence.

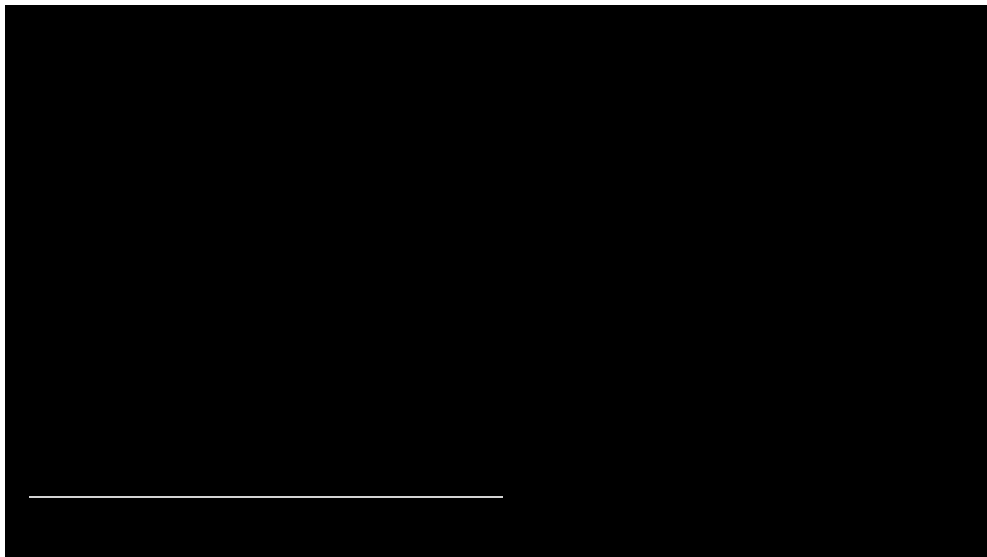
So honesty about GMOs? I'd have it no other way. Despite the hostile words and libelous claims of others, I can say that I always told the truth and did my job as a land-grant scientist.

Remember, I work for you, and I take that seriously. I have to work from an established set of rules and scientifically-vetted information. My talks are the same now as they were before the donation, and they'll be the same now that the funds are gone. That's because they reflect the best science we have, and the basis of a substantial scientific

consensus.

— *Kevin M. Folta is a professor and chairman of the horticultural sciences department at the University of Florida.*

## MOST POPULAR STORIES





## **EXHIBIT 5**



**Kevin Folta** ✓  
@kevinfolta

Follow

[@amy\\_harmon](#) [@geneticmaize](#) Our job is to work with industry. We are the expert advisers. Expected as extension in the Land Grant mission

12:16 PM - 6 Sep 2015



**Kevin Folta** ✓  
@kevinfolta

Follow

Replying to [@CGSportsfan](#)

[@Gray5Carl](#) [@microbiomom](#)  
[@tracyalanbaker](#) Wrong. My JOB is to work with companies, farmers, citizens, all. That's the land-grant mission.

3:16 PM - 11 Sep 2015



**Kevin Folta** ✓  
@kevinfolta

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Replying to [@JodiKoberinski](#) [@ScienceMarchDC](#)

And it is the mission of Land Grant Univ's to work with industry. No rules broken, no ethics breached.

4:14 AM - 23 Mar 2017



**Kevin Folta** ✓  
@kevinfolta

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Replying to [@Kevlarkent](#) [@dietwaldclaus](#) and 4 others

And don't forget, I work at a land-grant school, so my job is to work with industry. Judge what we do. Think a little deeper.

10:03 AM - 7 May 2017

## **EXHIBIT 6**

**Kent Fuchs**  
**Academic Freedom & Faculty Advocacy**  
**UF Faculty Senate Meeting**  
**10.15.15**

## **Introduction and Background**

Many of you may have followed the controversy earlier this fall surrounding Kevin Folta, professor and chairman of the UF Horticultural Sciences Department.

To recap very briefly: Dr. Folta, a vocal advocate for genetically modified organisms (GMOs), came under heavy attack when opponents of GMOs questioned his objectivity based on public records involving his dealings with the agribusiness giant Monsanto. *The New York Times* among many other national media outlets covered the story.

I had planned to discuss this at the Faculty Senate meeting in late August, but I was guest-lecturing in an undergraduate research class and didn't get to the Senate meeting until it had already concluded. I delivered the State of the University address in September, so this is my first chance to get back to the topic.

With the passing of time, the controversy has died down, offering a welcome opportunity for reflection and conversation. Also, the challenges Professor Folta faced raise issues that are confronting academia in general, and that will undoubtedly confront UF ... and I predict Kevin Folta and possibly some of you ... again. These issues surround faculty advocacy and academic freedom, and they bring in related matters of civil discourse, social media and public records.

Let me take these one at a time, starting with faculty advocacy ...

## **Faculty advocacy**

As scholars and researchers, our work often proves relevant and important to areas of concern or controversy in the public sphere, as is the case with Dr. Folta. This is true in the sciences, the social sciences and the humanities.

Sometimes, this is not just external to the university, but also internal.

In a small way, I personally was affected by these circumstances. In the first year of my appointment as an assistant professor 30 years ago in 1985, I wrote a proposal to a brand new federal entity called SDIO – the Strategic Defense Initiative Organization, sometimes called “Star Wars.” It had considerable funding. Some faculty at my university and nationally wouldn’t accept this funding. My personal experience was minor, and I wasn’t in the end negatively impacted.

Let me return to the public sphere. Society benefits from public debate that is informed by scholarship. I support faculty who engage in this informed research, share their knowledge and make their voices heard.

