

EXHIBIT 6

American Freedom Defense Initiative v. SMART

Deponent: **Beth Gibbons**

Taken: 6/25/2013



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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

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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?

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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

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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" --

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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?

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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 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 **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 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 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 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 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 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 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 **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 **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

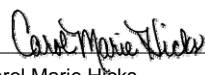

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1 **Q But in terms of a gentlemen's club being an**
2 **advertiser, is there anything in the guidelines that**
3 **would prohibit an advertisement of a gentlemen's**
4 **club?**
5 A I don't know. I'd have to see the ad.
6 **Q I understand you'd have 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**

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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 

26 (Pages 101 to 103)