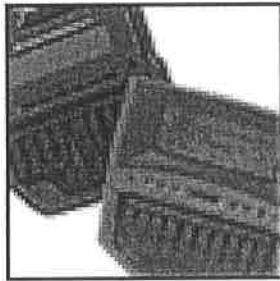


EXHIBIT G

American Freedom Defense Initiative v. SMART

Deponent: **Beth Gibbons**

Taken: **6/25/2013**



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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN

3
4 AMERICAN FREEDOM DEFENSE 2:10-cv-12134-DPH-MJH
5 INITIATIVE; et al., Hon. Denise Page Hood

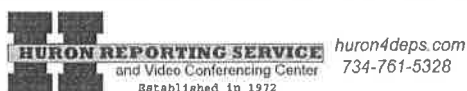
6
7 Plaintiffs, Magistrate Judge
8 vs. Hluchanuik

9 SUBURBAN MOBILITY AUTHORITY
10 for REGIONAL TRANSPORTATION
11 ("SMART"), et al.,

12
13 Defendants.

14 - - - - - /
15 Pages 1-103

16
17 The Deposition of Beth Gibbons, taken pursuant
18 to Notice in the above-entitled cause at 623 West
19 Huron Street, Ann Arbor, Michigan, on June 25, 2013,
20 at 9:00 a.m., before Carol Marie Hicks, CSR-3345,
21 Notary Public in and for the County of Livingston.



	Page 2		Page 4
1 APPEARANCES: 2 3 ROBERT J. MUISE (P62849) 4 AMERICAN FREEDOM LAW CENTER 5 P.O. Box 131098 6 Ann Arbor, Michigan 48113 7 734.635.3756 8 rmuise@americanfreedomlawcenter.org 9 Appearing on behalf of the Plaintiffs. 10 11 CHRISTIAN E. HILDEBRANDT (P46989) 12 VANDEVEER GARZIA, P.C. 13 1450 West Long Lake Road, Suite 100 14 Troy, Michigan 48098 15 248.312.2800 16 childebrandt@vgplaw.com 17 Appearing on behalf of the Defendants. 18 19 20 21 22 23 24 25	1 INDEX TO EXAMINATIONS 2 Witness Page 3 BETH GIBBONS 4 EXAMINATION BY MR. MUISE 5 5 6 7 EXHIBITS 8 Deposition Exhibits Page 9 GIBBONS EXHIBIT 42 Plaintiffs' Amended Notice 5 10 of Deposition of Defendant 11 Beth Gibbons 12 GIBBONS EXHIBIT 43 Transportation 46 13 Communications Newsletter, 14 dated Friday, April 26, 2010 15 GIBBONS EXHIBIT 44 Miami-Dade Transit article, 47 16 dated 4-16-10 17 GIBBONS EXHIBIT 45 Emails, dated May 24, 2010, 54 18 from Pamela Geller and 19 Beth Gibbons 20 GIBBONS EXHIBIT 46 Email from Pamela Geller to 57 21 Robert Hawkins, dated May 27, 22 2010 23 24 (Attached.) 25		
1 APPEARANCES: (cont'd.) 2 3 AVERY E. GORDON (P41194) 4 SMART 5 535 Griswold Street, Suite 600 6 Detroit, Michigan 48226 7 313.223.2100 8 agordon@smartbus.org 9 Appearing on behalf of the Defendants. 10 11 ALSO PRESENT: DANIEL J. PIEDRA 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 Ann Arbor, Michigan 2 June 25, 2013 3 At or about 9:00 a.m. 4 BETH GIBBONS, 5 having first been duly sworn, was examined and testified 6 on her oath as follows: 7 (Gibbons Deposition Exhibit No. 42 8 was marked for identification.) 9 EXAMINATION 10 BY MR. MUISE: 11 Q Good morning, ma'am. My name is Robert Muise, and 12 I'm an attorney representing the plaintiffs in this 13 case, the plaintiffs being the American Freedom 14 Defense Initiative, Robert Spencer, and Pamela 15 Geller. 16 I'm going to be asking you some 17 questions during the course of this deposition. I 18 believe we sort of met during the preliminary 19 injunction hearing where you testified previously. 20 At the deposition today, to my right, 21 is Dan Piedra, who is an assistant with my office at 22 the American Freedom Law Center, and then to his 23 right is Avery Gordon, who is an attorney 24 representing SMART, and to his right is 25 Mr. Christian Hildebrandt, who I understand is going		

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1 to be representing you today.
2 Could you please state your full
3 name, for the record.
4 A Beth Ann Gibbons.
5 Q Is your first name Elizabeth, or you just go by
6 Beth?
7 A It's just Beth.
8 Q And, ma'am, you've previously testified under oath
9 at the preliminary injunction hearing, correct?
10 A Yes.
11 Q Have you ever given a deposition before?
12 A Yes.
13 Q How many times?
14 A Once.
15 Q And what was the case?
16 A It was an employment matter, but it was not one of
17 my employees.
18 Q Employment matter at SMART?
19 A At SMART.
20 Q So do you understand that today your testimony is
21 given under oath as if you were testifying in a
22 court of law?
23 A Yes.
24 Q And to your right is our court reporter, and perhaps
25 one of the most important people in this room, and

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1 she is diligently taking down everything that is
2 said during the course of this deposition;
3 consequently, there are a few ground rules, that I'm
4 sure you're familiar with, having testified
5 previously in court and at deposition, but I think
6 it would be worthwhile to review those briefly so
7 hopefully we can have a clean record today, okay,
8 ma'am?
9 The first, perhaps most important,
10 rule is that only one of us should be talking at a
11 time. There's a tendency in normal conversation
12 that, when somebody's asking a question, you may
13 anticipate the question and want to start answering
14 before the whole question is asked. I'd ask you to
15 refrain from that tendency, let me get my complete
16 question out, and then start answering, and I will
17 likewise do the same and not ask a follow-up
18 question until you're done completely answering,
19 okay, ma'am?
20 A Okay.
21 Q And it's going to be important that the two of us
22 speak up and speak as clearly as we can, so, again,
23 our court reporter can hear everything, okay, ma'am?
24 A Sure.
25 Q If I ask you a question and you don't understand the

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1 question, my Boston accent still is kind of
2 lingering and I cut words off or I sometimes speak
3 too quickly, I apologize ahead of time to our court
4 reporter, let me know. I want to make sure you
5 completely understand my questions before answering,
6 okay, ma'am?
7 A Yes.
8 Q And if there's a document that might help you to
9 more fully answer a particular question, let me
10 know. There might be a good chance that I have it
11 here in my box, and I want to make sure that your
12 answers are as full and complete as possible today,
13 okay, ma'am?
14 A Okay.
15 Q If you need a break during the course of the
16 deposition at any time, please let me know. This is
17 not enhanced interrogation, by any stretch. The
18 only caveat being that, if we're in the middle of a
19 question and answer, I'd ask you complete answering
20 the question before we take a break, okay?
21 A (Witness nodded head.)
22 THE COURT REPORTER: Is that a "yes"?
23 A Yes.
24 Q That was the next thing I was going to bring up, so
25 there's a good example. You got to make sure that

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1 you respond to the questions using words, not head
2 gestures, 'cause the court reporter can't take down
3 gestures, and refrain from answering questions
4 "um-hum" or "uh-huh"; use "yes," "no," so that way
5 we can tell from the record at the end whether it's
6 an affirmative response or a negative response,
7 okay, ma'am?
8 A Okay.
9 Q Is there any reason that you can think of, as you're
10 sitting here today, why it might be difficult for
11 you to fully understand and answer my questions,
12 meaning are you under any doctor's care, do you have
13 any personal issues? I don't need to know any
14 details. I just want to make sure, as you're
15 sitting here today, that you're going to be able to
16 fully understand and answer my questions. Is there
17 anything you can think of that would prevent you
18 from fully understanding and answering my questions
19 here today?
20 A No.
21 Q In preparation for this deposition, did you review
22 any documents to help you refresh your recollection
23 of the events related to this litigation?
24 A Yes.
25 Q And could you tell me what those documents were,

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1 ma'am.
2 A The Sixth Court opinion, the depositions of Pam
3 Geller and Anthony Chubb. I think that's it.
4 Q And is your understanding --
5 A Oh, the production documents, I'm sorry.
6 Q When you say, "production documents," are those the
7 documents that were produced by SMART?
8 A Correct.
9 Q And just so we're clear, I've been using the term
10 "SMART"; you understand that stands for Suburban
11 Mobility Authority for Regional Transportation,
12 correct?
13 A Yes.
14 Q And SMART is one of the defendants in this case?
15 A Yes.
16 Q And is it okay with you if I use the acronym SMART
17 through the course of this deposition to help speed
18 things along?
19 A Yes.
20 Q Now, the production you're referring to is the
21 production that SMART provided to plaintiffs in this
22 case?
23 A Yes.
24 Q Now, you refer to the deposition transcript of
25 Anthony Chubb; is it your understanding that

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1 Mr. Chubb was designated to be the witness to
2 testify on behalf of SMART?
3 A Yes.
4 Q So, in fact, that was the SMART deposition that you
5 technically reviewed, correct?
6 A Correct.
7 Q Any other documents that you reviewed to help you
8 refresh your recollection of events related to this
9 litigation?
10 A No.
11 Q Now, ma'am, how are you currently employed?
12 A I am the manager of marketing communications at
13 SMART.
14 Q How long have you held that position?
15 A Five years, I believe.
16 Q Was that the position you held when my clients'
17 advertisement was presented to SMART for display?
18 A No, I had a different title.
19 Q And what was your title at that time?
20 A I think it was a marketing program manager.
21 Q Is the position you hold now, is it an elevated
22 position from the one you held previously as the
23 marketing program manager?
24 MR. HILDEBRANDT: Object; vague.
25 A Not sure what you mean by "elevated."

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1 BY MR. MUISE:
2 Q Certainly. Who held the position of manager of
3 marketing and what was the full title you have?
4 A Marketing communications. That title didn't exist
5 at that time.
6 Q Well, the title you hold now, was that a promotion
7 from the position you held previously?
8 A Probably.
9 Q Is there somebody who is the marketing program
10 manager today?
11 A No.
12 Q How long have you worked with SMART?
13 A 20 years.
14 Q Are your job duties different from when you were
15 their marketing program manager to your position now
16 as the manager of marketing and communications?
17 A Yes.
18 Q What has changed between the two?
19 A I'm now responsible for all of the marketing and
20 communication that go out to the, externally and
21 internally.
22 Q And what were your duty and responsibilities as the
23 marketing program manager?
24 A I was responsible for smaller pieces of programs
25 that we ran.

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1 Q Was one of those programs advertising on SMART buses
2 and bus shelters?
3 A Yes.
4 Q Do you still have responsibility over that
5 advertising in your present position?
6 A Yes.
7 Q And when you were the marketing program manager, who
8 was your boss, the person you report to directly?
9 A Elizabeth Dryden.
10 Q Does she go by "Beth" as well?
11 A Yes.
12 Q I shouldn't say "as well," but we understand. Now,
13 does Elizabeth Dryden currently work for SMART?
14 A No.
15 Q Do you know when she left SMART?
16 A 2010, I believe. Yes.
17 Q Did you essentially take over her position, then,
18 when she left?
19 A Yes.
20 Q You seem hesitant, was there --
21 A Well, I didn't get the title.
22 Q What was her title?
23 A Director of external affairs.
24 Q Do you currently have a director of external
25 affairs?

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1 A No.
2 Q Now, when you were the marketing program manager,
3 who was the general manager for SMART?
4 A John Hertel.
5 Q Is he currently the general manager for SMART?
6 A Yes.
7 Q Do you know how long he's been the general manager
8 for SMART?
9 A Not really.
10 Q Has it been the whole 20 years that you've been
11 there?
12 A No.
13 Q Has it been more than ten years?
14 A No.
15 Q Do you know if he was the general manager when my
16 clients' advertisement was, and this is the "leaving
17 Islam" advertisement, was presented to SMART for
18 display?
19 A Yes.
20 Q Ma'am, I hand you what's been previously marked as
21 Exhibit No. 42, 'cause I'm running my plaintiffs'
22 exhibits consecutively from the other deposition of
23 SMART.
24 MR. MUISE: Counsel, you can take a
25 quick look at that.

