

American Freedom Defense v. SMART

Deponent: **Elizabeth Dryden**

Taken: **6/27/2013**



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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 1-74

16
17 The Deposition of Elizabeth Dryden, taken
18 pursuant to Notice in the above-entitled cause at
19 623 West Huron Street, Ann Arbor, Michigan, on June
20 27, 2013, at 9:30 a.m., before Carol Marie Hicks,
21 CSR-3345, Notary Public in and for the County of
22 Livingston.

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1 ELIZABETH DRYDEN,
2 having first been duly sworn, was examined and testified
3 on her oath as follows:
4 EXAMINATION
5 MR. MUISE:
6 Q Could you please state your full name.
7 A Elizabeth Utton Dryden.
8 Q Can you spell the middle name.
9 A U-t-t-o-n.
10 Q And spell your last name, please.
11 A D-r-y-d-e-n.
12 Q Ma'am, my name is Robert Muise, and I am an attorney
13 for the plaintiffs in this case, the American
14 Freedom Defense Initiative, Pamela Geller, and
15 Robert Spencer, and I believe you and I met for the
16 first time today, correct?
17 A That is correct.
18 Q Ma'am, have you ever testified under oath in court
19 or at a deposition previously?
20 A No.
21 Q There's a few ground rules that I want to kind of
22 run through with you today that hopefully will allow
23 us to have a cleaner, complete record by the end of
24 the day, okay, ma'am?
25 A Yes.

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1 Q First, in this deposition room, to my right, is
2 Mr. Avery Gordon, who is an attorney, the general
3 counsel, for the Suburban Mobility Authority for
4 Regional Transportation; you know Mr. Gordon?
5 A I do.
6 Q And is it okay with you, during the course of the
7 this deposition, if I use the acronym "SMART" to
8 mean the Suburban Mobility Authority for Regional
9 Transportation?
10 A Yes.
11 Q That's the common acronym that's used for the
12 organization; is that correct?
13 A I believe so.
14 Q And then to Mr. Gordon's right is Mr. Christian
15 Hildebrandt, who I understand is representing you
16 during the course of this deposition; is that
17 correct?
18 A Yes.
19 Q And then to my left, and your right, is our court
20 reporter, who is perhaps one of the most important
21 persons in this room, because, as you can see, she
22 is diligently trying to take down everything that is
23 said during the course of this deposition;
24 consequently, there's a couple of rules that you and
25 I need to try to abide by to help us make a complete

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1 record here.
2 And the first one is that there's a
3 tendency, in normal conversation, to want to
4 anticipate a question and start answering the
5 question before the question is completely asked. I
6 would ask you to try your best to refrain from that
7 tendency, let me get my question out completely, and
8 then you can start answering the question, and I
9 will, likewise, refrain from asking a follow-up
10 question until you are done speaking; okay, ma'am?
11 A Yes.
12 Q So, again, it's important that just one of us be
13 speaking at a time, okay?
14 A (Witness nodded head.)
15 Q "Yes"?
16 A Yes.
17 Q Which leads me to one of the other important rules,
18 is that you need to respond in words, and words that
19 our court reporter can hear, so just don't nod the
20 head or shake the head, 'cause you can't pick that
21 up on the record. Avoid using "uh-huh" and
22 "um-hum," 'cause it's hard to determine whether
23 that's an affirmative or negative response, so I
24 would ask you to use words, don't use gestures, and
25 we need to speak loudly so you can hear us, okay?

Page 7

1 A Okay.
2 Q If there's a document that you think might help you
3 to recall events better, or more accurately, or more
4 clearly, let me know, there's a chance we might have
5 such a document here available to us.
6 If there's a question that I ask you
7 that you don't understand, I grew up in Boston, I
8 have a Boston accent that slips in every now and
9 then and tend to cut words off, and so if you don't
10 quite understand what I'm asking you, let me know.
11 If you don't, I will assume that you understood what
12 my question is and your answer will be directed to
13 that question.
14 If you need a break at any time
15 during the course of this deposition, let me know,
16 we'll to so. It's not enhanced interrogation, by
17 any stretch of the imagination. The only caveat to
18 that being, if we're in the middle of a question/
19 answer, I'll ask that you complete your answer to
20 that question before we take a break; okay, ma'am?
21 A Okay.
22 Q And I also typically try to go about 50 minutes to
23 an hour and then we'll take a break, so you could
24 almost anticipate that being the case, okay?
25 A Okay.