When their findings demand it, they have a right ... and even a responsibility ... to speak up. As I said at last month’s meeting in response to a question, I’m an advocate for advocacy!

But when faculty do engage as advocates in the public sphere, the rules change. They are not the rules of academic discussion and debate that we enjoy and are comfortable with. Others share our same rights to participate, and they do – often with great passion and sometimes in intemperate, uncivil or unfair ways. At worst, academic researchers and advocates can become victims of harassment and even violence.

Dr. Folta is a highly regarded scientist and an excellent department chair and administrator. I support him in his research and his eagerness to be an advocate for his position on GMOs, as I would support other faculty who are advocates in their area of scholarship. I condemn the extreme attacks, invective and harassment that were directed against him and his family, as I would condemn extreme attacks against any faculty member.

At the same time, I think the majority of these attacks ... as unfortunate as it is ... may come with the territory of being out-front as an advocate. We can’t control them ... the majority are legal ... but we can control how we communicate in our community and how we interact with outsiders.

## **Academic freedom and civility**

As a longtime faculty member, university leader and now president, I fully endorse and support the principles of academic freedom. I don't view the situation with Dr. Foltz as an academic freedom issue, since no leader at UF has questioned his right to advocate for GMOs or sought to punish him for doing so. Indeed, he had had many vocal supporters at the university.

That said, academic freedom has become an issue in other high profile cases involving faculty advocacy. Many of you may be aware, for example, of the ongoing controversy surrounding the University of Illinois's withdrawal of its appointment of Steven Salaita after he posted messages on Twitter that criticized Israel's incursion into Gaza in the strongest terms.

The university said it took the action because Dr. Salaita's comments were uncivil, representing "disrespectful and demeaning speech that promotes malice." He and his defenders contend that civility is simply a cover for the university to squash his voice and his viewpoint.

Dr. Salaita sued, a federal judge upheld the suit, and legal action continues. The Chancellor of the University of Illinois resigned late this summer and the Provost has subsequently resigned.

A sociologist by the name of the Keith Kahn-Harris published what I think is a smart piece about the Salaita case and the issue of civility last week in *The Chronicle for Higher Education*. In that piece, Dr. Kahn-Harris notes that the problem with deeply uncivil or abusive language is that it shuts off the possibility of conversation, and not just with those who are its targets.

Quoting Dr. Kahn-Harris, "...Such language makes any kind of dialogue with or empathy for those who disagree very difficult to achieve. It makes the scholarly effort to understand the other even harder. And aren't academics in the 'understanding the other' business?"

Dr. Kahn-Harris goes on to argue that it's in the self-interest of advocates to prize civility, since being uncivil tends to turn off those who are undecided or wavering. He sees the Salaita and related cases as "opportunities to begin a process of

thinking through how we might better communicate in a world in which the temptations to shut down communication are stronger than ever.”

Like Dr. Kahn-Harris, I feel that we should begin from a place of trying to empathize with those who oppose our positions, even if they are being unfair and uncivil.

This is partly based on my own experience. At my previous institution of Cornell, many of the faculty became bitterly divided over hydro fracking. The Cornell President and Provost were asked for their opinion on hydro fracking and we were urged to make a statement. We in turn suggested the faculty study the topic and publish their research.

Most of the faculty in the geology department supported it, but other faculty in other departments were vehemently opposed. The science wasn't advanced enough to resolve the debate, and the faculty started attacking one another. Ultimately, enemies were made, neither dialogue nor mutual understanding were advanced, and no one benefited.

Universities obviously should never violate the principles of academic freedom to punish views they find objectionable – and in my view they should take extreme caution in acting on quote “uncivil” behavior. “Civility” is a slippery slope that can be used to cast aspersions on someone who doesn't look or talk like us.

At the same time, faculty advocates should strive to emphasize, communicate and ‘understand the other.’” If universities fail to be places of civil discourse, what's left?

It's worth noting that the Salaita case and others like it involve statements and attacks on social media, and in particular Twitter. This was also true for the situation involving Kevin Folta.

Twitter has eliminated the middleman and given everyone the opportunity to make themselves and their opinions heard, and that's generally a good thing. But the immediacy of this form of communication ... the ability to instantly broadcast one's emotional responses across the world ... puts even more pressure on thoughtful and measured discourse.



## Public records

Dr. Folta and many other faculty researchers and advocates ... including faculty engaged in climate change research, for example ... have been targeted with massive public records requests by those opposed to their views.

I share many researchers' concerns about advocates exploiting public records laws to go on witch hunts for emails or other material that can be taken out of context to incriminate their targets. I also believe in the public's right to inquire and to know about publicly funded research at public institutions.

The public can gain access to these records through the federal Freedom of Information Act (FOIA) or through individual state public records laws. With regard to the latter, different states have different public records laws. This can be a challenge for faculty as they move from one state to another in their academic careers. For faculty in Florida, the public records law is very broad, with most correspondence and so on fully accessible to the public.

Some advocate changing public records laws to narrow the possibility for witch hunts. This has obvious practical difficulties, starting with changing law through state legislatures.

I have an alternative view. I believe faculty as a class should work to develop and follow an agreed-upon set of best practices and procedures for working in the public sphere – in other words, voluntary guidelines that would help faculty avoid major pitfalls whatever their state. Perhaps the AAUP, APLU, or a similar national faculty organization could take on this mantle. Since Florida's public records laws are so broad, this state might be a good place to develop these best practices or guidelines!

To recap ...