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1 BY MR. MUISE:
2 Q Have you seen this document prior to today, ma'am?
3 A Yes.
4 Q And I'll just represent to you this is the
5 deposition notice by which your deposition is being
6 taken today; is that your understanding?
7 A Yes.
8 MR. HILDEBRANDT: She did not see
9 this one prior to today. This was just issued last
10 night. She saw a notice of deposition, but it
11 wasn't this one.
12 BY MR. MUISE:
13 Q But you understand -- and the difference between
14 this one and the last one, I'll represent to you,
15 was the change of the location because of our court
16 reporter issue. But you understand you're here
17 today pursuant to a deposition notice?
18 A Yes.
19 Q And I'll represent to you that this is the latest
20 deposition notice, which identified this location
21 for the deposition.
22 In the defendants' initial
23 disclosures to plaintiffs, they indicated, they
24 identified you as a potential witness with personal
25 knowledge, and they indicated that you have personal

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1 knowledge of SMART's policies and the application
2 thereof; is that a correct statement?
3 A Yes.
4 Q And the policy that will be at issue in this case is
5 the advertising guidelines; you understand that?
6 A Yes.
7 Q And do you have personal knowledge of SMART's
8 application of the advertising guidelines?
9 A Yes.
10 Q In fact, in your position as marketing program
11 manager, you were required at times to apply those
12 guidelines to various advertising; is that correct?
13 A Yes.
14 Q And do you still have that responsibility today in
15 the position that you're holding now?
16 A Yes.
17 Q I'm handing you what's been previously marked as
18 Exhibit No. 2 from the SMART/Chubb, too, but it's
19 from the SMART deposition, Exhibit No. 2; if you'll
20 take a look at that. Do you recognize the
21 advertisement depicted on page two of Exhibit 2 to
22 be my clients' advertisement at issue in this case?
23 A Yes.
24 Q And just for completeness, I'm handing you what's
25 been marked previously as Exhibit SS from the Geller

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1 deposition; is that the same advertisement at issue?
2 A Yes.
3 MR. HILDEBRANDT: How is it you have
4 the original exhibits from Geller's deposition?
5 MR. MUISE: I don't.
6 MR. HILDEBRANDT: Okay.
7 MR. MUISE: It's a photocopy.
8 BY MR. MUISE:
9 Q I'm handing you what's been previously marked as
10 Exhibit No. 3 from the SMART/Chubb deposition; do
11 you recognize what that document depicts, ma'am?
12 A Yes.
13 Q And does this contain, this Exhibit No. 3, contain
14 the advertising guidelines at issue in this case?
15 A Yes.
16 Q And if you look on the third page of the exhibit,
17 but it's marked as page 40 at the bottom, and it
18 says, "5.07, Advertising Guidelines; do you see
19 that, ma'am?
20 A Yes.
21 Q And those advertising guidelines identified under
22 section 5.07, those are the guidelines that were
23 used to deny my clients' advertisement in this case;
24 is that correct, ma'am?
25 A Yes.

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1 Q And which of the guidelines, is it your
2 understanding, that were employed to deny my
3 clients -- and just for the purpose of this
4 deposition, the advertisement that's at Exhibit SS
5 and Exhibit 2 that we identified as my clients'
6 advertisement, I'm going to refer to it as the
7 leaving Islam advertisement; is that okay with you,
8 ma'am?
9 A Sure.
10 Q So which of the guidelines under section 5.07 of
11 Exhibit 3 were employed to deny my clients' leaving
12 Islam advertisement?
13 MR. HILDEBRANDT: We've already
14 produced a witness on behalf of SMART under Rule
15 30(b)(6) who has testified to this. As she's
16 testifying to this today, she's not binding SMART in
17 any way.
18 MR. MUISE: You can believe that, if
19 you want. She's a defendant in this case, and we'll
20 let the Court decide how binding her statements are
21 on the defense in this case.
22 MR. HILDEBRANDT: Certainly she's
23 binding on the defendant, but she's not being
24 produced as the witness on behalf of SMART today.
25 MR. MUISE: I understand that. But

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1 that's not a stipulation I will agree to.
2 MR. HILDEBRANDT: I get that.
3 MR. MUISE: I disagree with your
4 proposal. You can state it for the record, if you'd
5 like, but that's fine. We'll deal with that with
6 the summary judgment motions.
7 MR. HILDEBRANDT: The witness is here
8 to give her personal knowledge. Go ahead and tell
9 him, if you can.
10 A I believe it was section 5.07, B, one and four.
11 BY MR. MUISE:
12 Q What was it about my clients' advertisement that
13 was, looking at 5.07, B, one, political or political
14 campaign advertising? What was it that, is your
15 understanding, as to what made my clients' leaving
16 Islam advertisement political or political campaign
17 advertising?
18 A It was the use of "fatwa on your head" that was
19 deemed to be political, and then the website, the
20 actual website and the references within the
21 website.
22 Q And what was it about "fatwa on your head" that
23 makes this advertisement political?
24 A Fatwa is a legal mandate under Sharia law, and that
25 makes it political.

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1 Q When did you come to an understanding that a fatwa
2 is a legal mandate under Sharia law?
3 A In preparing for this today.
4 Q Did you know that a fatwa was a legal mandate under
5 Sharia law back when my clients' advertisement was
6 declined by SMART?
7 A No.
8 Q And then you mentioned the website; what is it that
9 was on the website that made this advertisement a
10 political advertisement?
11 A Because they were advocating for a particular side.
12 Q Did you review the website back when my clients'
13 advertisement was originally declined by SMART?
14 A I may have. I don't really recall.
15 Q What do you recall about being on the website when
16 you reviewed it back when my clients' advertisement
17 was denied?
18 MR. HILDEBRANDT: Asked and answered.
19 A I couldn't tell you.
20 BY MR. MUISE:
21 Q How did you learn to testify here today that there
22 was something on the website that SMART used to
23 determine this advertisement was political?
24 MR. HILDEBRANDT: I'm going to object
25 to the form of the question. How did you learn to

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1 testify today?
2 MR. MUISE: Is that what said? What
3 was the question, ma'am?
4 (The last question was read back.)
5 MR. HILDEBRANDT: Same objection. Go
6 ahead.
7 A How did I learn today that -- can you repeat the
8 question. I'm not sure I understood it.
9 BY MR. MUISE:
10 Q Okay. Let me try rephrasing it, it might help. You
11 testified that there were essentially two things, as
12 I recall, you said SMART used to determine that it
13 was a political advertisement.
14 MR. HILDEBRANDT: I'm going to object
15 to the mischaracterization. She did not say that
16 SMART used that. She's testifying to what she has
17 personal knowledge of.
18 BY MR. MUISE:
19 Q Okay. Is it your personal knowledge that SMART
20 determined that fatwa was a legal mandate under
21 Sharia law?
22 A Is it my understanding?
23 Q Yes, ma'am.
24 A Yes.
25 Q Okay. And is it your understanding that SMART made

<p style="text-align: right;">Page 22</p> <p>1 some determination this was political also based on 2 what was contained on the website 3 RefugeFromIslam.com? 4 A Yes. 5 Q And what was it, based on your understanding, that 6 was political about the website RefugeFromIslam.com? 7 A I don't know. I mean, I don't know specifics. 8 Q When this advertisement was presented to SMART for 9 display, did that request come through you or to 10 you? 11 A Yes. 12 Q And when you viewed this advertisement, did you 13 determine, based on your understanding of SMART's 14 guidelines, whether it was political or not 15 political? 16 A I sent it to legal for an opinion. 17 Q What was your view when you saw this advertisement 18 when it was first presented to you; did you believe 19 it was political at that time? 20 A Not necessarily. 21 Q Why not? 22 A I didn't really have a good understanding of what 23 the ad was or what it meant. 24 Q Did you go to the website to find out more about the 25 advertisement?</p>	<p style="text-align: right;">Page 24</p> <p>1 the application of SMART's policy. 2 A Yes, it would become part of the process. 3 Q In every case. 4 A Yes. 5 Q Aside from the guidelines that we looked at in 6 Exhibit 3, are there any other guidelines or manuals 7 or policies, that you're aware of, that would 8 provide a definition for what is political or not 9 political in terms of how these guidelines are 10 applied? 11 MR. HILDEBRANDT: Go ahead. 12 A No. 13 BY MR. MUISE: 14 Q What is your understanding of the term "political," 15 as used by these advertising guidelines, and I'm 16 referring again to Exhibit 3? 17 A My understanding is that political is when somebody 18 advocates for a particular side. 19 Q When did you come to an understanding that that was 20 the definition of political that's employed for the 21 application of these advertising guidelines? 22 A I've always known that. I guess it's just 23 qualifying it with words is a difficult subject. 24 MR. MUISE: How did she answer that, 25 "qualifying it" --</p>
<p style="text-align: right;">Page 23</p> <p>1 A I don't remember if I did. 2 Q You, in your position as the, the previous position, 3 and I guess, apparently, your position today, as the 4 marketing program manager, you make determinations, 5 you can or you have made determinations of whether 6 an advertisement should be displayed or not 7 displayed based on the advertising guidelines, 8 correct? 9 A I usually, if it's presented to me, send it to legal 10 for an opinion. 11 Q But you have the authority to make a determination 12 to run an ad or not run an ad; isn't that correct? 13 A I could. 14 Q When you make determinations to run or not run an 15 ad, in your capacity as the program manager, do you 16 always look at websites that are referenced on the 17 advertisements that are presented? 18 A It could be part of the decision, yes. 19 Q But is it the policy that you always look at the 20 websites? 21 MR. HILDEBRANDT: This is not being 22 presented, put forward, the policy, but rather her 23 personal knowledge. 24 BY MR. MUISE: 25 Q I'm asking about your personal knowledge regarding</p>	<p style="text-align: right;">Page 25</p> <p>1 (The last answer was read back.) 2 BY MR. MUISE: 3 Q Would it be fair to say that you were able to 4 qualify it with words after reading the SMART/Chubb 5 deposition? 6 A Yes. 7 Q Prior to reading that deposition, would you have 8 qualified it with words in the same manner? 9 A I don't know. 10 Q So if you said political is advocating for a 11 political side? 12 A A particular side. 13 Q A particular side. Can't read my own writing, I'm 14 sorry. Particular side of what? 15 A Depends; pro or con, however, you know, depending on 16 the issue or the subject. 17 Q Based on your understanding, would advocating for a 18 political side be, for example, an advertisement 19 that advocated for the non-existence of God? 20 MR. HILDEBRANDT: Object to the 21 hypothetical. 22 A Advocating for it? I don't know. I couldn't answer 23 that. I'd have to see the ad. 24 BY MR. MUISE: 25 Q You have seen a similar ad, haven't you, ma'am?</p>

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1 Handing you what's been marked Exhibit No. 4.
2 MR. HILDEBRANDT: It's not a
3 question.
4 BY MR. MUISE:
5 Q Handing you what's been previously marked as Exhibit
6 No. 4. Do you recognize the --
7 MR. HILDEBRANDT: What deposition?
8 MR. MUISE: From the SMART/Chubb
9 deposition.
10 BY MR. MUISE:
11 Q Do you recognize the advertisement depicted in that
12 exhibit, ma'am?
13 A Yes.
14 MR. HILDEBRANDT: We can recognize
15 Chubb/SMART as either Chubb or SMART. We understand
16 the nature of SMART and the nature of Chubb in that
17 deposition, you can refer to it either way. I don't
18 have any problem with it.
19 MR. MUISE: Okay.
20 BY MR. MUISE:
21 Q In the SMART exhibit that I just handed you, do you
22 recognize that advertisement contained on page two?
23 A Yes.
24 Q And what advertisement was that?
25 A It's the CoR ad, Detroit CoR ad.

