

EXHIBIT 9

American Freedom Defense v. SMART

Deponent: **Elizabeth Dryden**

Taken: **6/27/2013**



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Page 1	Page 3
<p>IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>AMERICAN FREEDOM DEFENSE 2:10-cv-12134-DPH-MJH INITIATIVE; et al., Hon. Denise Page Hood</p> <p>Plaintiffs, Magistrate Judge vs. Hluchanuik</p> <p>SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION ("SMART"), et al.,</p> <p>Defendants.</p> <p>----- / Pages 1-74</p> <p>The Deposition of Elizabeth Dryden, taken pursuant to Notice in the above-entitled cause at 623 West Huron Street, Ann Arbor, Michigan, on June 27, 2013, at 9:30 a.m., before Carol Marie Hicks, CSR-3345, Notary Public in and for the County of Livingston.</p>	<p>1 INDEX TO EXAMINATIONS</p> <p>2 Witness Page</p> <p>3 ELIZABETH DRYDEN</p> <p>4 EXAMINATION BY MR. MUISE 4</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 Deposition Exhibits Page</p> <p>8 DRYDEN EXHIBIT 47 Plaintiffs' Amended Notice 54 9 of Deposition of Elizabeth 10 Dryden</p> <p>11 DRYDEN EXHIBIT 48 Email chain re Macomb County 54 12 "Report Drunk Drivers" 13 campaign</p> <p>14 DRYDEN EXHIBIT 49 Email chain re vandalism 57</p> <p>15 DRYDEN EXHIBIT 50 Email chain re Detroit CoR 60 16 Publicity Campaign</p> <p>17 DRYDEN EXHIBIT 51 Email from Ms. Dryden to Jim 64 18 Fetzer, re CoR ads</p> <p>19 DRYDEN EXHIBIT 52 Email chain re Godless 67 20 advertising on SMART buses</p> <p>21 DRYDEN EXHIBIT 53 Email from Ms. Dryden to Ms. 70 22 Gibbons re Advertise with 23 SMART copy 24 (Attached.) 25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ROBERT J. MUISE (P62849)</p> <p>4 AMERICAN FREEDOM LAW CENTER</p> <p>5 P.O. Box 131098</p> <p>6 Ann Arbor, Michigan 48113</p> <p>7 734.635.3756</p> <p>8 rmuise@americanfreedomlawcenter.org</p> <p>9 Appearing on behalf of the Plaintiffs.</p> <p>10</p> <p>11 CHRISTIAN E. HILDEBRANDT (P46989)</p> <p>12 VANDEVEER GARZIA, P.C.</p> <p>13 1450 West Long Lake Road, Suite 100</p> <p>14 Troy, Michigan 48098</p> <p>15 248.312.2800</p> <p>16 childebrandt@vgpclaw.com</p> <p>17 Appearing on behalf of the Defendants.</p> <p>18</p> <p>19 AVERY E. GORDON (P41194)</p> <p>20 SMART</p> <p>21 535 Griswold Street, Suite 600</p> <p>22 Detroit, Michigan 48226</p> <p>23 313.223.2100</p> <p>24 agordon@smartbus.org</p> <p>25 Appearing on behalf of the Defendants.</p>	<p>1 ELIZABETH DRYDEN,</p> <p>2 having first been duly sworn, was examined and testified</p> <p>3 on her oath as follows:</p> <p>4 EXAMINATION</p> <p>5 MR. MUISE:</p> <p>6 Q Could you please state your full name.</p> <p>7 A Elizabeth Utton Dryden.</p> <p>8 Q Can you spell the middle name.</p> <p>9 A U-t-t-o-n.</p> <p>10 Q And spell your last name, please.</p> <p>11 A D-r-y-d-e-n.</p> <p>12 Q Ma'am, my name is Robert Muise, and I am an attorney</p> <p>13 for the plaintiffs in this case, the American</p> <p>14 Freedom Defense Initiative, Pamela Geller, and</p> <p>15 Robert Spencer, and I believe you and I met for the</p> <p>16 first time today, correct?</p> <p>17 A That is correct.</p> <p>18 Q Ma'am, have you ever testified under oath in court</p> <p>19 or at a deposition previously?</p> <p>20 A No.</p> <p>21 Q There's a few ground rules that I want to kind of</p> <p>22 run through with you today that hopefully will allow</p> <p>23 us to have a cleaner, complete record by the end of</p> <p>24 the day, okay, ma'am?</p> <p>25 A Yes.</p>