I support and defend Kevin Folta and all our faculty against unfair and unjust attacks

I am an advocate for scholarship-based faculty advocacy

We should never compromise academic freedom to punish alternative or opposing viewpoints, but we also need to prize empathy, understanding and civil discourse

In dealing with public records at UF and other universities nationwide, it would be helpful to have a set of voluntary guidelines that would help faculty avoid pitfalls and witch hunts

### **Future steps**

To continue this conversation, Provost Glover and I have asked Senate Chair Professor Davenport to arrange for a panel focused on faculty advocacy and academic freedom.

## **EXHIBIT 7**

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

**CHARLES GRAPSKI,,**

Plaintiff,

vs.

CASE NO.: **01-2005-CA-4005**

DIVISION: **J**

**J. BERNARD MACHEN**, in his official capacity  
As President of the University of Florida,

Defendant.

**ORDER ON EVIDENTIARY HEARING**

This cause came before the court for an evidentiary hearing on Plaintiff's Amended Complaint seeking an order compelling Defendant to produce certain public records and awarding him his attorney's fees and costs. Based upon the testimony of the witnesses, the documents received in evidence and a review of the entire case file, the court makes the following findings of fact and conclusions of law:

1. Plaintiff is a University of Florida doctoral candidate who teaches at the University of Florida on occasions. He is self described as politically active with a keen interest in the relationship between the University of Florida and Florida Blue Key, Inc., a private corporation. He desires to monitor that relationship including the flow and control of money between the two.

2. Defendant is the President of the University of Florida and is being sued in his official capacity.



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3. Plaintiff routinely sends numerous e-mails to Defendant and other officers and employees of the University of Florida expressing his concerns about various issues including his concerns about the relationship between the University of Florida and Florida Blue Key, Inc.

4. In an effort to monitor this relationship, Plaintiff sent numerous public records requests to Defendant and other University of Florida officials requesting documents about the relationship. The specific subjects of the hearing on Plaintiff's complaint and this order are two public records requests made by Plaintiff on June 7, 2005. These were an e-mail to Defendant (Exhibit "4") and an e-mail to Dr. Patricia Telles-Irvin, Vice President for Student Affairs (Exhibit "5"). The emails were identical in their request. Plaintiff sought from Defendant and Dr. Telles-Irvin the following documents in their possession or control:

[A]ny and all records held by or generated by your office with regard to the issue of the funding of Homecoming 2005, the related proposal to use the A&S fee, and the agency relationship of UF with Florida Blue Key, Inc.

5. On June 13, 2005, Steve Orlando, an employee in the University of Florida's News Bureau responded to the Plaintiff's public records requests by e-mail. He advised Plaintiff that Defendant had no records responsive to Plaintiff's request and that the documents in Dr. Telles-Irvin's possession or control responsive to his request were available for pickup. These documents were admitted into evidence as exhibit "1" which contained 43 pages. After receiving Steve Orlando's e-mail, Plaintiff testified that he dealt primarily with Steve Orlando regarding his public records requests.

6. Plaintiff picked up the documents and reviewed them. He e-mailed Dr. Telles Irvin on June 13, 2005 advising her that the production was incomplete. He identified documents he believed were public records which were not produced (Exhibit "6"). Plaintiff also testified that he again requested that Defendant produce documents responsive to the request.

7. On June 22, 2005, Steve Orlando e-mailed Plaintiff that Defendant did not have any documents responsive to the Plaintiff's requests.

8. On July 11, 2005, Plaintiff was advised that additional documents responsive to his request to Dr. Telles-Irvin were available for pickup. These documents were admitted into evidence as exhibit "2" which contained 38 pages.

9. Plaintiff continued to send e-mails to Defendant and Dr. Telles-Irvin stating that the production was not complete and that additional documents should be produced. Defendant advised Plaintiff by e-mail again on August 10, 2005 that his office had no documents responsive to Plaintiff's requests. On August 17, 2005, Steve Orlando e-mailed Plaintiff stating that Dr. Telles-Irvin and Defendant had produced all documents in their possession or control responsive to Plaintiff's requests and that no further documents would be forthcoming.

10. On October 20, 2005, Plaintiff sent an additional Public Records request "B" to Dr. Telles-Irvin requesting additional documents regarding the University of Florida and Florida Blue Key, Inc. This request was much broader in scope. He

requested, "ALL relevant University documents pertaining to FBK, Growl, and Homecoming."

11. On November 14, 2005, Plaintiff filed his amended complaint seeking an order from this court compelling Defendant to produce the documents responsive to his June 7, 2005 public records requests which he believed were not produced. He also sought an award of attorney's fees and costs. The Amended complaint was served by mail upon Defendant's counsel, John Devault, whose office is in Jacksonville, Florida.

12. On November 15, 2005, Steve Orlando advised Plaintiff by e-mail that documents responsive to his October 20, 2005 public records request "B" were available for pickup and that a fee of \$144.19 was being charged for copying and staff time for assembling the documents. Plaintiff did not pick these records up until the week of the evidentiary hearing of April 21, 2006, some five months later. These documents were admitted into evidence as exhibit "3" which contained 42 pages.

13. Defendant does not routinely maintain copies of documents, including e-mail communications he receives, that he forwards to his executive staff for handling. Defendant's executive staff members are his designee responsible for maintaining any public records pursuant to Chapter 119, Florida Statutes, Florida's Public Records Law. Dr. Telles-Irvin was Defendants' designee for the public records requested by Plaintiff on June 7, 2005.