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1 Q Do you know what Detroit CoR is?
2 A It's called Coalition of Reason.
3 Q And you're referring to, there's a website on that
4 advertisement; is that correct?
5 A Yes.
6 Q It's DetroitCoR.org?
7 A Correct.
8 Q Did you get a chance to review that advertisement
9 before it was accepted by SMART?
10 A Yes?
11 Q And when you reviewed that advertisement, did you go
12 look at that website, DetroitCoR.org?
13 A I may have. I don't know.
14 Q Do you recall what was listed on that website?
15 A No.
16 Q Do you recall whether that website advocated for a
17 certain, advocated for a particular side of an
18 issue?
19 A I would say no.
20 Q You don't recall, or you don't know if it did?
21 A I would say no, because it was posted.
22 Q Now, is your understanding this advertisement that
23 we're referring to, I'll refer to it, we can refer
24 to it as the Detroit Coalition of Reason or the
25 atheist advertisement; are you okay with either one

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1 of those?
2 A That's fine.
3 Q Do you have any personal knowledge that this atheist
4 advertisement was vandalized while it was displayed?
5 A Yes.
6 Q It was, in fact, vandalized, correct?
7 A Yes.
8 Q Do you know what the nature of the vandalism was?
9 A I can see this, in this particular picture, that the
10 piece of the ad was pulled off and some scratching
11 on the word "don't."
12 Q So an advertisement that says, "Don't believe in
13 God, question mark, "you're not alone," does not
14 advocate for a particular side of an issue?
15 A I believe it's a religious ad.
16 Q When you say you believe it's a religious ad, but
17 can't religious ads also advocate for a particular
18 side?
19 A It could.
20 Q For example, advocating for a side that God doesn't
21 exist, that would be a political ad under SMART's
22 guidelines?
23 MR. HILDEBRANDT: I'm going to object
24 to the hypothetical.
25 A Could you state the question again.

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1 (The last question was read back.)
2 A Yes, I believe so.
3 BY MR. MUISE:
4 Q Now, the atheist advertisement, when it was
5 displayed, did it create controversy, that you're
6 aware of?
7 A Yes.
8 Q What controversy are you aware of?
9 A There were some complaints from the public and
10 drivers, and then, obviously, the vandalism.
11 Q What were the complaints from the public, that
12 you're aware of?
13 A They didn't like the ad being on the bus.
14 Q They say why?
15 A Not that I remember.
16 Q How about drivers?
17 A Drivers refused to drive those buses.
18 Q Why?
19 A Because it went against their belief.
20 Q What belief?
21 A Either they believed -- they must have believed in
22 God, I don't know, or their religion.
23 Q Handing you what's been previously marked as Exhibit
24 No. 6.
25 MR. HILDEBRANDT: Chubb 6?

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1 MR. MUISE: SMART 6.
2 MR. HILDEBRANDT: Fine.
3 MR. MUISE: Yes.
4 BY MR. MUISE:
5 Q Do you recognize this web page, ma'am?
6 A Yes.
7 Q If you look under the advertising guidelines, and
8 there's three paragraphs under that section; do you
9 see that, ma'am?
10 A Yes.
11 Q To the second sentence of the first paragraph, it
12 reads, "First Amendment free speech rights require
13 that SMART not censor free speech and because of
14 that, SMART is required to provide equal access to
15 advertising on our vehicles."
16 A Yes.
17 Q Did I state that correctly?
18 A Yes.
19 Q Do you know if that sentence was added to these
20 advertising guidelines following the controversy
21 related to the atheist advertisement?
22 A Yes.
23 Q Did you have any role or responsibility in adding
24 that language to this web page?
25 A I think so. I don't remember doing it, but I was

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1 riders"?.
2 A That's correct.
3 Q And was that something that you added?
4 A I believe so.
5 Q And, again, that was added in response to the
6 controversy regarding the atheist advertisement?
7 A Yes.
8 Q Is there anything that changed, from your
9 perspective, in SMART's application of its
10 advertising guidelines following the controversy
11 with the atheist advertisement?
12 A No.
13 Q I believe from SMART's deposition, that, based on
14 those guidelines, that that atheist advertisement
15 would, if presented, be permissible under the
16 guidelines again today; would you hold the same
17 view?
18 A I believe so.
19 Q 'Cause the guidelines that were in place when my
20 clients' advertisement was declined were the same
21 guidelines that were used to accept the Detroit
22 Coalition of Reason advertisement, correct?
23 A Yes.
24 Q And those guidelines are the same as they are
25 sitting here today, correct?

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1 probably responsible for handling it.
2 Q And why do you say that?
3 A Just because there was a couple of us that did the
4 website in terms of posting.
5 Q And who else besides you?
6 A It was another employee from marketing department.
7 Q Was it somebody that worked for you?
8 A No.
9 Q Somebody that had similar on the employment food
10 chain, so to speak?
11 A Yeah.
12 Q And what was your understanding of the background
13 for the reason of putting that sentence on this part
14 of the web page?
15 A Well, because of the controversy, people were
16 questioning the posting of our ad, or of that ad, of
17 the Detroit CoR ad.
18 Q Was there anything else that was added to this
19 section of the web page we're looking at on SMART
20 Exhibit 6 as a result of the Detroit CoR, or atheist
21 advertisement, controversy?
22 A I believe the third paragraph.
23 Q And the whole section that's in bold, "Advertising
24 posted on SMART property does not always reflect the
25 views or opinions of SMART, its employees, or

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1 A Yes.
2 Q When my clients' advertisement, the leaving Islam
3 advertisement, was presented for review, I believe
4 you indicated that you sent it to the office of the
5 general counsel for review, correct?
6 A Yes.
7 Q Did you make a recommendation to the office of
8 general counsel whether you believe the
9 advertisement complied with the particular
10 guidelines or contrary to the guidelines?
11 MR. HILDEBRANDT: I'm going to object
12 to that question; that infringes upon SMART's
13 attorney/client privilege. To the extent that this
14 manager, employee, of SMART sought legal opinions or
15 legal advice from the general counsel's office,
16 those conversations, and any content on them, are
17 privileged, and I'm instructing the witness not to
18 answer that question.
19 BY MR. MUISE:
20 Q Are you going to follow your attorney's advice?
21 A Yes.
22 Q So you're not going to answer that question?
23 A Yes.
24 Q When you presented the advertisement to the general
25 counsel for review, did you seek information beyond

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1 whether or not the advertisement comported with
2 SMART's advertising guidelines as set forth in the
3 Exhibit 3, SMART Exhibit 3?
4 MR. HILDEBRANDT: I'm going to object
5 that that is privileged information. When this
6 manager, employee, seeks the counsel of the general
7 counsel's office, she is engaging in attorney/client
8 privileged communications, and I'm going to instruct
9 the witness not to answer.
10 BY MR. MUISE:
11 Q Are you going to follow your attorney's
12 instructions?
13 A Yes.
14 Q So you're not going to answer the question?
15 A Yes.
16 Q Now, ma'am, when you testified at the hearing on the
17 preliminary injunction; you remember doing that,
18 correct?
19 A Yes.
20 Q You understood, at that time, that you were
21 designated by SMART to testify on behalf of SMART
22 during that hearing; isn't that correct?
23 A I didn't really realize the distinction at the time,
24 I would say.
25 Q Okay. Do you recall being asked this question by

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1 Q Do you remember being asked this question:
2 Question, "When SMART determined that
3 this ad was in compliance with its advertising
4 policies, guidelines, and procedures it examined
5 just the ad copy and the art work, correct"?
6 Do you remember your answer to that
7 question?
8 A No.
9 Q The answer was, "Yes"; that sound correct, ma'am?
10 A Sure.
11 Q Then the next question was:
12 "It didn't look to things extrinsic
13 to the advertising itself to determine that."
14 Do you remember your answer to that
15 question?
16 A No.
17 Q You answered, "Correct."
18 A Okay.
19 Q So as you sit here today, is it your recollection
20 that, when SMART reviewed the atheist advertisement,
21 that it did not look at its website?
22 MR. HILDEBRANDT: Object to the
23 vagueness, and object to the mischaracterization of
24 the prior testimony. Go ahead.
25 A Well, I sent it to legal for review.

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1 Mr. Yerushalmi:
2 Question, "Ms. Gibbons, you
3 understand you're testifying here on behalf of
4 SMART, correct"?
5 Do you remember what your answer was?
6 A No.
7 Q Your answer was, "Yes."
8 A Okay.
9 Q Do you recall that?
10 A Sure.
11 Q And this transcript is already part of the record as
12 document number 18.
13 A Okay.
14 Q You were testifying under oath at that time; you
15 understood that, right, ma'am?
16 A Um-hum.
17 Q "Yes"?
18 A Yes, I did. Sorry.
19 Q Do you recall, during this sworn testimony in court,
20 you were asked questions about SMART's application
21 of the policy to the Detroit Coalition of Reason, or
22 atheist advertisement, that we've been referring to
23 in Exhibit 4; do you remember being asked questions
24 about that, ma'am?
25 A Yeah.

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1 BY MR. MUISE:
2 Q I understand, but you were testifying on behalf of
3 SMART during this deposition -- excuse me, during
4 this trial testimony. Is it your understanding
5 that, when SMART reviewed this, that they did not
6 look at anything extrinsic, meaning the information
7 on the website, when it determined that the
8 advertisement was not political?
9 MR. HILDEBRANDT: She's already
10 testified to her understanding; now you're just
11 badgering her.
12 A Is it my understanding that they didn't look at it?
13 BY MR. MUISE:
14 Q Yes.
15 MR. GORDON: Mr. Muise, is your
16 question does she recall --
17 MR. MUISE: There's one attorney that
18 can object. We're not doing battling attorneys here
19 with this witness.
20 MR. HILDEBRANDT: He's not objecting.
21 He's asking for a clarification.
22 MR. MUISE: That's fine. He's not
23 testifying either.
24 MR. HILDEBRANDT: Okay, don't say
25 anything. Write it down for me, Avery, and I'll say

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1 it, if that's the way you want to go, Mr. Muise.
2 BY MR. MUISE:
3 Q Do you understand the question?
4 MR. MUISE: Do you want to read back
5 the question, ma'am.
6 (The last question was read back.)
7 THE WITNESS: Do you want me to
8 answer?
9 MR. HILDEBRANDT: My objection is
10 it's vague and it mischaracterizes the prior
11 testimony. You can answer, if you can.
12 A I didn't personally look at it, and so I don't know.
13 At this point, I don't know.
14 BY MR. MUISE:
15 Q Did you know when you were testifying in court, when
16 you answered, "Correct," to the question of whether
17 any extrinsic evidence was looked at, did you have
18 knowledge of SMART's determination at that time?
19 MR. HILDEBRANDT: What determination?
20 BY MR. MUISE:
21 Q It didn't look to things extrinsic to the
22 advertising itself to determine the guidelines.
23 MR. HILDEBRANDT: Are you saying that
24 that's what SMART's determination was, because I
25 don't see that in that transcript, and I don't hear

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1 it in this prior testimony, or any other prior
2 testimony, and, therefore, the question is a
3 mischaracterization.
4 A It's very confusing.
5 BY MR. MUISE:
6 Q I think your attorney's doing his level best to make
7 it that way. Here's the question --
8 MR. GORDON: That's outrageous.
9 MR. HILDEBRANDT: I object to that
10 outrageous statement on the record, too.
11 MR. MUISE: That's fine.
12 MR. HILDEBRANDT: I'm certainly just
13 placing legal objections here.
14 MR. MUISE: These are speaking
15 objections.
16 BY MR. MUISE:
17 Q Here's a question that was asked: "It," and
18 throughout this entire context "it" was SMART,
19 "didn't look to things extrinsic to the advertising
20 itself to determine that," and the prior question I
21 had read to you, "determine that it wasn't
22 political", and your answer was, "Correct."
23 A Then I'll stick with my testimony.
24 Q During this hearing, in reference to my clients'
25 advertisement, the leaving Islam advertising that

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1 we've referred to already in this deposition,
2 question was asked:
3 Question, "In what way is the ad
4 before you that was provided by my clients
5 political"?
6 Answer, "It was determined not. It
7 was not based on the content. It was based on the
8 knowledge of what had happened in Miami with Miami
9 Dade Transit that declared it political."
10 Do you recall that question/answer?
11 A Yes.
12 Q And was that a truthful answer that you provided to
13 that question?
14 MR. HILDEBRANDT: I'm going to object
15 to the form of the question.
16 A I don't know how to -- it was found to be political,
17 and the controversy highlighted the need for us to
18 look at it. It was not the reason for the decision.
19 BY MR. MUISE:
20 Q Your answer was, "It was based on the knowledge of
21 what had happened in Miami with Miami Dade Transit
22 that declared it political"; is that correct?
23 MR. HILDEBRANDT: Is what correct, is
24 that what that says or --
25 MR. MUISE: That answer.