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1 Q Is there any reason, as you're sitting here today,
2 why you think it might be difficult for you to
3 understand and answer my questions truthfully;
4 meaning, are you under any doctor's care, do you
5 have any personal issues, and I don't need to know
6 the details of those. I just want to know whether
7 or not you're capable, as you're sitting here today,
8 to understand and answer my questions.
9 A I am.
10 Q In preparation for your deposition today, did you
11 review any documents that helped you to refresh
12 recollection of any the events related to this
13 litigation?
14 A I did.
15 Q Could you tell me what those documents were, ma'am.
16 A I reviewed the deposition of SMART, I reviewed
17 Pamela Geller's testimony, I reviewed documents that
18 were prepared and provided to me, and I reviewed the
19 decision by the last Court.
20 Q The Sixth Circuit?
21 A If that is the last court, then that's the one.
22 Q Okay. You said Geller testimony; was that her
23 deposition, her testimony at court, or do you know
24 what specific testimony it was that you reviewed?
25 A I don't specifically know. I believe it was her

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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.

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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?

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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.

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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.

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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.

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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

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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?

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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

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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

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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

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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

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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.

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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

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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.

Page 25

1 Q But battered women's shelter wouldn't be one of
2 those categories, correct?
3 A Not in and of itself.
4 Q And it's not a defined category that's prohibited
5 from the advertising guidelines; is that correct?
6 A That is correct.
7 MR. HILDEBRANDT: I object to the
8 form of the question.
9 BY MR. MUISE:
10 Q So there's nothing on the face of these advertising
11 guidelines that would prohibit an advertisement on a
12 battered women's shelter, on its face; is that
13 correct?
14 A I believe so.
15 Q Same thing, there's nothing on the face of these
16 advertising guidelines that would prohibit an
17 advertisement about Islam, for example?
18 A That is correct.
19 Q Show you what's been previously marked as Exhibit
20 No. 7 from the SMART deposition. Have you seen that
21 advertisement before?
22 A I believe it was a request for advertising.
23 Q Okay. I'm sorry, I meant to ask you one other
24 question about my clients' advertisement, the
25 Exhibit 2 and Exhibit SS. You said the second bases

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1 for rejecting under the advertising guidelines was
2 that it disparaged a -- I want to get the language.
3 Can you read for me the language, the disparaging
4 language, from the advertising guidelines that are
5 prohibited.
6 MR. HILDEBRANDT: I'm going to object
7 to the form of the question. It does not refer to
8 disparagement, but she'll read the text of it.
9 A "Advertising that is clearly defamatory or likely to
10 hold up to scorn or ridicule any person or group of
11 persons."
12 BY MR. MUISE:
13 Q Was there a particular person or group of persons
14 that my clients' advertisement held up to scorn
15 Under these advertising guidelines?
16 A The language implied that people were after people
17 leaving Islam.
18 Q So was it the persons or group of persons that were
19 held up to scorn or ridicule were of the Islamic
20 faith?
21 MR. HILDEBRANDT: Object to the form
22 of the question.
23 A Or people leaving that faith.
24 BY MR. MUISE:
25 Q How did it hold up to scorn people who are leaving

Page 27

1 the faith?
2 MR. HILDEBRANDT: Object; calls for
3 speculation; calls for a legal conclusion.
4 A Well, I think we discussed this before, and the
5 language implies that, if you're leaving Islam, that
6 other people will come after you or, period.
7 BY MR. MUISE:
8 Q And the other people that come after you are?
9 A The language implies that, if you're leaving this
10 religion, that people, who are also in that
11 religion, will kill you because of the fatwa.
12 Q And so it holds up to scorn or ridicule people of
13 that religion; is that fair to say?
14 A It could.
15 Q Any other persons that it holds up to scorn or
16 ridicule?
17 A I'm not sure.
18 Q Going back to Exhibit No. 7, do you know if that
19 advertisement was submitted for approval or
20 rejection to SMART?
21 A I believe it was.
22 Q Do you know if you had any role in the decision to
23 accept or reject that advertisement?
24 A As the department director, I would have been
25 involved in that decision.

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1 Q Do you recall the decision that was made regarding
2 that advertisement?
3 A I believe it was not posted.
4 Q Do you know why it was not posted?
5 A I don't recall right now.
6 Q As you sit here looking at that advertisement, based
7 on your understanding of the advertising guidelines,
8 would there be a reason to reject that
9 advertisement?
10 A It could be considered political.
11 Q And why?
12 A The way that it is portrayed, abortion, at the time
13 especially, could be considered a hotly-contested
14 issue in the media.
15 Q Anything else?
16 A Anything else, what?
17 Q Anything else I would ask you for why you, based on
18 the guidelines, what you thought why it might be
19 rejected, and you said abortion is a hotly-contested
20 issue in the media, so it could be political under
21 the prohibition of the guidelines, and I'm just
22 asking is there anything else you can think of?
23 A No.
24 Q Hand you what's been marked Exhibit No. 4 from the
25 SMART deposition. Have you seen the advertisement