Page 9

1 testimony, or her deposition.
2 **Q** You said, "documents that were prepared and provided
3 to me"; what documents are you referring to?
4 A Well, it would be -- all those documents would fall
5 under there, and then there were some email
6 documents that were provided to me.
7 **MR. HILDEBRANDT:** We provided her
8 with a subset of the production documents, the ones
9 that included her name as a recipient or cc, or as a
10 writer.
11 **BY MR. MUISE:**
12 **Q** Ma'am, how are you currently employed?
13 A Yes.
14 **MR. HILDEBRANDT:** How.
15 A How am I currently employed? I'm a director of
16 public affairs at Charter One Bank.
17 **BY MR. MUISE:**
18 **Q** When did you start that job?
19 A In August of 2010.
20 **Q** And were you employed prior to that?
21 A I was.
22 **Q** And who were you employed with prior to that?
23 A SMART.
24 **Q** How long were you employed with SMART?
25 A Three years.

Page 10

1 **Q** Do you know approximately when you started?
2 A July or August of 2007.
3 **Q** What position did you hold at SMART?
4 A I was the director of external affairs, marketing
5 and communications.
6 **Q** As director of external affairs, marketing and
7 communications; is that correct?
8 A Correct.
9 **Q** Did you hold that position the entire time you
10 worked for SMART?
11 A I did.
12 **Q** Why did you leave SMART?
13 A For other professional opportunities.
14 **Q** Was it your decision to leave SMART?
15 A Yes.
16 **Q** Do you know who Beth Gibbons is?
17 A Yes.
18 **Q** How do you know Beth Gibbons?
19 A From my time at SMART, working there.
20 **Q** What position did Beth Gibbons hold at the time you
21 were working at SMART?
22 A I don't recall her exact title, but she reported
23 directly to me.
24 **Q** Was your department you were director of referred to
25 as the marketing department?

Page 11

1 A That's one of the ways it could have been referred
2 to.
3 **Q** Did you have any role and responsibility with regard
4 to applying SMART's advertising guidelines to
5 various advertisements that were submitted for
6 running on SMART property?
7 A Yes.
8 **Q** What role is that?
9 A Well, as the director of the department, it was, I
10 was one of the people who would help make decisions
11 on whether ads were to be placed.
12 **Q** Would that be decisions based on SMART's advertising
13 guidelines?
14 A On the policy, yes.
15 **Q** You refer to the "policy"; is that fair to call it
16 the advertising guidelines?
17 A I believe so. It depends on how you've referred to
18 it previously.
19 **Q** Just so I'm clear, is there a policy that's separate
20 from the advertising guidelines as to whether an
21 advertising should apply or not?
22 **MR. HILDEBRANDT:** The contract in
23 this case actually titles them the advertising
24 guidelines.
25 A Then the advertising guidelines.

Page 12

1 **BY MR. MUISE:**
2 **Q** Okay. I want to provide you with a document that's
3 been previously marked. They're marked "Chubb" and
4 we'll refer to them as the SMART exhibits that were
5 admitted as part of the SMART deposition. This one
6 is Exhibit No. 3. Take a look at that, ma'am.
7 A Okay.
8 **MR. HILDEBRANDT:** So the question
9 was, is there a policy separate from the advertising
10 guidelines?
11 A Not to my knowledge. At the time that I was there,
12 there was not.
13 **BY MR. MUISE:**
14 **Q** Okay. I don't know if there was necessarily a
15 question on the table, but I appreciate that
16 clarification. If you look on Exhibit 3 that I
17 handed you from the SMART deposition, it's actually
18 the third page of the exhibit, but it's marked as
19 number 40, and there's a subsection 5.07 titled
20 Advertising Guidelines; you see that, ma'am?
21 A Yes.
22 **Q** Are these the advertising guidelines that you would
23 employ while you worked with SMART to determine
24 whether an ad should be accepted or rejected?
25 A Yes.