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1 MR. HILDEBRANDT: -- is that part of
2 the question that you're quoting?
3 BY MR. MUISE:
4 Q Is that answer correct?
5 MR. HILDEBRANDT: That was a question
6 you were quoting, not an answer.
7 MR. MUISE: No, I'm asking her, is
8 that statement that she gave under oath correct?
9 MR. HILDEBRANDT: As you sit here
10 today, is that statement correct?
11 A No.
12 BY MR. MUISE:
13 Q The follow-up question was that, "So when you
14 examined this ad, there was nothing about the ad
15 itself that was political"; do you recall your
16 answer to that question?
17 A No.
18 Q Your answer was, "Correct."
19 A Okay.
20 Q Was that a truthful answer when you testified during
21 this hearing?
22 MR. HILDEBRANDT: Was her opinion
23 truthful at the time; is that your question?
24 MR. MUISE: That's not my question.
25 Don't change it.

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1 BY MR. MUISE:
2 Q My question is exactly, you were asked a specific
3 question, you gave a specific answer, and my
4 question to you is, were you testifying truthfully
5 when you answered that way?
6 MR. HILDEBRANDT: The Sixth Circuit
7 determined that to be a statement of her personal
8 opinion, and are you asking her if her opinion at
9 the time was true or false?
10 MR. MUISE: I'm asking her whether
11 her testimony during this hearing was true or false.
12 MR. HILDEBRANDT: Did you try to give
13 truthful testimony at the time?
14 MR. MUISE: This is a speaking
15 objection. You know it's a speaking objection,
16 Christian.
17 MR. HILDEBRANDT: No, it's not a
18 speaking objection.
19 MR. MUISE: Yes, it is. It
20 absolutely is. This is about a straightforward --
21 MR. HILDEBRANDT: I'm objecting to
22 the form of the question, because it's already been
23 determined to be an opinion and you're asking her if
24 her opinion is true. So I'm objecting to the form
25 of the question, because it is incorrect.

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1 MR. MUISE: The form of the question
2 is incorrect or her answer is incorrect?
3 MR. HILDEBRANDT: The form of the
4 question is incorrect.
5 BY MR. MUISE:
6 Q Ma'am, it's pretty simple. You were asked under
7 oath during trial testimony, where you admitted
8 under oath that you were testifying on behalf of
9 SMART, "So when you examined this ad, there was
10 nothing about the ad itself that was political"?
11 Your answer was, "Correct." Was that a truthful,
12 honest answer under oath, under penalty of perjury?
13 MR. HILDEBRANDT: I'm going to object
14 to the form of the question, to the extent that it
15 refers to that as trial testimony, to the extent
16 that it refers to that as an admission, and to the
17 extent that you're arguing with her about a penalty
18 of perjury over what an opinion was, something that
19 the Sixth Circuit has already determined, as a
20 matter of law, was an opinion --
21 MR. MUISE: You are so out of bounds,
22 so out of bounds. It's a straightforward question.
23 MR. HILDEBRANDT: Those are all valid
24 objections.
25

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1 BY MR. MUISE:
2 Q Answer the question, were you testifying truthfully
3 when you answered that question, ma'am?
4 MR. HILDEBRANDT: You can answer.
5 A Like I said, I didn't understand the distinction. I
6 gave my opinion there. That was not the
7 determination made by SMART.
8 BY MR. MUISE:
9 Q And was your opinion based on the fact that you were
10 the marketing program manager at SMART and somebody
11 who would have to apply these guidelines?
12 A I didn't apply them. I referenced it to legal for
13 their opinion.
14 Q And so what did you base this sworn testimony upon?
15 A My opinion.
16 Q And was it based upon your understanding of the
17 guidelines?
18 A Was my opinion based on the guidelines?
19 Q Yes.
20 A No, it was my opinion.
21 Q But what did you base this opinion? When you're
22 referring to "political," what was the question
23 referring to here that you understood?
24 A I'm not sure I can answer that. I don't know what
25 you're asking.

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1 Q You don't know if you were asked questions about the
2 application of SMART's guidelines and my clients'
3 advertisement during this testimony?
4 MR. HILDEBRANDT: Now you're being
5 combative, and you're not going to be combative in
6 this dep. That's just a ridiculous question.
7 MR. MUISE: That's straightforward
8 question.
9 MR. HILDEBRANDT: That's just a
10 ridiculous question based upon what she said. Do
11 not be combative with her. She is just trying to do
12 her best.
13 BY MR. MUISE:
14 Q When you testified under oath, at a hearing before a
15 court, about questions of whether or not this
16 advertisement was political under SMART's
17 guidelines, and you were answering questions
18 referring to the application of SMART's guidelines
19 and my clients' advertising, you understood that,
20 didn't you, ma'am?
21 A I said I didn't.
22 Q You didn't understand that you --
23 A I didn't understand the distinction about my
24 personal opinion versus what SMART had done.
25 Q Well, that's fine, but I'm asking you whether it was

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1 from your personal opinion what SMART had done, your
2 understanding was that these were questions based on
3 the application of SMART's guidelines to my clients'
4 advertisement.
5 A Yes, I would agree with that.
6 Q And it was based on your personal knowledge and
7 personal understanding, correct?
8 A My personal opinion.
9 Q Your personal opinion is based on your personal
10 knowledge, isn't it, ma'am?
11 A Yes.
12 (Gibbons Deposition Exhibit No. 43
13 was marked for identification.)
14 Q Handing you what's been marked as Exhibit No. 43.
15 Do you recognize what's depicted here on Exhibit No.
16 43?
17 A Yes.
18 Q And what is it?
19 A It's a transportation newsletter that I receive on a
20 regular basis.
21 Q If you look down at number six, it refers to
22 "Miami-Dade Transit to remove offensive Islamic bus
23 ads"; do you see that, ma'am?
24 A Yes.
25 Q In the testimony that we just were going over from

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1 the preliminary injunction hearing, you referred to
2 an issue dealing with this advertisement with the
3 Miami-Dade Transit; do you recall that?
4 A Yes.
5 Q And is the issue you were referring to in the
6 testimony referenced here in that number six of
7 Exhibit No. 43?
8 A Yes.
9 (Gibbons Deposition Exhibit No. 44
10 was marked for identification.)
11 Q I'm handing you what's been marked Exhibit No. 44.
12 Do you know if this is the advertisement that was
13 referenced in the link at number six on Exhibit No.
14 43?
15 MR. HILDEBRANDT: I'm going to object
16 to the form of the question. The advertisement?
17 BY MR. MUISE:
18 Q Excuse me, article.
19 MR. MUISE: Thank you.
20 A It has a different date at the top.
21 BY MR. MUISE:
22 Q Different date of what?
23 A Of published, Thursday, July 8, '10. I think the
24 email was from April.
25 Q But I think that is when it was pulled off the

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1 website.
2 A Yeah.
3 Q So Exhibit 44 is the article referenced in Exhibit
4 No. 43 at paragraph six?
5 A It looks to be.
6 Q And was this article where you got the information
7 you referred to in your testimony in terms of the
8 knowledge of what had happened in Miami with the
9 Miami-Dade Transit that declared it political?
10 MR. HILDEBRANDT: Object to the form
11 of the question, vague.
12 A Yes.
13 BY MR. MUISE:
14 Q Aside from seeing the advertisement, having the
15 advertising copy itself, and reading the newsletter
16 in Exhibit 43, and then subsequently the article in
17 Exhibit No. 44, was there anything else that you
18 personally reviewed, as the marketing program
19 manager, with regard to my clients' advertisement?
20 A When I received it, or at what point are you asking
21 the question?
22 Q Let's run through it, then. When you first received
23 it, what was the information that you sought?
24 MR. HILDEBRANDT: The information
25 that she saw or sought?

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1 MR. MUISE: Sought.
2 MR. HILDEBRANDT: From whom?
3 A Yeah.
4 MR. MUISE: Well, how did she answer
5 the other?
6 (Page 48, lines 14-21 were read back.)
7 BY MR. MUISE:
8 Q So the question we'll start with when you first
9 received it.
10 A I thought, when you asked the question, there was
11 something about and determined it to be political.
12 That's where I didn't make that, you know, that was
13 referred to legal for that.
14 Q Well, you said you, based on your review, and now
15 your personal opinion, the Dade Transit declared it
16 political, is what you testified to at the hearing.
17 So let's just try to clean this up and go back from
18 the beginning. How did my clients' advertising,
19 leaving Islam, first come to your attention?
20 A Through an email from CBS Outdoor.
21 Q And was that from Robert Hawkins?
22 A Correct.
23 Q And who is Robert Hawkins?
24 A He's their sales display manager, at that time.
25 Q SMART works with CBS Outdoor to procure advertising

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1 for the buses; is that correct?
2 A They're responsible for the sales and postings of
3 ads.
4 Q So an advertising is presented to CBS Outdoor, in
5 this case it went to Robert Hawkins, my clients'
6 leaving Islam ad, and then Mr. Hawkins presented it
7 to you; is that correct?
8 A He sent an email, yes.
9 Q And then what did you do when you got that email?
10 A I forwarded it to legal for an opinion.
11 Q And when did you look at those Exhibits 43 and 44?
12 A This was prior to actually receiving the leaving
13 Islam ad. It looks to be, I don't know, this is in
14 April, and I think we got the ad later. I don't
15 know how much later, though. When is this? May 13.
16 So this is about a month prior I had seen this
17 article.
18 Q Did you know this advertisement was coming to SMART
19 when you saw those articles?
20 A No.
21 Q So you saw the articles, as part of Exhibit 43 and
22 44, 43 referencing it, 44 being the actual article,
23 and you had determined that the leaving Islam
24 advertisement had created some controversy in Miami;
25 is that right?

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1 A Yes.
2 Q And so then, sometime subsequent to that, you
3 received an email from Robert Hawkins that had the
4 similar advertisement being requested to be
5 displayed on SMART's buses.
6 A Correct.
7 Q And at that point you didn't approve the
8 advertisement, correct?
9 A No.
10 Q Why not?
11 A Because I understood there to be controversy
12 surrounding the ad, I forwarded it to legal for an
13 opinion.
14 Q Anything else, any other reason, beside there being
15 a controversy over this advertisement, that you
16 considered before sending it up to legal for an
17 opinion?
18 A No.
19 Q What was it about the controversy that caused you to
20 want to forward the advertisement up to legal as
21 opposed to approving it at your level?
22 A Well, if there's a controversy, I need to, one of my
23 roles is to make sure that I protect SMART, and so,
24 because there's controversy, just that's a symptom
25 of something building, brewing, potentially becoming

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1 political, or politicized, and so I forwarded it to
2 legal for review.
3 Q Do you know if the advertisement was forwarded
4 beyond legal to general manager for any final
5 determination?
6 MR. HILDEBRANDT: This is a "yes" or
7 "no" question.
8 A Yes.
9 BY MR. MUISE:
10 Q Is it your understanding the general manager made
11 the final determination to decline the leaving Islam
12 advertisement?
13 A Yes.
14 Q Anthony Chubb, on behalf of SMART, testified that at
15 times there is collaboration between marketing,
16 legal, and the general manager to make a final
17 determination as to whether an advertisement is
18 accepted or rejected; is that your understanding of
19 how the process works at times?
20 A Yes.
21 Q And was there a collaboration on the leaving Islam
22 advertisement?
23 A Yes.
24 Q Did you participate in that collaboration?
25 A Yes.