14. The sole issue for determination by this court is if the Defendant, through his designee, "unlawfully refused to permit a public record to be inspected, examined, or



copied” and if Plaintiff had to file a civil action to require production of these public records. If the court determines that defendant did unlawfully refuse, then Plaintiff is entitled to production of the refused documents and he is entitled to reasonable costs of enforcement including reasonable attorney’s fees.

15. Plaintiff contends that the records produced by Defendant on November 15, 2005 responding to his October 20, 2005 contained documents which should have been produced in response to his June 7, 2005 requests. He also contends that the numerous e-mails from himself and others to Defendant and other University officials concerning 2005 homecoming are public records and should have been produced.

16. E-mails from Plaintiff and others to Defendant, Dr. Telles-Irvin, and other University of Florida officials raising concerns about issues, complaining about things, praising them or condemning them may or may not be “public records” within the meaning of the Public Records Act. The Florida Supreme Court has limited the definition of public records to: “those materials which constitute *records*- that is, materials that have been prepared *with the intent* of perpetuating or formalizing knowledge”, State v. City of Clearwater, 863 So.2d 149 (Fla. 2003). In City of Clearwater, *supra*, the Court was specifically speaking of e-mails on government computers. “Thus, it cannot merely the placement of the e-mails on the City’s computer system that makes the e-mail public records. Rather, the e-mails must have been prepared ‘in connection with official agency business’ and be ‘intended to perpetuate, communicate, or formalize knowledge of some type.’” City of Clearwater, *supra*.

17. Plaintiff contends that all e-mails, regardless of source, received by a public official concerning the agency are public records. He also seems to believe that it is his *intent* that his e-mails be formalized or perpetuated as knowledge within the agency which makes them public records. Accepting Plaintiff's interpretation, would lead to an unreasonable and unworkable result for public agencies. In this modern computer age with the ability of people to continually send e-mails to public officials and the problems all persons who own a computer face with "spam" and bulk mail, to hold that every e-mail a public official receives on his or her public computer mentioning the agency, is a public record is an absurd result. The mere fact that an e-mail is received by a public agency or official does not make it a public record.

18. If the public agency or official receives an e-mail and it is intended by that agency or official that the e-mail be acted upon by the agency or that its contents be perpetuated, communicated or formalized as knowledge within the agency, then it properly is to be considered a public record. Otherwise the e-mail is not a public record.

19. Plaintiff's public records requests of June 7, 2005 were very specific. He wanted documents regarding funding of homecoming 2005, the related proposal to use A&S fees and the agency relationship of the University of Florida and Florida Blue Key, Inc. The Defendant responded to this request twice, providing 81 pages of documents.

20. Plaintiff's public records request of October 20, 2005, was much broader in scope. He requested, "ALL relevant University documents pertaining to FBK, Growl,

and Homecoming.” The Defendant provided 42 pages of documents in response to this request.

21. The court has carefully reviewed exhibits “1, 2 & 3” and the e-mails from Plaintiff and others to Defendant and Dr. Telles-Irvin to determine if any of these documents support Plaintiff’s contention that Defendant “unlawfully” withheld production of public records which were responsive to his June 7, 2005 requests.

22. The only documents introduced into evidence which could conceivably support Plaintiff’s claim that Defendant unlawfully withheld public records would be any documents in exhibit “3” which were responsive to Plaintiff’s June 7, 2005 requests which had not previously been produced since the documents in exhibits “1” and “2” were produced by Defendant or his designee before the initial or amended complaint were filed. The documents in exhibit “3” were compiled in response to Plaintiff’s October 20, 2005 request and produced one day after Plaintiff’s amended complaint was served by mail. Plaintiff’s beliefs and supposition that other “public records” exist which are responsive to his June 7, 2005 requests are not evidence. Plaintiff failed to produce any evidence that any other “public records” exist which are responsive to his initial requests.

23. The only documents contained in exhibit “3” which could be considered as responsive to Plaintiff’s initial public records requests are: (a) a copy of a June 14, 2005 Independent Florida Alligator article titled: “VP vetoed bill, cuts Gator Growl Funding by \$200K”; (b) copy of University of Florida Student Senate, Student Body Law 2005-124, an amendment to the A&S Fee Budget dealing with a transfer from reserves to SGP to

fund 24,000 tickets to Gator Grawl; (c) copy of a June 1, 2005 Gainesville Sun article titled, "SG clears up confusion over source of funds"; (d) copy of Letter from Dr. Telles-Irvin to Randy Talbot appointing him to the Homecoming Advisory Committee along with a copy of a list of the committee members. At the hearing, Dr. Telles Irvin said copies of other appointment letters to the remaining committee member were missing, but they were identical to the Talbot letter. She did not know where there other copies were. Since there was no testimony that these copies existed at the time of the hearing, the missing copies are not public records. Skeen v. D'Alessandro, 681 So.2d 712 (Fla. 2d DCA 1995); (e) copy of a June 21, 2005 e-mail from Dr. Telles-Irvin to Linda Nielsen asking her to file an e-mail from an unknown person (the name was redacted), subject FBK Homecoming and Gator Grawl documents.; (f) copy of Gator Grawl/Homecoming Budget Analysis. This appears to be another iteration of two other budget analysis previously provided in exhibits "1 & 2"; and (g) copy of an e-mail dated June 2, 2005 from Defendant to Dr. Telles-Irvin forwarding a copy of Plaintiff's email to Defendant dated June 2, 2005, subject FBK getting A&S Fee money. Defendant's email to Dr. Telles-Irvin stated "This guy's not the one to pursue this but the issues are contained in his memo." The court finds that a, b, d, f, and g are records are public records which could be deemed responsive to Plaintiff's June 7, 2005 public records request since the agency intended that this information be perpetuated or formalized as knowledge. Item c is not responsive to the initial public records request since it dealt with Student government transfer of reserve funds and not A&S fees as plaintiff specifically requested.