Page 13

1 Q Are you aware of any other manuals, or guidelines,
2 or policies that would explain how these advertising
3 guidelines would be applied by SMART?
4 A No.
5 Q So the sum and substance of the advertising
6 guidelines that SMART would employ to accept or
7 reject an advertisement is contained in this Exhibit
8 3, particularly section 5.07, Advertising
9 Guidelines; is that correct?
10 A Correct.
11 Q What is your understanding, if you look at -- let me
12 back up. Look at section 5.07, Advertising
13 Guidelines, subsection B, 1. And based on this, it
14 appears that SMART prohibits advertisements that are
15 political or political campaign advertising; is that
16 correct?
17 A Yes.
18 Q And what was your understanding, when you were
19 working with SMART, as to how SMART defined
20 "political"?
21 A It could be ballot proposals, it could be campaign
22 initiatives, or individuals, and that's the
23 broad. . .
24 Q What would make, for example, individuals political?
25 A If they're running for office.

Page 14

1 Q Anything else that would qualify as being a
2 political advertisement of the SMART guidelines,
3 based on your understanding when you worked at
4 SMART?
5 A We'd have to review that on a case-by-case basis.
6 Q Was the application of political in the advertising
7 guidelines, was it limited to just matters that
8 dealt with politics, such as the example you used,
9 political campaigns, campaign initiatives, ballot
10 proposals?
11 MR. HILDEBRANDT: Object to the form
12 of the question.
13 THE WITNESS: Can you repeat the
14 question.
15 (The last question was read back.)
16 A No.
17 BY MR. MUISE:
18 Q What other ways were advertisements considered
19 political that didn't deal directly with politics?
20 A Again, it would have to be taken on a case-by-case
21 basis. Some matters that are hot, or hotly
22 contended, in the media, that an ordinary person
23 would understand as possibly political, may be
24 considered political.
25 Q Hotly contended that a person may consider

Page 15

1 political; the political you're referring to there
2 refers to what?
3 A You'd have to look at it on a case-by-case basis. I
4 can't -- if it's a hotly-contended matter in the
5 media at that time, that might be something that
6 could be considered political.
7 Q Okay. So the fact that it's hotly contended in the
8 media is what might make the matter political.
9 A Possibly.
10 Q Do you have an example of, when you were working at
11 SMART, of an issue that was hotly contended in the
12 media that was deemed to be political as a result?
13 A I don't recall.
14 Q I'm handing you what's been previously marked as
15 Exhibit SS from the Geller deposition, and also
16 Exhibit 2 from the SMART deposition. And if you
17 look at page two of the SMART deposition and Exhibit
18 SS, I'm going to ask you if you've seen the
19 advertisement that's depicted in those exhibits.
20 Have you seen that advertisement prior to today,
21 ma'am?
22 A I have.
23 Q And do you understand that to be the advertisement
24 that my client submitted to SMART for display and it
25 was rejected?

Page 16

1 A Yes.
2 Q Were you involved in any of the decisions to reject
3 the advertisement?
4 A Yes.
5 Q In what manner?
6 A The advertisement was brought to my attention, and I
7 shared, I asked legal for an opinion, and was
8 involved in discussions regarding the next steps,
9 and also informing the general manager, and that was
10 how I was involved.
11 Q Did you have any discussions with Beth Gibbons about
12 this advertisement?
13 A Yes.
14 Q What do you remember about those discussions?
15 A I don't remember any details, but because Beth
16 reported to me, and she brought the advertisement to
17 me, then I would have discussed it with her.
18 Q Do you have any general recollection of what was
19 discussed about this advertisement?
20 MR. HILDEBRANDT: I'm going to object
21 to the question. Does that --
22 BY MR. MUISE:
23 Q With Beth Gibbons.
24 MR. HILDEBRANDT: With Beth Gibbons.
25 A I don't recall any of the details of the