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1 Q And during this collaboration did you express any
2 view, one way or the other, whether the
3 advertisement should be accepted or rejected under
4 SMART's advertising guidelines?
5 MR. HILDEBRANDT: I'm going to object
6 to any reference or questions concerning any
7 conversations that took place with the office of the
8 general counsel in this matter as attorney/client
9 privileged, and I'm instructing her not to answer.
10 BY MR. MUISE:
11 Q You're going to follow your attorney's instructions?
12 A Yes.
13 Q Are you going to answer the question?
14 A No.
15 Q Did you ever have any conversations with the general
16 manager, outside the presence of general counsel,
17 referring to my clients' advertisement, the leaving
18 Islam advertisement?
19 A Nope.
20 Q Did you ever have any conversations with anyone at
21 SMART outside the presence of the general counsel
22 regarding my clients leaving Islam advertisement?
23 A No.
24 Q Have you ever heard anyone at SMART refer to my
25 client or my clients' advertisement as being either

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1 anti-Islam or Islamophobic?
2 A No.
3 Q The Exhibits No. 43 and 44, in particular the
4 article in Exhibit No. 44, did you forward those to
5 anyone?
6 A I did.
7 Q You did?
8 A I did.
9 Q Who did you forward them to?
10 A I think I forwarded it to legal; probably my boss,
11 Beth Dryden. From that point, I don't know.
12 MR. MUISE: We've been going for
13 about an hour, you want to take five?
14 MR. GORDON: Please.
15 (Break was taken.)
16 (Gibbons Deposition Exhibit No. 45
17 was marked for identification.)
18 Q Ma'am, I hand you what's been marked as Exhibit No.
19 45.
20 A Okay.
21 Q Now, the bottom part of this exhibit appears to be
22 an email from Robert Hawkins to, the address is
23 Write, W-r-i-t-e, atlas@aol.com, and cc on there is
24 BGibbons@smartbus.org. Is BGibbons@smartbus.org an
25 email address that you've used?

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1 A Yes.
2 Q Is it your email address today?
3 A Yes.
4 Q Are you familiar with this communication?
5 A I don't remember it offhand, but, obviously, it was
6 sent to me.
7 Q And it appears that this bottom communication, the
8 email from Hawkins to Writeatlas@aol.com, is an
9 email to my client, Pamela Geller; is that your
10 understanding?
11 A Yes.
12 Q And it's referring to, in the email from
13 Mr. Hawkins, the beginning, it says, "My primary
14 contact at SMART called today to notify me that your
15 ad was not approved"; do you see that?
16 A Yes.
17 Q And then it appears that he has Beth Gibbons below
18 and a phone number; you see that, ma'am?
19 A Yes.
20 Q Is that your phone number?
21 A Yes.
22 Q And did you contact Robert Hawkins to inform him
23 that the advertisement was not approved?
24 A Yes.
25 Q Did you give him a reason as to why the

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1 advertisement was not approved?
2 A I don't believe so.
3 Q Why not?
4 A It's not usually our policy. We'll just, that it
5 was against the guidelines, the advertising
6 guidelines.
7 Q Do you know if you even told him that it was against
8 the advertising guidelines?
9 A I probably did.
10 MR. HILDEBRANDT: Don't "probably."
11 The question is, do you know.
12 A I don't know for sure.
13 BY MR. MUISE:
14 Q And in the email above that, appears to be an email
15 back from Writeatlas@aol.com, Pamela Geller, to
16 Robert Hawkins; you see that?
17 A Yes.
18 Q And you were cc'd on that email as well?
19 A Yes.
20 Q And in this email, she says, "Beth and Robert, thank
21 you for getting back to me. What was it about the
22 ad that was not approved and what would have to be
23 changed? Please let me know so we can get this
24 campaign on the road."
25 A Okay.

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1 Q Did I say that correctly?
2 A Yes.
3 Q And do you recall ever responding to Ms. Geller?
4 A I do not.
5 Q Do you know why you didn't respond to Ms. Geller?
6 MR. HILDEBRANDT: Do you know why she
7 does not recall or why she didn't? You asked her if
8 she recalled doing it, and she said she did not, but
9 she did not say that she did not respond.
10 A I'm sorry.
11 MR. HILDEBRANDT: Sorry.
12 BY MR. MUISE:
13 Q Did you respond to Ms. Geller?
14 A I do not believe I did.
15 Q Why not?
16 A I don't know.
17 (Gibbons Deposition Exhibit No. 46
18 was marked for identification.)
19 Q Ma'am, I hand you what's been marked as Exhibit No.
20 46. And just for time reference, you look at
21 Exhibit No. 45, it appears that those two emails we
22 were referring to were sent on May 24th of 2010,
23 correct?
24 A Yes.
25 Q Then on 46 appears to be another email, up top, sent

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1 on May 27, correct?
2 A Yes.
3 Q And you were cc'd on this email, correct?
4 A Looks like it, but my address isn't there.
5 Q On the cc, it says, "Gibbons, Beth," correct?
6 A Correct.
7 Q Look at the very top of the email, it says,
8 "Gibbons, Beth," right?
9 A Yes.
10 Q So it's likely this email was printed from your
11 email file; is that right?
12 A Yes, that would be right.
13 Q And in this email Pam Geller is emailing to Robert
14 Hawkins, cc'ing you, "Robert, Beth hasn't answered
15 me. Can you tell me who in SMART actually were
16 involved in the decision. Will contact them as
17 well. Thanks, Pamela"; do you see that?
18 A Yes.
19 Q Do you recall at any time, either after the May 24
20 email or May 27, did you contact Ms. Geller to
21 inform her of the basis for SMART's decision to deny
22 her advertisement?
23 A No.
24 Q Do you know why?
25 A No.

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1 Q Have you communicated, in other situations where an
2 advertisement was declined, did you communicate to,
3 either through Robert Hawkins or the individual who
4 was proposing the advertisement, to explain to them
5 why an advertisement was rejected by SMART?
6 A I may have. I can't remember off the top of my head
7 right now.
8 Q Do you know why you didn't do it in this case?
9 MR. HILDEBRANDT: Asked and answered.
10 A I don't know.
11 BY MR. MUISE:
12 Q I'm handing you what's been previously marked as
13 SMART Exhibit No. 7. Do you recall seeing this
14 advertisement prior to today?
15 A Yes.
16 Q Was this an advertisement that came across your desk
17 at SMART?
18 A I remember the ad. I don't know if I was the one
19 involved in this.
20 Q What do you remember about seeing this ad?
21 A That it had been rejected by SMART.
22 Q Do you know if you had any role in the decision to
23 reject this advertisement by SMART?
24 A I don't believe I did. I think I was on vacation.
25 Q Do you know why SMART rejected this advertisement?

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1 A They deemed it to be political.
2 Q Do you know why this is deemed to be political?
3 A Because it's about abortion.
4 Q Are there certain subject matter that are political
5 as opposed to actually, see, how did you define it,
6 advocating a particular side, based on your
7 understanding of applying these guidelines?
8 MR. HILDEBRANDT: Object to the
9 vagueness of the question. Go ahead.
10 A There's no list.
11 BY MR. MUISE:
12 Q Do you know, does this advertisement advocate for a
13 particular side of an issue?
14 A Well, it looks to be, yes; I mean, yes. You know,
15 it was deemed political, it wasn't posted. That's
16 my understanding of the ad.
17 Q Based on your understanding of the guidelines, do
18 you have a belief as to why you think this
19 advertisement was political?
20 A Well, abortion is very political, it's a politicized
21 issue. There's people who advocate for both sides.
22 Q And just so I'm clear on this, so there are certain
23 issues, even though the advertisement may not be
24 advocating for a particular side, but there are
25 certain issues where there are different sides of

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1 the issue that you don't allow that issue to be
2 displayed?
3 A No, that's not true.
4 Q Okay. Then help me to understand your testimony.
5 You said that it was deemed to be political because
6 it was about abortion and there are different sides
7 on the issue of abortion.
8 A So people are advocating one way or the other, it's
9 a political ad.
10 Q So this advertisement is advocating one side or
11 another with regard to abortion.
12 A I would say yes.
13 Q Advocating, what, with regard to abortion?
14 A I don't know. I mean --
15 MR. HILDEBRANDT: If you don't know,
16 you don't know.
17 A I don't know.
18 MR. HILDEBRANDT: You've already told
19 him you weren't involved in the ad.
20 MR. MUISE: She's answering the
21 questions, not you. You can stop this now. I want
22 to get this deposition done. Quite frankly, I'm
23 real close to saying let's just end this thing now
24 and we'll have to go to the judge on these speaking
25 objections if you want to testify for your witness.

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1 I want to get through this.
2 MR. HILDEBRANDT: I'm not testifying
3 for --
4 MR. MUISE: Of course, you are. You
5 just gave her an answer, Christian. It's on the
6 record, for goodness' sakes.
7 MR. HILDEBRANDT: She said, "I don't
8 know," and then you stared at her.
9 MR. MUISE: Listen --
10 MR. HILDEBRANDT: And I told her it's
11 fair enough to say "I don't know."
12 MR. MUISE: That's not what you said,
13 but that's fine.
14 MR. HILDEBRANDT: Okay.
15 BY MR. MUISE:
16 Q Anything else with regard to this advertisement?
17 A No.
18 Q Let me hand you what's been previously marked as
19 Exhibit TT, tango, tango, to the Geller deposition.
20 Have you seen that advertisement prior to today,
21 ma'am?
22 A Yes.
23 Q When did you first see that?
24 A It came through an email this winter. I don't know
25 when, the date was.

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1 Q Did you understand that to be a subsequent
2 advertisement that my clients requested to be
3 displayed on SMART?
4 A Yes.
5 Q And did this advertisement come to you at SMART?
6 A Through CBS.
7 Q And did you make any decision as to whether or not
8 this advertisement should be accepted or rejected?
9 A I forwarded it to legal for their opinion.
10 Q When you looked at this advertisement when it came
11 in, did you believe it violated any of the
12 advertising guidelines at SMART?
13 A I sent it to legal for their opinion.
14 Q But did you believe that it violated any of the
15 advertising guidelines?
16 A I sent it to legal for their opinion.
17 Q That's not responsive to my question, ma'am, so
18 strike the answer. Did you make a determination,
19 based on your understanding of the advertising
20 guidelines, whether or not that ad violated any of
21 those guidelines?
22 MR. GORDON: Mr. Muise, you can't
23 instruct the witness to answer.
24 MR. MUISE: I can strike her answer
25 as not being responsive.

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1 MR. HILDEBRANDT: He's changed the
2 question. The question is, did you make a
3 determination as to whether this was violative.
4 A No, I forwarded it to legal for their opinion.
5 BY MR. MUISE:
6 Q Okay. And, based on your understanding of the
7 advertising guidelines, is there anything in that
8 advertisement, TT, that violates the advertising
9 guidelines, based on your personal knowledge?
10 A I believe the website, when you go to it, is where
11 the problem lied.
12 Q Did you go to the website?
13 A I did.
14 Q And what was it about the website where the problem
15 lied, based on your understanding?
16 A There was statements in there about the pedophile
17 Prophet Muhammad.
18 Q And what is it about those statements that, on the
19 website, that made that advertisement violative of
20 SMART's guidelines?
21 A I believe it would hold a group or groups up to
22 scorn.
23 Q Do you know if a proposal was made to remove the
24 website from that advertisement?
25 A By who?