Item e is not responsive to the initial request since it was an email from a student government officer wanting to develop a working relationship with Dr. Telles-Irvin, not with anything specifically requested by Plaintiff.

24. The question is whether the Defendant through his designed “unlawfully refused” inspection, examination or copying of these public records. The public records law is designed to allow citizens access to public records in a timely manner without the need for court intervention. It should be liberally construed in favor of production of the documents. No citation of authority is needed for these propositions. Every court knows this. However, common sense and reason must play a part in applying this statute to a set of facts. The legislature never intended this statute to be used as a hammer to club an agency or public official in a game of minutiae when a few documents are inadvertently omitted. Were there some public records that were not produced in the first two requests? Absolutely. Was this failure of production an unlawful refusal? Absolutely not. The record in this case clearly establishes that the Defendant and his designees made a good faith attempt to comply with the public records requests of Plaintiff. They acted in a timely manner and produced these documents. There was no evidence of a refusal to produce the records. Six documents produced in the third production by Defendant out of 123 pages produced do not prove an unlawful refusal or unlawful delay on Defendant’s part in producing the records. In fact, it shows that Defendant was still trying to produce documents responsive to Plaintiff’s requests. Plaintiff failed to produce any evidence that Defendant “unlawfully refused” or “unlawfully delayed” production or that his court

action was the catalyst which caused the documents to be produced. The evidence was that the records were timely produced in response to his public records requests.

25. Plaintiff's theory of this case is that if a record is missing, regardless of the reason, he is entitled to attorney's fees. He argues if the agency overlooks a document, even though it produces many documents responding to his request, or that the agency in good faith believes it has complied, but that a document later turns up responsive to his request, he is entitled to attorney's fees. This is not in keeping with the interpretation of the public records law. A finding of "unlawful" refusal or delay in producing public records requires some proof that the agency or public official took some action in hindering the production or took no action which resulted in an unlawful delay in production of the public records. In this case that proof is lacking. "Good faith" is recognized as a defense to a request for attorney's fees in cases where the agency refused production on a good faith belief that the requested documents were not public records. Alston v. City of Riviera Beach, 882 So.2d 436 ( Fla. 4<sup>th</sup> DCA 2004); Skeen v. D'Alessandro, 681 So.2d 712 (Fla. 2d DCA 1995). Dr. Telles-Irvin testified she made a good faith effort to comply with the public records requests of Plaintiff. The record indicates she did just that. If "good faith" is a defense to a refusal, surely it is a defense in a case where the Defendant is making a "good faith" attempt to produce. Inadvertence or misplacing a document is not a refusal or an unreasonable delay.

26. The six documents described in paragraph 23 were not produced by Defendant in response to Plaintiff's law suit. They were compiled and made available to

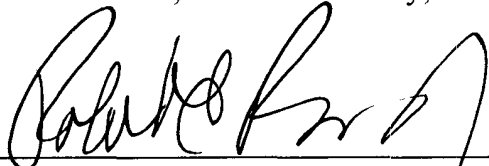
Plaintiff by Defendant on November 15, 2005 in response to Plaintiff's additional public records request of October 20, 2005. It is mere happenstance that the production and delivery occurred one day after Plaintiff filed his amended complaint. Plaintiff served his amended complaint by mail, therefore, this production was made before Defendant received Plaintiff's amended complaint.

27. Plaintiff failed to prove that Defendant or his designees unlawfully refused or delayed production of the public records he requested and he failed to prove that any other public records exist which were not produced. He is not entitled to costs or attorney's fees. Defendant is not entitled to attorney's fees in defending Plaintiff's suit. He is, however, entitled to recover costs as the prevailing party.

Accordingly, it is adjudged:

Plaintiff shall take nothing by this action. The court reserves jurisdiction for an award of costs to Defendant.

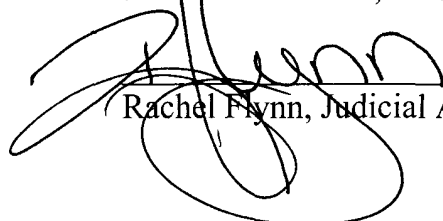
DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida,  
this 9<sup>th</sup> day of May, 2006.

  
\_\_\_\_\_  
**ROBERT E. ROUNDTREE, JR.,**  
Circuit Judge

Copy furnished by regular U.S. mail May 9, 2006 to:

GARY S. EDINGER, ESQUIRE  
305 NE 1<sup>ST</sup> STREET  
GAINESVILLE, FLORIDA 32601

JOHN A. DEVAULT, III, ESQUIRE  
101 EAST ADAMS STREET  
JACKSONVILLE, FLORIDA 32202

  
\_\_\_\_\_  
Rachel Flynn, Judicial Assistant



## **EXHIBIT 8**

IN THE CIRCUIT COURT, EIGHTH  
JUDICIAL CIRCUIT, IN AND FOR  
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-2006-CA-1573  
DIVISION: W

ENVIRONMENTAL TURF, INC.,

Plaintiff,

v.

UNIVERSITY OF FLORIDA BOARD OF  
TRUSTEES, INSTITUTE OF FOOD &  
AGRICULTURAL SCIENCES, an agency  
of the State of Florida, and FLORIDA  
FOUNDATION SEED PRODUCERS, INC., a  
not-for-profit corporation chartered  
by the State of Florida,

Defendant.