Page 17

1 conversations that I had with Beth Gibbons regarding
2 this advertisement.
3 **BY MR. MUISE:**
4 **Q Do you recall if this advertisement -- strike that.**
5 **Do you know what the basis was for rejecting this**
6 **advertisement by SMART?**
7 A I believe it was -- there were two reasons, I
8 believe, but this was a long time ago, and, you
9 know, I don't recall all the details of the matter.
10 **Q Do you recall that one of the bases for denying it**
11 **was because it was political?**
12 A Again, I'm not absolutely sure today, as I talk to
13 you, exactly why, the exact reason why it was
14 declined.
15 **Q Based on your understanding of the application of**
16 **the advertising guidelines that we've been**
17 **discussing, when you look at this advertisement, is**
18 **there anything, looking at that advertisement's four**
19 **corners, that you would deem to be political based**
20 **on your understanding of the guidelines?**
21 A In the discussion --
22 **MR. HILDEBRANDT: In the discussion**
23 **with whom? I need to know if I need to object on**
24 **privilege here.**
25 **MR. MUISE: I didn't ask her anything**

Page 18

1 about --
2 **MR. HILDEBRANDT: I understand.**
3 **Don't answer relative to discussions that you've had**
4 **with legal, because those are privileged, okay?**
5 **THE WITNESS: Okay.**
6 **MR. HILDEBRANDT: But you can tell**
7 **him, certainly, the underlying facts. He's entitled**
8 **to know the underlying facts of what this ad**
9 **represents.**
10 A In this ad, the website contained within the
11 advertisement, directs people, who are reading the
12 website, to a political website.
13 **BY MR. MUISE:**
14 **Q Did you ever go look at that website?**
15 A I believe so.
16 **Q What recollection do you have of what you saw on**
17 **that website?**
18 A I can't recall the details.
19 **Q Anything, other than what was found on the website,**
20 **based on your understanding of the application of**
21 **SMART's guidelines, anything else about this**
22 **advertisement that you believe is political per the**
23 **guidelines?**
24 A Can you restate that question.
25 **Q Sure. I'll try to make it clearer. I started this**

Page 19

1 **line of questioning with, based on your**
2 **understanding of the advertising guidelines, is**
3 **there anything that, as you look at this**
4 **advertisement, that you would deem to be political**
5 **based on your understanding of the guidelines, and**
6 **you responded by referring to the**
7 **RefugeFromIslam.com, the content of that website; is**
8 **that correct?**
9 A That's correct.
10 **Q And then I followed up and said, other than the**
11 **content of that website, is there anything, as**
12 **you're looking at this advertisement, Exhibit SS,**
13 **and page two of Exhibit 2 from the SMART deposition,**
14 **anything else from that that's political?**
15 A I'm not sure.
16 **Q Why aren't you sure?**
17 **MR. HILDEBRANDT: Object to the form**
18 **of the question, why aren't you sure.**
19 A Why am I not sure. As I said earlier in my
20 testimony, **the definition of politics can be broad,**
21 and I would not say precisely that nothing else in
22 this ad is not political.
23 **BY MR. MUISE:**
24 **Q Was anything brought to your attention about a**
25 **dispute regarding the display of this ad at another**

Page 20

1 **transit authority in Florida?**
2 A I was aware of a dispute at other transit
3 authorities.
4 **Q I believe there's one that, we saw an article**
5 **dealing with the Miami advertising agency; you**
6 **familiar with the controversy that was involved with**
7 **this advertisement in Miami?**
8 A Again, the details of that are not -- I don't recall
9 all the details. I recall controversy, as you
10 describe it, with a transit agency in Florida, I
11 believe Miami.
12 **Q Did you have a discussion with Beth Gibbons about**
13 **that?**
14 A I don't recall.
15 **Q Do you know if this advertisement contained content**
16 **that was, I guess, using the way you described**
17 **previously, hotly contested in the media?**
18 **MR. HILDEBRANDT: Hotly contested, I**
19 **think, is what she said.**
20 **BY MR. MUISE:**
21 **Q Okay.**
22 A **Not necessarily.**
23 **Q You said there was a second bases that you had an**
24 **understanding as to why it was rejected; what basis**
25 **was that?**