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1 Q By my client.
2 A Yes.
3 Q And do you know, at that point, SMART said that it
4 would run the advertisement?
5 A Yes, they agreed to post it.
6 Q And were you involved in that determination?
7 A I was, yeah. I was part of the collaboration.
8 Q So the advertisement, "Don't believe in Muhammad,"
9 question mark, "You are not alone," that itself
10 doesn't convey a political message, based on your
11 understanding of political as SMART applies it, in
12 the advertising guidelines?
13 A No.
14 Q Looking back at my clients' advertisement, which was
15 marked as Exhibit SS, as well as part of SMART
16 Exhibit 2, when you viewed that advertisement did
17 you believe, at the time when you viewed it, that it
18 was disparaging towards any group or individuals in
19 violation of SMART's advertising guidelines?
20 A I didn't know. I forwarded it to legal for their
21 opinion.
22 Q Did you say you didn't know or, I'm not sure.
23 A I didn't know.
24 Q You didn't know. So based on looking at that
25 advertisement, you, Beth Gibbons, could not

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1 determine whether or not it was disparaging towards
2 any group under the advertising guidelines?
3 MR. HILDEBRANDT: Object to the
4 vagueness of the question. You mean at the time?
5 BY MR. MUISE:
6 Q When you first say that advertisement.
7 A I knew that this could impact SMART, so I forwarded
8 it to legal for their opinion.
9 Q Right. You already testified you had personal
10 knowledge as to how the advertising guidelines are
11 applied and at times you make determinations,
12 correct?
13 A I have not.
14 Q You have the authority to make determinations,
15 correct?
16 A I can.
17 Q So based on your understanding of the advertising
18 guidelines, when you saw this, was there anything
19 that you saw that violated the guideline that
20 prohibits advertising that is clearly defamatory or
21 likely to hold up to scorn or ridicule any person or
22 group of persons?
23 A I didn't have a good understanding of the ad at the
24 time, so I forwarded it to legal for their opinion.
25 Q So based on looking at the advertisement, you didn't

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1 make a determination yourself that it violated the
2 advertising guideline that prohibits advertising
3 that is clearly defamatory or likely to hold up to
4 scorn or ridicule any person or group of persons; is
5 that correct?
6 A I did not.
7 Q And as you sit here today looking at the
8 advertising, is there anything based on that
9 advertisement that you believe violates that
10 provision of the advertising guidelines?
11 A Well, I believe, with the "fatwa on your head," that
12 it implies that, you know, there's harm, with your
13 family or community threatening you, could hold
14 people up to scorn or ridicule. It implies that.
15 Q Do you know if, under Islam, there are fatwas that
16 are issued for people who leave Islam where threats
17 are made against individuals for doing so?
18 A I believe that's what this ad is.
19 Q But do you know --
20 MR. HILDEBRANDT: Do you know if
21 that's the case under Islam.
22 BY MR. MUISE:
23 Q Do you know if that's a fact?
24 A Apparently.
25 Q So is your understanding that there's anything in

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1 this advertisement that's not truthful about Islam?
2 A I don't know. I don't know that much detail.
3 Q But you have some understanding that a fatwa can
4 issue against an individual for leaving Islam and
5 that fatwa may contain violence against the
6 individual.
7 A Yes.
8 Q My understanding, from prior testimony, is that the
9 advertising guidelines we've been discussing today,
10 those advertising guidelines were in place in 2008;
11 is that your understanding?
12 A I believe, with the new contract, they were placed
13 into that.
14 Q And under those guidelines the only advertisements
15 that have been rejected because they're political
16 are my clients' leaving Islam advertisement, the
17 abortion advertisement that we've been referring to
18 here that's Exhibit No. 7 from the SMART deposition,
19 and then, apparently, the most recent advertisement
20 submitted by my client, which, I believe, was
21 Exhibit tango, tango, with the website.
22 MR. HILDEBRANDT: I'm going to object
23 to the form of the question. She didn't testify
24 that that was rejected because it was political.
25 She said it was because of scorn.

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1 BY MR. MUISE:
2 Q Okay. Then let me just clarify, then, so we are
3 clear. So Exhibit TT was not rejected, as you
4 understand it, because it was political, even with
5 the website.
6 A With the website, right, it was not political. It
7 was not determined to not be political.
8 Q Get rid of all the double negatives. At no time was
9 this advertisement, as depicted in Exhibit TT,
10 determined to be political in violation of SMART's
11 advertising guidelines.
12 A Correct.
13 Q And it was determined, with the website, Exhibit TT,
14 that it was scornful and disparaging, that provision
15 of the guidelines it violated.
16 A Yes.
17 Q Going back to my previous question, then, under the
18 advertising guidelines at issue here, there's only
19 been two advertisements that have been rejected by
20 SMART because they were political, and that's my
21 clients' leaving Islam advertisement and the
22 abortion advertisement; is that correct?
23 A I believe so.
24 Q That's your understanding?
25 A Yes.

<p style="text-align: right;">Page 70</p> <p>1 Q Then there was one other advertisement that was 2 rejected, aside from the tango, tango, the Red 3 Redemption -- 4 MR. HILDEBRANDT: Red Dead 5 Redemption, d-e-a-d, video game. 6 BY MR. MUISE: 7 Q The Red Dead Redemption video game advertisement 8 that was rejected, the one that included a gun, 9 correct? 10 A Correct. 11 Q And that was rejected, why? 12 A Because it was imminent lawless -- it depicted 13 imminent lawlessness. 14 Q Then they modified the advertisement, took off the 15 gun, and it was approved, correct? 16 A Yes. 17 Q Show you what's been previously marked as Exhibits 18 15, 16, 17, and 18 from the SMART deposition. Have 19 you seen any of those advertisements prior to today? 20 A Yes. 21 Q Were you involved in any of the determinations as to 22 whether those advertisements should be accepted or 23 rejected by SMART? 24 A I was part of the collaboration. 25 Q Was the decision to have those advertisement --</p>	<p style="text-align: right;">Page 72</p> <p>1 Q Why? 2 A To make a determination. 3 Q And why didn't you make that determination at your 4 level? 5 A I just wanted to be sure. 6 Q Did you have a chance to go look at that website 7 statussexy.com? 8 A I don't believe I did. 9 Q When you viewed these ads or their website, did you 10 have any information and knowledge that this 11 advertisement, this advertisement campaign, promotes 12 sexual conduct between gay men? 13 MR. HILDEBRANDT: I'm going to object 14 to the mischaracterization of the advertising 15 campaign. 16 A No. 17 BY MR. MUISE: 18 Q Have you ever been to statussexy.com? 19 A I don't remember if I have. That doesn't -- I don't 20 know if I did go to the site. 21 Q Looking at these advertisements, did you have any 22 understanding that they involved homosexuality or 23 gay rights issues at all? 24 A I take it more as a HIV status issue more than 25 whether it's gay right or not. That's my</p>
<p style="text-align: right;">Page 71</p> <p>1 well, let me back up. It's my understanding those 2 advertisements did, in fact, run on SMART, correct? 3 A Yes. 4 Q So there's nothing about those advertisements that 5 violated any of the advertising guidelines at issue 6 here. 7 A Correct. 8 Q When these came in to you as the -- well, let me 9 back up. Were you the program manager when these 10 ads came to you? 11 A Marketing communications manager. 12 Q So it was the second position that you held? 13 A Correct. 14 Q So these advertisements were submitted after my 15 clients' advertisements; is that your understanding? 16 A Yes. 17 Q And when you reviewed these advertisements, did you 18 make any decision, based on your personal knowledge 19 of the advertising guidelines, as to whether or not 20 these ads would violate any guidelines of SMART? 21 A No. 22 Q So did you approve them at your level? 23 A No. 24 Q What did you do? 25 A I forwarded them to legal for their opinion.</p>	<p style="text-align: right;">Page 73</p> <p>1 interpretation, it's medical. 2 Q Is HIV an issue that the gay rights community 3 advocates for on a particular side? 4 A Well, I don't believe that's whose put these ads 5 out. 6 Q What do you mean "whose"? 7 A I don't know who it is, but I don't know that it's 8 an advocacy group. Can you tell who it is? 9 Q As you look at those advertisements, do you consider 10 those advertisements to be controversial at all? 11 A They were posted. 12 Q I understand, but do you understand them to be 13 controversial? 14 A No, I think it's making sure people understand they 15 should get themselves tested. 16 Q Is it fair to say that they want to make sure people 17 get tested for HIV before engaging in any sexual 18 conduct? 19 A I don't know. I guess it could imply that. 20 Q Imply that? Strike that. This one advertisement, 21 15, uses the word "sexy"; does it not? 22 A Sexy doesn't have to be sex. 23 Q This Exhibit No. 18 uses "hot"; is that right? 24 A Um-hum. 25 Q Is that a "yes"?</p>

<p style="text-align: right;">Page 74</p> <p>1 A Yes. 2 Q And 17 uses "hot"? 3 A Yes. Could be more about looks. 4 Q In Exhibits 15 and 16 have men in various poses 5 without their shirts on; is that right? 6 A Yes. 7 Q That doesn't convey to you any particular message 8 regarding homosexuality? 9 A It doesn't violate our guidelines. 10 Q Would homosexuality be one of those subjects where 11 there are particular sides to the issue that would 12 make it political? 13 A Just as a subject -- 14 Q Yes. 15 A -- or in an ad? 16 Q As a subject. 17 A Could. 18 Q Similar to the abortion issue? 19 A It would be something that we would look at. 20 Q Show you what's been previously marked as Exhibit 21 No. 22 from the SMART deposition. Do you recall 22 seeing that advertisement, ma'am? 23 A Only in the production material. 24 Q Is it your understanding that this advertisement ran 25 on SMART's buses?</p>	<p style="text-align: right;">Page 76</p> <p>1 A Yes. 2 Q Were you involved -- let me back up. These 3 advertisements actually were accepted by SMART, 4 correct? 5 A Correct. 6 Q Looks like the first one ran on a bus shelter; is 7 that right? 8 A Looks like shelters and bus ads, too. 9 Q The first advertisement, the second page, is the bus 10 shelter, correct? 11 A Yes. 12 Q And then the second one is the exterior of the bus? 13 A Yes. 14 Q Do you they make distinctions for sides and tails? 15 A There is a smaller version of the, just sizewise, 16 yes, but there's still a tail. 17 Q Is number two considered a bus tail? 18 A Yes. 19 Q As you indicated, these were accepted by SMART to 20 run, correct? 21 A Yes. 22 Q Were you involved in the decision to accept these 23 advertisements? 24 A They were not presented to SMART. 25 Q How was it that they were accepted?</p>
<p style="text-align: right;">Page 75</p> <p>1 A Based on the contract, yes. 2 Q And looking at the second page of Exhibit 22, it 3 appears from that photograph that they actually ran 4 on the inside of the buses? 5 A Yes. 6 Q What do you actually call that display site? 7 A Interior bus ad. 8 Q Do you know if it was also run on the outside of the 9 buses? 10 MR. HILDEBRANDT: Pursuant to this 11 contract or at any time, or does she know? 12 MR. MUISE: Does she know. 13 A No, other than what I see on this contract. 14 BY MR. MUISE: 15 Q Anything political about this advertisement? 16 A No. 17 Q I'm referring to political as used in the SMART 18 advertising guidelines; you understand that, 19 correct? 20 A Correct. 21 Q Show you what's been previously marked as Exhibit 22 No. 23. Trying to move along here to get everybody 23 out on time. Do you recall seeing this, the 24 advertisements presented in this exhibit, prior to 25 today, ma'am?</p>	<p style="text-align: right;">Page 77</p> <p>1 A CBS did not send them to us for review. 2 Q Is there anything in these advertisements, that 3 you're aware of, that would violate SMART's 4 advertising guidelines? 5 A It's posted, so, no. 6 Q Are there instances where CBS Outdoor might approve 7 an advertisement that goes up and then, you know, 8 somebody from SMART sees the advertisement and then 9 direct it to be taken down because it was 10 inappropriately put up in violation of the 11 guidelines? 12 MR. HILDEBRANDT: Has that occurred, 13 is that your question? 14 MR. MUISE: Yeah, I'm asking her if 15 that's ever occurred. 16 A No. 17 BY MR. MUISE: 18 Q Is that possible? 19 A I suppose it could be possible, yes. 20 Q One of my questions, 'cause, for example, a lot of 21 these, we see the contract and we see photographs of 22 the advertisements that are put up afterwards; who's 23 the one that's taking these photographs that are 24 attached to the ad? 25 A CBS.</p>

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1 Q And at what point in time do they actually submit
2 the photographs with the contract to SMART?
3 A They do that on a monthly basis, but not for
4 approval. Just as a, what do you want to say,
5 confirmation of the contract.
6 Q So my point being, if an advertising went up and you
7 got the photos, CBS Outdoor sent the contract with
8 the photos to SMART, somebody reviews those and
9 says, "Look, this shouldn't have gone up, it
10 violates the advertising guideline, take it down";
11 is that a possibility?
12 A I don't know. It would be dependent upon the ad and
13 the situation, but, no, that has not happened.
14 Q Could it happen, though?
15 A I suppose it could.
16 Q Are you aware of any advertisement that was actually
17 displayed on SMART that was later determined to be
18 actually in violation of the guidelines, but it
19 slipped past SMART for some reason?
20 A No.
21 Q Do you know if all these contracts with the
22 advertisements attached and the photographs of the
23 advertisement, whether these are all reviewed at
24 some point in time by a SMART employee?
25 A No.