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**DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant University of Florida Board of Trustees,  
Institute of Food & Agricultural Sciences ("UF/IFAS"), submits  
this supplemental memorandum in support of its Motion for  
Summary Judgment filed on July 6, 2009 and in response to the  
questions raised at the July 27, 2009 hearing on Plaintiff's  
and Defendant's respective motions for summary judgment.

At the hearing on Plaintiff's and Defendant's pending  
motions for summary judgment, the Court withheld ruling on the  
parties' motions pending submission of a privilege log

Case: 2006 CA 001573



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identifying any documents withheld from production by Florida Foundation Seed Producers, Inc. ("FFSP"). Simultaneous herewith, in accordance with the Court's direction, a privilege log of the FFSP documents withheld from production is being filed.<sup>1</sup> The FFSP privilege log sets forth one internal FFSP e-mail relating to patents and 3 patent applications that were withheld from production based on the DSO exemption in Florida Statutes section 1004.28(5). The withheld e-mail is between Berry Treat, Germplasm Manager of FFSP and Tom Stadsklev, Executive Director of FFSP and as hereinafter shown is confidential and exempt from Chapter 119. The three patent applications, as FFSP documents, were likewise confidential and exempt from Chapter 119.<sup>2</sup>

Section 1004.28(5) provides "All records of the organization other than the auditor's report, management letter, any supplemental data requested by the Board of Governors, the University Board of Trustees, the Auditor

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<sup>1</sup> UF/IFAS filed its privilege log on November 20, 2006 and it has never been challenged. The log listed documents that were withheld as exempt pursuant to Florida Statutes sections 1004.22(2) and 119.071(1)(d).

<sup>2</sup> As a result of the passage of time since Plaintiff's public records request to FFSP, one of the patent applications, Zoysiagrass Plant "1BA-189," is now a public record available on-line through the U.S. Patent Office.

General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from the provisions of s. 119.07(1)."<sup>3</sup> This court has previously ruled (and been affirmed) that FFSP as a DSO is entitled to the statutory exemption for production of its records. (Jan. 10, 2007 Order on FFSP's Motion to Dismiss, affirmed Environmental Turf, Inc. v. University of Florida Board of Trustees, et al., 974 So.2d 1071 (Fla. 1st DCA 2008) (per curiam)). As records of FFSP, the 4 documents withheld were exempt from production under Chapter 119 at the time of the request for records by Plaintiffs.

In response to Environmental Turf's September 2005 requests under Chapter 119 and after Environmental Turf had inspected the records compiled by UF/IFAS and FFSP, some 1,652 copies of records were provided to Environmental Turf in October 2005. (Nov. 2009 Aff. of L. Knight.) Despite the production of over 1,600 copies, Environmental Turf contends that there are more responsive records. In particular, at the July hearing, Environmental Turf argues that there are FFSP records which were withheld from the public records production

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<sup>3</sup> In accordance with Florida Statutes section 1004.28(5), FFSP produced its audit records. (Nov. 2009 Aff. of L. Knight.)

by FFSP and which are not protected by the DSO exemption.<sup>4</sup> Environmental Turf asserts that any FFSP document which was shared with or received by any University employee (or which may be housed in McCarty Hall), is a UF/IFAS document subject to production. Regardless of whether such is the case, UF/IFAS previously presented a sworn declaration which provided that if any FFSP documents had been shared outside of FFSP with UF/IFAS, they were compiled for production unless protected by the research or litigation/attorney-client exemption.<sup>5</sup> (July 2009 Aff. of L. Knight at ¶ 9.)

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<sup>4</sup> In paragraph 27 of its Amended Complaint, Environmental Turf asserts that "licenses, bid requests, bid documents, bids, agreements, memorandum of understanding, or other contracts relating to new or developing grass cultivars in general, and with regard to the December, 2004, bid request in particular" were not produced. (Amd. Compl. ¶ 27.) Assuming Plaintiff is referring to any agreements or contracts relating to new turfgrass cultivar development with a third-party other than Plaintiff, no such documents exist. (See Depo. of K. Kenworthy at 6, 11. 20-24: Q.: Are you aware of any turfgrass cultivar development at UF that is being done as a part of a partnership or a contractual relationship with a third-party private entity currently? A: No.) As to documents in connection with the December 2004 bid request, all such documents were in fact either produced or identified on the UF/IFAS privilege log. (Nov. 2009 Aff. of L. Knight at ¶ 8, identifying correspondence re: proposal and Research Agreement as produced; Nov. 2009 Aff. of L. Knight at ¶ 9, identifying correspondence re: proposal as exempt; see also exhibits A, B, C, D, E, and F to Amended Complaint.)

<sup>5</sup> Although FFSP records have been treated as UF/IFAS records in instances where shared, "the mere fact that an employee of a public agency temporarily possesses a document

Environmental Turf, however, questioned the particulars of "who" at UF/IFAS. As set forth in Leslie Knight's subsequent affidavit filed herewith, she identified the UF/IFAS personnel as including Joe Joyce (Associate Vice President, IFAS), Jimmy Cheek (Past Senior Vice President for Agriculture and Natural Resources, IFAS), Richard Jones (Past Interim Vice President, IFAS and Director of FAES, Dean of Research, IFAS), and Mark McLellan (Dean of Research and Director of FAES) and stated that FFSP documents shared with these personnel were treated as UF/IFAS documents. (Nov. 2009 Aff. of L. Knight at ¶ 7.)