Page 21

1 **MR. HILDEBRANDT: Feel free to look**
2 **at the guidelines, if you need to.**
3 A Okay. As section 5.07, number 4, B, 4, excuse me.
4 Would you like me to read it?
5 **BY MR. MUISE:**
6 **Q So what was it about B, 4, that was -- strike that.**
7 **Go ahead and read what you're referring to.**
8 A "Advertising that is clearly defamatory or likely to
9 hold up to scorn or ridicule any person or group of
10 persons."
11 **Q What was it about this advertisement that violates**
12 **that provision?**
13 A The advertisement implies that people, who are
14 Islamic, or practicing Islams, are under, are
15 threatened by other members of the community.
16 **Q Anything else?**
17 A That's the general answer.
18 **Q Do you know what a fatwa is that's referenced in the**
19 **advertisement?**
20 A I believe it is a decree for someone to be killed in
21 some religions or in legal, in some laws.
22 **Q Do you know if a fatwa is an Islamic religious**
23 **edict?**
24 A I'm not sure of that.
25 **Q When you reviewed this advertisement, did you have**

Page 22

1 **any understanding of fatwa or Sharia, or what Islam**
2 **calls for if an individual leaves Islam?**
3 A Did I know that at the time when we discussed it?
4 **MR. HILDEBRANDT: Object to the form**
5 **of the question. Go ahead.**
6 A Okay. I did not know that when the information was,
7 when this was first brought to me.
8 **BY MR. MUISE:**
9 **Q Did you subsequently learn of that information?**
10 A Yes, I did.
11 **Q When?**
12 A In the process of the discussions about the
13 advertisement.
14 **Q I want to go back and just follow up on one thing**
15 **you had indicated about the website reference on**
16 **there. I believe you said that the website was a**
17 **political website, or it referred to a political**
18 **website; do you remember what it was about the**
19 **website that you deemed it to be political?**
20 A I do not.
21 **Q You don't recall if actually you considered the**
22 **RefugeFromIslam.com website itself to be political,**
23 **or perhaps some links that were on that website,**
24 **that were deemed to be political?**
25 A I don't recall that.

Page 23

1 **Q Now, my understanding was that, at your level of**
2 **the, I'll just call marketing department for**
3 **simplicity, at the marketing department level, this**
4 **advertisement was not rejected; is that right?**
5 A The advertisement was, we requested the analysis of
6 the legal department.
7 **Q And why was it that marketing department could not**
8 **make a determination as to whether this ad should**
9 **run or not run?**
10 A It had complex issues that we wanted further
11 recommendations for and. . .
12 **Q What were the complex issues that were presented by**
13 **this advertisement, based on your view?**
14 A The content of the website and the scorn that's
15 implied through the language on the ad.
16 **Q Do you know if SMART ever ran any advertisements for**
17 **battered women's shelters?**
18 A I do not.
19 **Q Do you know if there's anything in the policy that**
20 **would prohibit a display of an advertisement for a**
21 **battered women's shelter?**
22 A All ads are, would be reviewed on a one-by-one
23 basis.
24 **Q Is there anything, though, as you're looking at**
25 **that, that would prohibit an advertisement on a**

Page 24

1 **battered women's shelter as an excluded subject from**
2 **the advertising guidelines?**
3 **MR. HILDEBRANDT: Object; calls for**
4 **speculation; it's a hypothetical.**
5 A Depends what's in the content of the ad.
6 **BY MR. MUISE:**
7 **Q As a subject matter is there anything that is**
8 **prohibited, under the advertising guidelines, from**
9 **running an advertisement about a battered women's**
10 **shelter?**
11 A I don't know. I don't think so.
12 **Q We've heard other testimony that, for example,**
13 **religion isn't a subject matter that's excluded by**
14 **the advertising guidelines; is that correct?**
15 A Yes.
16 **Q So would it be fair to say the same for an**
17 **advertisement about a battered women's shelter**
18 **wouldn't necessarily be excluded by the guidelines?**
19 A Because of the issue itself, is that what you're
20 asking?
21 **Q Yes, 'cause when I look at this there's really two**
22 **categories that are prohibited, well, probably**
23 **three: Political campaigns, alcohol, and tobacco**
24 **sales; that fair to say?**
25 A That's, yes, here.