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1 Q So who keeps these records?
2 A At the point that I receive them, it's for financial
3 purposes only.
4 Q Do they come to you, though?
5 A Yes.
6 Q Hand what's been marked as Exhibit No. 26 of the
7 SMART deposition. Do you recall seeing this
8 advertisement prior to today, ma'am?
9 A No.
10 Q So you weren't involved in any determination as to
11 whether this advertisement should be allowed to be
12 displayed on SMART?
13 A It was not sent to SMART.
14 Q Based on your understanding and personal knowledge
15 of the advertising guidelines, anything with this
16 advertisement that violates those guidelines?
17 A No.
18 Q Is your understanding, based on viewing this
19 advertisement, that it is an advertisement for a
20 Christian church?
21 A I suppose so.
22 Q Why would you suppose so?
23 A Union Grace Church, I don't necessarily know.
24 Q Does that cross on the right indicate anything to
25 you?

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1 A Probably. Yeah, that would be Christian.
2 Q Hand you what's been previously marked as Exhibit
3 No. 27. Have you seen that prior to today?
4 A No.
5 Q Do you know who made the determination that that
6 should be displayed on a SMART bus shelter?
7 A I never saw it and CBS never presented it to us for
8 consideration.
9 Q Anything about this advertising, though, based on
10 your personal knowledge of the guidelines, that
11 would violate those guidelines?
12 A No.
13 Q Handing you what's been previously marked as Exhibit
14 No. 28.
15 MR. HILDEBRANDT: This is Chubb 28?
16 MR. MUISE: SMART, yes, SMART/Chubb
17 Exhibit 28. Thank you.
18 BY MR. MUISE:
19 Q Do you recall seeing this advertisement prior to
20 today?
21 A No.
22 Q Do you know if this was an advertisement that was
23 accepted by or determined by SMART to be accepted?
24 A I never -- it was never presented to me for
25 consideration.

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1 Q Anything about this advertisement, based on your
2 personal knowledge of the guidelines, that would
3 violate those guidelines?
4 A No.
5 Q Do you know what this, looks like,
6 hungerfreesummer.org is?
7 A No.
8 Q Does it appear, based on this advertisement, it's
9 dealing with, I guess, hunger in children?
10 A Correct, that's what I would assume.
11 Q Now, it's my understanding that SMART accepts
12 commercial advertisement as well as public service
13 messages?
14 A Yes.
15 Q Would this last exhibit qualify as a public service
16 message or is it a commercial advertisement?
17 A I would say a public service.
18 Q Are there any categories of public service messages
19 that SMART excludes from display?
20 A It's hard to -- I mean, there's -- hypothetically, I
21 couldn't decide. There's no list, again.
22 Q And how about with regard to -- let me back up. My
23 understanding is that religious messages can be
24 dismayed on SMART buses as well, correct?
25 A Correct.

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1 Q Handing you what's been marked as Exhibits 30 and
2 31. Do you recall seeing those advertisements prior
3 to today, ma'am?
4 A Yes.
5 Q And what do you recall about when you first saw
6 those advertisements?
7 A I forwarded it to legal for consideration.
8 Q Was there anything that you saw when you reviewed
9 these, based on your personal knowledge of the
10 advertising guidelines, that would violate the
11 advertising guidelines?
12 A I wasn't sure, so that's why I forwarded it to
13 legal.
14 Q Do you know if those advertisements were accepted or
15 rejected by SMART?
16 A They were not rejected.
17 Q My recollection from, if I recall correctly from
18 SMART's deposition, is that they didn't violate the
19 advertising guidelines, but, at some point, it was
20 decided, perhaps by the proponents of the
21 advertisements, that they weren't going to run them;
22 is that correct?
23 A Right, there was no contract ever established.
24 Q Hand you what's been previously marked as Exhibit
25 No. 34.

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1 A Okay. Okay.
2 Q The bottom email appears to be an email from
3 Elizabeth Dryden to Avery Gordon and John Swatosh,
4 S-w-a-t-o-s-h; did I pronounce that correctly?
5 A Swatosh.
6 Q Swatosh. We know Mr. Avery Gordon is general
7 counsel for SMART, correct?
8 A Correct.
9 Q Who is Mr. Swatosh?
10 A He is the deputy general manager of administration.
11 Q Does he work in the general manager's office?
12 A He reports to the general manager.
13 Q And you were cc'd on this email, correct?
14 A Yes.
15 Q And a Brenda, with the last name, Y-n-c-l-a-n, how
16 do you pronounce that?
17 A Ynclan.
18 Q Ynclan, was also cc'd, correct?
19 A Correct.
20 Q Who is Brenda?
21 A She is the executive secretary to legal counsel.
22 Q And this email was dated May 14, 2010; you see that?
23 A Yes.
24 Q If you look in the email to Avery, which is the
25 bottom email from Elizabeth Dryden, it says, "We

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1 were notified that a request has been made for the
2 Islamic advertisement that Beth G forwarded a month
3 ago"; you see that?
4 A Yes.
5 Q That "Beth G" is in reference to you?
6 A Correct.
7 Q And there's some links below here, and one of them
8 is to that Miami Herald article that we previously
9 discussed; isn't that correct?
10 A Yes.
11 Q And that was the article at Exhibit --
12 MR. HILDEBRANDT: 44.
13 BY MR. MUISE:
14 Q -- 44, correct, ma'am?
15 A Yes.
16 Q In this email Ms. Dryden suggests, quote, "While we
17 don't believe we need to do that, let's meet to
18 discuss/meet with ACCESS about this, something to
19 think about"; do you see that, ma'am?
20 A Yes.
21 Q Do you know who ACCESS is?
22 A It's an organization, I don't really, for, is it
23 mid-eastern? I don't know exactly the title or what
24 it means, but it's an organization in Dearborn.
25 Q Let me see if this helps you. Do you understand

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1 this organization to be Arab Community Center for
2 Economic and Social Services?
3 A That would work with the acronym.
4 Q Do you know what the purpose for making a request or
5 suggestion to meet with ACCESS about this Islamic
6 advertisement?
7 A No.
8 Q Did you ever talk to Ms. Dryden about that?
9 A No.
10 Q Did you ever have any discussions with Ms. Dryden
11 about this email?
12 A Not that I'm aware of.
13 Q Do you know of any other instances, since you've
14 been working at SMART, where suggestions were made
15 to meet with an outside group to make a
16 determination as to whether an advertisement should
17 be accepted or rejected to run on SMART's buses?
18 MR. HILDEBRANDT: Object to the
19 characterization of the testimony. Go ahead.
20 A I'm not aware of that.
21 BY MR. MUISE:
22 Q On the third page of this advertisement, it appears
23 it was cut off for some reason in the production, it
24 appears to be my clients' advertisement at issue
25 here; is that fair to say?

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1 A Yes.
2 Q And is your understanding -- well, let me back up.
3 Was this the email that was forwarding this
4 advertisement to legal to make a determination as to
5 whether or not it would violate SMART's advertising
6 guidelines?
7 MR. HILDEBRANDT: Object, the lack of
8 foundation.
9 A Are you waiting for me?
10 BY MR. MUISE:
11 Q Yes, ma'am.
12 A I don't know if this was the formal request or not.
13 Q Do you know who actually forwarded the advertisement
14 to legal for a request?
15 MR. HILDEBRANDT: First?
16 A Yeah. I don't know. I don't know if I did or if
17 this is it.
18 BY MR. MUISE:
19 Q Did you ever discuss the leaving Islam advertisement
20 with Ms. Dryden?
21 A As part of the collaboration, yes.
22 Q How about prior to the collaboration, in terms of
23 the decision to move it up to the general counsel,
24 did you have any discussions with her about that?
25 A We may have.

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1 Q What do you recall --
2 A I mean, I don't remember specifics.
3 Q Do you have any general recollection?
4 A No.
5 Q Do you have any recollection of discussing that
6 Miami Herald article with Ms. Dryden before sending
7 the issue to legal?
8 A We probably did. I don't know.
9 Q Why do you believe you probably did?
10 A Well, 'cause it was part of the conversation.
11 Q What conversation?
12 A In terms of, you know, what's happened, and, you
13 know, where we should go from here and moving it
14 forward to legal.
15 (At this time, Mr. Hildebrandt left
16 the deposition room.)
17 Q Handing you what's been previously marked as Exhibit
18 No. 36. Do you recall seeing this?
19 A Sorry.
20 MR. GORDON: Hang on.
21 MR. MUISE: That's SMART Exhibit 36.
22 A Okay.
23 BY MR. MUISE:
24 Q Do you recall seeing this email prior to today,
25 ma'am?

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1 A Yes.
2 Q And the top email appears to be an email from
3 Anthony Chubb to you; is that right?
4 A Yes.
5 Q An Anthony Chubb is the assistant general counsel
6 for SMART; is that right?
7 A Yes.
8 Q And in this email he's responding to your request
9 for his thoughts on a proposed advertising; is that
10 correct?
11 A Correct.
12 Q And what specifically was the advertisement?
13 A I don't know they ever presented anything.
14 (At this time, Mr. Hildebrandt
15 entered the deposition room.)
16 Q Did you ever have any Get Out the Vote drives'
17 advertisements displayed on SMART?
18 A Get Out -- not that I remember.
19 Q And this comment here, "Typically Get Out the Vote
20 drives are not political," would that comport with
21 your personal knowledge and understanding of the
22 advertising guidelines employed by SMART?
23 A Yes.
24 Q Handing you what's been previously marked as Exhibit
25 No. 37 from the SMART deposition.

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1 A Yes.
2 MR. GORDON: Take your time. Make
3 sure you know what it is.
4 A Okay.
5 BY MR. MUISE:
6 Q Have you seen these emails prior to today, ma'am?
7 A Yes.
8 Q The very bottom email appears to be an email from
9 Robert Hawkins to a Gende Huang, G-e-n-d-e, last
10 name, H-u-a-n-g; do you see that?
11 A Yes.
12 MR. HILDEBRANDT: From Hawkins to
13 Huang?
14 BY MR. MUISE:
15 Q Excuse me, from Huang to Hawkins.
16 A Okay. Yes.
17 Q And based on this email, it appears that Gende Huang
18 is the national coordinator for United Coalition of
19 Reason; is that fair to say?
20 A Yes.
21 Q Have you ever had any conversations with Gende
22 Huang?
23 A No.
24 Q Any communications with Gende Huang?
25 A No.