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1 depicted on the second page of Exhibit 4 before?
2 A I have.
3 Q We've been referring to that advertisement as the
4 atheist ad; is that okay with you, ma'am?
5 A Yes.
6 Q What role did you have -- let me back up. My
7 understanding is that advertisement actually ran on
8 SMART buses, correct?
9 A Yes, it did.
10 Q And did you have a role in the decision to accept
11 that advertisement?
12 A I did.
13 Q And what role is that?
14 A As the director of the department, I was engaged in
15 conversation related to the posting of the ad.
16 Q In your position at SMART when you first saw this
17 ad, did you believe that it should run, under the
18 advertising guidelines?
19 A I don't recall.
20 Q The ad was not approved at the marketing department,
21 though, correct?
22 A I don't recall.
23 Q Do you recall, when this advertisement came in,
24 having any concerns about it being run on SMART
25 buses?

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1 A I don't recall.
2 Q Do you recall there being any vandalism associated
3 with the atheist advertisement?
4 A I do.
5 Q What do you recall about that?
6 A What do I recall about that?
7 Q Yes, ma'am.
8 A That there was vandalism that occurred, and we were
9 notified -- well, I found out about it through the
10 media.
11 Q I saw some emails about that we might get to. How
12 did you find out about it in the media?
13 A I don't remember the exact method that I heard about
14 it.
15 Q Do you recall what it was that you heard or saw in
16 the media?
17 A Just that the advertisement had been vandalized.
18 Q When you'd heard that the ad had been vandalized in
19 the media, what did you do next?
20 A I'm not exactly certain exactly what I did next.
21 Q What do you recall the steps that you may have taken
22 after hearing about this ad being vandalized?
23 A I most likely notified the general manager.
24 Q And who was that at the time?
25 A I'm not sure.

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1 Q John Hertel?
2 A Possibly, or could have been somebody else, I don't
3 know. I mean, there were -- in my three years at
4 SMART, there were three general managers, so between
5 the last two I don't remember exactly when John came
6 on and Steve left.
7 Q So who were the other two general managers?
8 A Steve Brown.
9 Q Steve Brown?
10 A And Hayes Jones.
11 Q Say that again slowly.
12 A Hayes.
13 Q Hayes?
14 A Jones.
15 Q Can you spell his first name.
16 A H-a-y-e-s.
17 Q So you recall, or believe, you contacted the general
18 manager, correct?
19 A Yes, whatever I just said.
20 Q And any other steps that you took after learning
21 about the ad being vandalized?
22 A I don't recall exactly what steps I took after the
23 ad was vandalized.
24 Q Were you aware of any dispute with any of the bus
25 drivers over the display of this advertisement?

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1 MR. HILDEBRANDT: Object to the form
2 of the question.
3 A No.
4 BY MR. MUISE:
5 Q Do you know what the nature of the vandalism was to
6 the advertisements?
7 A I don't recall.
8 Q Do you know if the decision by SMART to display the
9 atheist advertisement, depicted in Exhibit 4 of the
10 SMART deposition, created any public controversy?
11 MR. HILDEBRANDT: Object to the form
12 of the question.
13 A Do I know if the decision -- I don't know. I don't
14 recall.
15 BY MR. MUISE:
16 Q Do you recall there being any public controversy
17 about these advertisements running on SMART's buses?
18 A I don't recall.
19 Q When the atheist advertisement first came to your
20 attention, did you go to the Detroit Coalition --
21 let me back up. The website that's indicated on
22 this advertisement is DetroitCoR.org; do you see
23 that, ma'am?
24 A I do.
25 Q When this advertisement came to your attention, did

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1 you go look at the DetroitCoR.org website?
2 A I don't recall.
3 Q So do you have any recollection of seeing any
4 website associated with this atheist advertisement
5 that might have political content?
6 A I don't recall.
7 Q Based on your understanding of how the advertising
8 guidelines were applied, if there was political
9 content on that DetroitCoR.org website, should that
10 advertisement have been rejected?
11 MR. HILDEBRANDT: Object; calls for a
12 conclusion, legal conclusion.
13 A If the ad was posted it was not political.
14 BY MR. MUISE:
15 Q In order to post the ad, though, would SMART have to
16 go look at that DetroitCoR.org website to determine
17 that there was nothing on the website that was
18 political?
19 MR. HILDEBRANDT: Object; form of the
20 question. This witness is not being provided as a
21 30(b)(6) witness as to what SMART had to do or what
22 SMART didn't have to do. She's being provided as a
23 fact witness, pursuant to a notice that did not
24 indicate she was to be prepared for testifying on
25 behalf of SMART. We won't consider any answer she