Environmental Turf insists, however, that disclosure to Berry Treat or Tom Stadsklev would likewise make any FFSP document a UF/IFAS document as Treat and Stadsklev are University employees. Although Treat and Stadsklev are University employees, they are designated by the University as FFSP personnel. (B. Treat depo. at 7-8; T. Stadsklev depo. at 20.) Berry Treat served as Germplasm Manager of FFSP (B. Treat depo. at 3) and Tom Stadsklev serves as Executive

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does not necessarily mean that the person has custody as defined by sec. 119.07." Mintus v. City of West Palm Beach, 711 So.2d 1359, 1361 (Fla. 4th DCA 1998). In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping, or guardianship.

Director of FFSP (T. Stadsklev depo. at 3). Such an arrangement is specifically contemplated and provided for in Florida Statute section 1004.28(2)(a). Section 1004.28 provides that any university may provide to its direct-support organization the use of university personal services, including full-time or part-time personnel as well as payroll processing. Accordingly, Treat and Stadsklev's employment by the University does not render their service to FFSP and possession of FFSP documents as a waiver of the DSO exemption set forth in Florida Statute section 1004.28(5). Regardless, as noted on the privilege log of FFSP's, only one such document was withheld.

There is no material dispute as to the evidence before the court. The issue presented is purely a question of law. UF/IFAS has produced all its documents not protected by an exemption. As Environmental Turf has not and cannot make an evidentiary showing that there exists within UF/IFAS the custody and control of documents responsive to the public records request that have not been produced and whose production may be compelled, this action should be dismissed and summary judgment should be entered in favor of UF/IFAS.

WHEREFORE, Defendant University of Florida Board of Trustees, Institute of Food and Agricultural Sciences,



requests that final summary judgment be entered in its favor and against Plaintiff Environmental Turf, Inc. (without the necessity of a further hearing) and that the Court reserve judgment to award Defendants their costs.

Respectfully submitted,

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE  
Professional Association

By

  
John A. Devault, III

Florida Bar No. 103979

Courtney K. Grimm

Florida Bar No. 953740

The Bedell Building

101 East Adams Street

Jacksonville, Florida 32202

Telephone: (904) 353-0211

Facsimile: (904) 353-9307

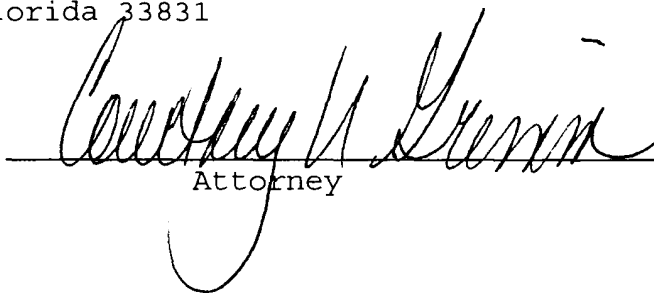
**Attorneys for The University of Florida  
Board of Trustees, Institute of Food &  
Agricultural Sciences**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail, this 16<sup>th</sup> day of February, 2010 to:

Hank B. Campbell  
Valenti, Campbell, Trohn,  
Tamayo & Aranda, P.A.  
1701 South Florida Avenue  
Lakeland, Florida 33803

Jonathan W. Stidham  
Stidham & Stidham, P.A.  
Post Office Box 510  
Bartow, Florida 33831

  
Attorney

## **EXHIBIT 9**

IN THE CIRCUIT COURT, EIGHTH  
JUDICIAL CIRCUIT, IN AND FOR  
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-2006-CA-1573  
DIVISION: W

ENVIRONMENTAL TURF, INC.,

Plaintiff,

v.

UNIVERSITY OF FLORIDA BOARD OF  
TRUSTEES, INSTITUTE OF FOOD &  
AGRICULTURAL SCIENCES, an agency  
of the State of Florida, and FLORIDA  
FOUNDATION SEED PRODUCERS, INC., a  
not-for-profit corporation chartered  
by the State of Florida,

Defendant.

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**NOTICE OF FILING**

Defendant University of Florida Board of Trustees,  
Institute of Food and Agricultural Sciences, by and through  
its undersigned attorneys, hereby gives notice of the filing  
of the original Affidavit of Leslie Knight in support of  
Defendant's Motion for Summary Judgment:

This 6<sup>th</sup> day of July, 2009.

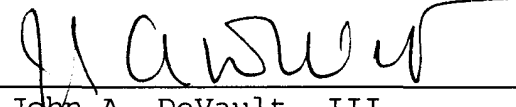
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W. B. FLETCHER  
JUL 6 2009  
10:00 AM

Case: 2006 CA 001573  
00074928278  
Dkt: AF01-R

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BEDELL, DITTMAR, DeVAULT, PILLANS & COXE  
Professional Association

By

  
John A. DeVault, III  
Florida Bar No. 103979  
Courtney K. Grimm  
Florida Bar No. 953740  
The Bedell Building  
101 East Adams Street  
Jacksonville, Florida 32202  
Telephone: (904) 353-0211  
Facsimile: (904) 353-9307

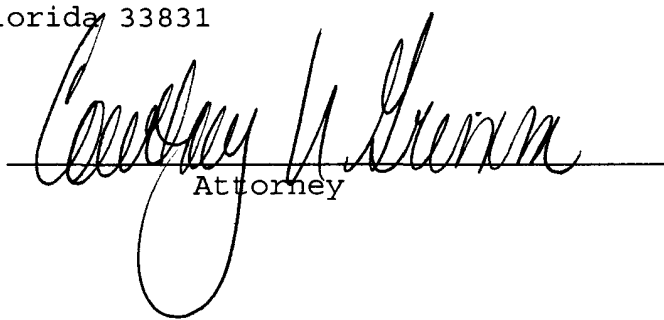
**Attorneys for The University of Florida  
Board of Trustees, Institute of Food &  
Agricultural Sciences**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing ~~has~~ been  
furnished by Facsimile and Federal Express, this 6<sup>th</sup> day of  
July, 2009 to:

Hank B. Campbell  
Valenti, Campbell, Trohn,  
Tamayo & Aranda, P.A.  
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and FLORIDA FOUNDATION SEED  
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corporation chartered by the  
State of Florida,

Defendant.