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1 Q Is it your understanding that this is related to the
2 atheist or DetroitCoR.org advertisement we discussed
3 previously?
4 A Yes.
5 Q Did you ever do any research on the United Coalition
6 of Reason organization?
7 A Yes.
8 Q And what did you do?
9 A I probably went to the website.
10 Q Was this in the context of reviewing the atheist,
11 Detroit CoR, advertisement?
12 A Yes, as part of that process.
13 Q Was there anything on that advertisement that you
14 saw, that you recall, that would have made you
15 determine that that advertisement was political?
16 MR. HILDEBRANDT: Asked and answered.
17 We've already been through that advertisement.
18 A I forwarded it to legal for their recommendation.
19 BY MR. MUISE:
20 Q The next email up is an email from Robert Hawkins to
21 you, correct?
22 A Yes.
23 Q He's forwarding to you the request to run the, the
24 request from the national coordinator for the United
25 Coalition of Reason's request to run an

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1 making the determination of whether proposed
2 advertisements are simple information items or cross
3 the line and make political statements"; you see
4 that?
5 A Yes.
6 Q What factors, in terms of your personal knowledge of
7 the application of guidelines, does SMART apply to
8 determine whether an advertisement crosses the line
9 and makes political statements?
10 MR. HILDEBRANDT: Object to
11 vagueness. Object to lack of foundation.
12 A I'm not sure what the factors are. I mean, common
13 sense plays a role, and taking a look at the, you
14 know, website and/or the ad, but specifics, I
15 couldn't tell you.
16 BY MR. MUISE:
17 Q Is there anything in any of the guidelines, that
18 you're aware of, that would set out any factors to
19 determine whether an advertisement would cross the
20 line and make political statements?
21 MR. HILDEBRANDT: Asked and answered.
22 A Can you repeat the question.
23 (The last question was read back.)
24 A No.
25

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1 advertisement, he's sending that up to you; is that
2 right?
3 A Yes.
4 Q And then it appears that you forward that up to
5 Anthony Chubb, Avery Gordon, and Elizabeth Dryden,
6 correct?
7 A Yes.
8 Q And it was your understanding that the title of the
9 ads when you forwarded this up were "Godless"?
10 A Correct.
11 Q It looks like you forwarded this up on January 12th
12 of 2010; is that right?
13 A Yes.
14 Q And then you get an email, it appears, back from
15 Anthony Chubb the next day, correct?
16 A Yes.
17 Q And he emails you and cc's Elizabeth Dryden and
18 Avery Gordon; is that right?
19 A Yes.
20 Q And in that email he says that there's nothing about
21 that advertisement that violates any provisions of
22 the advertising guidelines; is that correct?
23 A Yes.
24 Q In the second paragraph, he says, "We do have to
25 continue being very careful on this issue and in

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1 BY MR. MUISE:
2 Q Hand you what's been previously marked as SMART
3 Exhibit No. 38. Do you recall seeing that email
4 prior to today?
5 A Yes.
6 Q And do you know what this email chain is referring
7 to?
8 A It appears to be about a TV show.
9 Q Do you recall if an advertisement for that TV show
10 was submitted?
11 A I don't specifically remember.
12 Q I believe, according to the bottom email, it's
13 referred to as My Generation, is the name of the TV
14 show?
15 A Looks like it. I'm waiting for the document back.
16 Yes.
17 Q Do you know if any advertisement for My Generation
18 ever ran on any of the SMART buses?
19 A I do not know, do not recall.
20 Q Do you recall whether any proposed advertisement was
21 rejected by SMART?
22 A I don't know.
23 Q In the top email Anthony Chubb states, in an email
24 to you, Avery Gordon and Elizabeth Dryden, "Subject:
25 Re ABC," quote, This decision turns on whether the

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1 proposed advertisement is obscene per section 5.07.
2 I believe an argument can be made that the proposed
3 ad is repulsive by reason of crass disregard of
4 moral or ethical principles and should therefore be
5 rejected. Avery makes the final decision. I'd ask
6 for alternative graphics, end quote; do you see
7 that?
8 A Yes.
9 Q Do you agree with that statement in terms of the
10 application of SMART's advertising guidelines to the
11 proposed ad?
12 A I don't know what the ad looks like, so I can't
13 answer that.
14 Q Do you know if that's a correct statement of the
15 application of the advertising guidelines, that an
16 ad could be obscene if it's repulsive by reason of
17 crass disregard of moral or ethical principles?
18 MR. HILDEBRANDT: Object to
19 relevance.
20 A I don't know.
21 BY MR. MUISE:
22 Q Based on your understanding and personal knowledge
23 of the application of the guidelines, you don't know
24 whether or not that's a correct statement of whether
25 an ad would be obscene or not obscene under the

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1 advertising guidelines?
2 A If that's legal's opinion, then I probably would go
3 with it, but that's why I turn over the ads, for
4 them to give the legal opinion on.
5 Q Based on your personal knowledge of the ads, do you
6 have any reason to reject that application of the
7 obscene provision of the advertising guidelines?
8 MR. HILDEBRANDT: She told you she
9 hasn't seen the ads. I'm going to object to the
10 mischaracterization and form of the question.
11 A I honestly don't remember what the ads look like.
12 BY MR. MUISE:
13 Q That wasn't my question, despite your counsel's
14 attempt to redirect the question.
15 MR. HILDEBRANDT: Perhaps you should
16 read back the question and listen to what you said,
17 then.
18 BY MR. MUISE:
19 Q My question is, based on your understanding and
20 application of the advertising guidelines, is that a
21 correct statement of the application of the
22 guideline as it relates to the obscene prohibition?
23 MR. HILDEBRANDT: Asked and answered.
24 A And I said, I don't know, that's why I give it back
25 to legal for them to make a determination.

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1 BY MR. MUISE:
2 Q Is there anything inconsistent about what is said
3 there with regard to SMART's advertising guidelines?
4 MR. HILDEBRANDT: She doesn't know,
5 Mr. Muise.
6 A I don't know.
7 BY MR. MUISE:
8 Q How do you apply the guidelines if you don't know
9 how they're applied, ma'am?
10 MR. HILDEBRANDT: Object. That's an
11 outrageous question under the circumstances;
12 mischaracterizes the prior testimony.
13 A All of these are not necessarily black-and-white
14 issues, and not necessarily clean decisions. So in
15 my process and in my thinking, I always put weight
16 on the opinion of my legal counsel. So whether I
17 apply it or I don't apply it, I always look for
18 their opinion, too, in our collaboration in making a
19 decision.
20 BY MR. MUISE:
21 Q So when you look at these advertisement, is there a
22 way to you to step back and look objectively at each
23 advertisement and say, This violates or this doesn't
24 violate SMART's advertising guidelines?
25 A I could, or I'm questioning whether it does, or I

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1 want, what do you want to say, clarification on my
2 decision. But in this particular case, I didn't do
3 any of those things.
4 Q Do you know if "obscene" is defined anywhere in the
5 advertising guidelines that SMART employs?
6 A As part of the guidelines, that's all that's in
7 there.
8 Q Handing you what's been previously marked as Exhibit
9 No. 40.
10 A Okay.
11 Q Do you recall seeing these emails prior to today?
12 A Yes.
13 Q And you were cc'd, or, excuse me, in the top email
14 it was sent to you from Anthony Chubb, correct?
15 A Yes.
16 Q And the bottom email is from Elizabeth Dryden, and
17 you were also included in the "To" box for that,
18 correct?
19 A Yes.
20 Q Do you know what these emails are referring to?
21 A Two ads that were presented to us, and one is a
22 question, one topic that was a potential advertiser.
23 Q And the two ads that were presented were the Rock
24 Star ads and Shrek ad; is that correct?
25 A Yes.

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1 Q Were those accepted?
2 A Rock Star, with the amendments -- oh wait, Rock
3 Star -- yeah, I guess -- is the Rock Star the Red
4 Dead Redemption one? Yeah, so that's the Red Dead
5 Redemption ad, I thought, and --
6 Q That's the ad we already discussed in this
7 deposition.
8 A Right. And Shrek was accepted, but they never
9 posted.
10 Q And what was the Marijuana University discussion
11 about?
12 A Apparently somebody at CBS was questioning whether a
13 potential advertiser could post on our buses dealing
14 with medical marijuana.
15 Q Do you know if a determination had been made whether
16 it could?
17 A I don't believe we made any final determination.
18 Q Was any advertisements ever submitted to SMART on
19 behalf of the Marijuana University?
20 A No.
21 Q Is there anything, that you're aware of, based on
22 your personal knowledge of the advertising
23 guidelines, that would prohibit Marijuana University
24 from displaying an advertisement regarding
25 legalizing marijuana?

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1 A I would have to see the ad for a final
2 determination.
3 Q Is there anything about that subject matter that
4 would be prohibited under the advertising
5 guidelines?
6 A It could, under the tobacco, no tobacco allowed.
7 Q How about under the political?
8 A It could, but, again, I'd want to see the ad before
9 a determination would be made.
10 Q Is there anything that would prohibit, under the
11 advertising guidelines, based on your personal
12 knowledge, an advertisement regarding marijuana; is
13 that a subject that is excluded from the, as a
14 subject matter, from the advertising guidelines?
15 A Again, there's no list.
16 Q Alcohol and tobacco are listed as specific subjects,
17 correct?
18 A That would be true.
19 Q How about with marijuana?
20 A It hasn't been determined.
21 Q When you say, "it hasn't been determined," do you
22 mean it hasn't been decided whether it is an
23 excluded category or an accepted category; what's
24 your understanding --
25 A There's been no ad presented for us to consider.

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1 MR. MUISE: Let's take another break
2 and see if we can't wrap up when we come back. It's
3 11:10. Let's come back 11:15.
4 (Break was taken.)
5 BY MR. MUISE:
6 Q Handing you what's been previously marked as Exhibit
7 No. 41 from the SMART deposition. Have you seen
8 that email exchange prior to today?
9 A No.
10 Q Are you aware, at some point in time, there was a
11 proposed advertisement for the Flight Club, which,
12 according to these emails, is a gentlemen's club?
13 A I had heard that there was something about that
14 issue.
15 Q Do you know if an advertisement was ever proposed to
16 SMART by a gentlemen's club?
17 A I don't know. I don't think that ad, or that email,
18 says that specifically. I think it's waiting for
19 the ad.
20 Q Do you know if, based on your personal knowledge of
21 SMART's advertising guidelines, is there anything
22 that would prohibit a gentlemen's club from
23 advertising on SMART buses?
24 A We would have to review the ad to make that
25 determination.

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1 Q But in terms of a gentlemen's club being an
2 advertiser, is there anything in the guidelines that
3 would prohibit an advertisement of a gentlemen's
4 club?
5 A I don't know. I'd have to see the ad.
6 Q I understand you'd have to see the ad, but just on
7 the guidelines itself, is there anything that would
8 prohibit a gentlemen's club from advertising on
9 SMART?
10 A There's no list of prohibited, other than what's in
11 the outline, in the ad.
12 Q Since you've been working at SMART, have you heard
13 any SMART employee ever refer to any of my clients
14 as being Islamophobes?
15 A No.
16 MR. HILDEBRANDT: Asked and answered.
17 BY MR. MUISE:
18 Q During any time that you've worked with SMART, have
19 you heard any SMART employee ever refer to my
20 clients' speech, or their speech activity, as
21 Islamophobic or hate speech?
22 A No.
23 Q As you sit here today, is it your understanding that
24 my clients' leaving Islam ad would not be displayed
25 under SMART's advertising guidelines if it was

1 resubmitted?
2 A No, it would not be displayed.
3 MR. MUISE: No further questions.
4 MR. HILDEBRANDT: I don't have any
5 questions.
6 (The deposition concluded at 11:25 a.m.)
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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF LIVINGSTON)
5 I, Carol Marie Hicks, Certified Shorthand Reporter,
6 a Notary Public in and for the above county and state, do
7 hereby certify that the above deposition was taken before
8 me at the time and place hereinbefore set forth; that the
9 witness was by me first duly sworn to testify to the
10 truth and nothing but the truth, that the foregoing
11 questions and answers made by the witness were duly
12 recorded by me stenographically and reduced to computer
13 transcription; that this is a true, full and correct
14 transcript of my stenographic notes so taken; and that I
15 am not related to, nor of counsel to either party nor
16 interested in the event of this cause.
17
18
19
20 Carol Marie Hicks
21 CSR 3345 Notary Public
22 Livingston County, Michigan
23 My Commission expires: September 4, 2016
24
25