AFFIDAVIT OF LESLIE KNIGHT

STATE OF FLORIDA

COUNTY OF ALACHUA

**BEFORE ME**, the undersigned authority, personally appeared  
Leslie Knight, who, being first duly sworn, says:

1. I am a resident of Alachua County, Florida, and am  
over twenty-one (21) years of age. I am competent to testify  
as to the matters set forth herein.

2. I have personal knowledge of the matters set forth herein.

3. During the summer and fall of 2005, I was associate general counsel for the University of Florida. As associate general counsel, I provided representation for University of Florida, Institute of Food and Agricultural Sciences ("UF/IFAS") and Florida Foundation Seed Producers, Inc. ("FFSP").

4. In connection with my representation of UF/IFAS, I received a copy of an August 29, 2005 Public Records Request to UF/IFAS and a September 14, 2005 Supplemental Request to UF/IFAS. A copy of the August 29, 2005 request is attached hereto as Exhibit A and a copy of the September 14, 2005 request is attached hereto as Exhibit B.

5. In connection with my representation of FFSP, I received a copy of a September 14, 2005 Public Records Request directed to FFSP. A copy of the request is attached hereto as Exhibit C.

6. In response to the three records requests, Berry Treat, the Germplasm manager of FFSP and assistant director of



research programs at IFAS at the time, coordinated the gathering of the documents.

7. Once the documents were gathered, Mr. Treat and I reviewed the three requests and then reviewed every document that had been gathered to determine whether it was responsive to the requests and if so, whether any exemptions applied.

8. The exemptions that we considered were Florida Statute § 1004.22(2), the research exemption; Florida Statute § 119.071(1)(d), the litigation/attorney-client exemption; and Florida Statute § 1004.28(5), the Direct Support Organization ("DSO") exemption.

9. In reviewing FFSP's documents, if the documents had been shared outside of FFSP with UF/IFAS, we reviewed them as UF/IFAS documents and compiled them for production unless protected by either the research exemption (§ 1004.22(2)) or the litigation/attorney-client exemption (§ 119.071(1)(d)).

10. After we completed our review of the documents, the UF/IFAS documents which were exempt from production pursuant to Florida Statutes § 1004.22(2) and § 119.071(1)(d) were withheld from production, while the responsive non-exempt UF/IFAS documents were made available to Plaintiff and its

counsel for inspection. Likewise, the FFSP documents which were exempt from production pursuant to Florida Statute § 1004.28(5) were withheld from production, while the responsive non-exempt FFSP documents were made available to Plaintiff and its counsel for inspection.

11. On October 14, 2005, I confirmed in writing to Plaintiff's counsel that Plaintiff would be inspecting the records on October 18, 2005 and that the records exempt pursuant to Florida Statutes § 1004.28(5), § 1004.22(2), and § 119.071(1)(d) would not be provided. A copy of my October 14, 2005 correspondence is attached hereto as Exhibit D.

12. Thereafter, in accordance with the Court's October 11, 2006 Order, which provided that a privilege log should be filed with regard to UF/IFAS documents withheld as exempt, I assisted in the preparation of a privilege log for any UF/IFAS documents (including any FFSP documents furnished to UF/IFAS) withheld from production on the basis of an exemption. A copy of the privilege log filed on or about November 20, 2006 is attached hereto as Exhibit E.

13. In paragraph 27 of Environmental Turf's Amended Complaint, it alleges that UF/IFAS failed to produce "virtually all of the records requested with regard to UF or FFSP licenses, bid requests, bid documents, bids, agreements, memorandum of understanding or other contracts relating to new or developing grass cultivars in general, and with regard to the December, 2004, bid request in particular."

14. If such documents existed and were UF/IFAS documents responsive to the public records requests, they were either produced by UF/IFAS or were included on UF/IFAS' privilege log (Exhibit E) as exempt pursuant to Florida Statute § 1004.22(2) or § 119.071(1)(d).

15. If such documents existed and were FFSP documents responsive to the public records requests, they were withheld from production on the basis of the DSO exemption (Fla. Stat. § 1004.28(5)). If such documents were FFSP documents deemed to be documents of UF/IFAS, those documents would still have been withheld from production as exempt due to the research exemption set forth in Florida Statute § 1004.22(2) as they are documents that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, business transactions, or proprietary information in connection with research.

FURTHER AFFIANT SAYETH NOT.

Leslie H. Knight  
Leslie Knight

STATE OF FLORIDA

COUNTY OF ALACHUA

Sworn to and subscribed before me this 2<sup>nd</sup> day of ~~June~~ July, 2009, by Leslie Knight, who is personally known to me and who took an oath administered by me.

(NOTARY SEAL)



Marilyn B. Henderson  
(Signature of Notary)

MARILYN B. HENDERSON  
(Type Name of Notary)