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1 gives binding on SMART, but go ahead and answer if
2 you can.
3 MR. MUISE: That's fine, we'll leave
4 that to the Court.
5 A What's the question?
6 BY MR. MUISE:
7 Q Let me back up. Just so we're clear, you already
8 testified that you had an understanding of the
9 advertising guidelines; in your position at the
10 marketing department, you would apply the
11 advertising guidelines to various advertisements;
12 you testified that, with my clients' advertisement,
13 you went to the website that was contained on the
14 advertisement, and you do recall there being
15 political content, you don't remember the details.
16 So my question to you is, when this
17 atheist advertisement was presented to you at SMART,
18 and based on your understanding of the advertising
19 guidelines, did you review what was on the website
20 that's identified in that advertisement?
21 A I don't recall, but if the ad was posted it was not
22 political.
23 Q So if the ad was posted, based on your understanding
24 of how the guidelines are applied, somebody at SMART
25 would have had to look at that DetroitCoR.org

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1 website to determine that there wasn't anything
2 political on it; is that correct?
3 MR. HILDEBRANDT: Same objection. Go
4 ahead.
5 A Yes.
6 BY MR. MUISE:
7 Q So the fact that it was run, based on your
8 understanding of how the advertising guidelines are
9 applied, there would have had to have been a
10 determination that there was nothing political, even
11 on the website, that was identified on that
12 advertisement; is that correct?
13 MR. HILDEBRANDT: Same objection.
14 This witness is not being provided as a witness for
15 SMART, and we will not consider any answer she gives
16 to be binding upon SMART. Mr. Chubb's testimony was
17 presented for that purpose.
18 MR. MUISE: Objection is noted.
19 A Ask your question, please, again.
20 BY MR. MUISE:
21 Q Based on your understanding of how the advertising
22 guidelines are applied, and you indicated, in the
23 case with my clients' ad, the website contained
24 political content, and that was a bases for
25 determining that it was political.

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1 My question to you is, based on your
2 understanding of the advertising guidelines for this
3 ad to have run, it would have had to have been
4 determined that the content of that DetroitCoR.org
5 website contained no political content; is that
6 right?
7 MR. HILDEBRANDT: Same objection.
8 A Correct.
9 BY MR. MUISE:
10 Q Based on your understanding of the advertising
11 guidelines and how you defined political, is it your
12 understanding whether someone believes in God or
13 does not believe in God is not a hotly-contended
14 issue in the media?
15 A Correct, I do not believe it's a hotly-contended
16 issue in the media.
17 Q Show you what's been previously marked as SMART
18 Exhibit No. 6. Are you familiar with what's
19 depicted in that exhibit, ma'am?
20 A Yes.
21 MR. HILDEBRANDT: The advertisement
22 with SMART --
23 BY MR. MUISE:
24 Q What do I recognize it as?
25 MR. GORDON: I'd like to see it,

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1 please.
2 MR. HILDEBRANDT: Can we hand it down
3 to Avery.
4 MR. GORDON: Yes, okay.
5 BY MR. MUISE:
6 Q What do you recognize that as, ma'am?
7 A It's a web page on the SMART web, or was on the
8 SMART website.
9 Q If you look at the three paragraphs under the
10 advertising guidelines; you see that, ma'am?
11 A I do.
12 Q I understand, from the testimony of Ms. Beth
13 Gibbons, that portions of that, those paragraphs,
14 were added after SMART had decided to run the
15 atheist advertisement; is that correct?
16 A I don't recall.
17 Q Do you recall any discussions about the content of
18 any of those three paragraphs under the advertising
19 guidelines of Exhibit 6?
20 A I'm sorry, could you, please -- you're asking me if
21 I recall, what?
22 (The last question was read back.)
23 A I don't recall the specifics of a conversation
24 regarding these advertising guidelines.
25 Q Do you have any general recollection of

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1 conversations regarding the content contained under
2 the advertising guidelines of Exhibit 6?
3 A Just that there may have been a discussion. I'm
4 sorry, this was so long ago that. . .
5 Q Do you have any general recollection of any aspect
6 of a discussion that may have been held about the
7 content of those three paragraphs under the
8 advertising guidelines of Exhibit 6?
9 A Just that there was one.
10 MR. HILDEBRANDT: You need to wait
11 until his question finishes before you answer.
12 THE WITNESS: Okay.
13 BY MR. MUISE:
14 Q Do you remember seeing an advertisement about Red
15 Dead Redemption, a video advertisement?
16 A I do.
17 Q What do you remember about that?
18 A It had a gun on it.
19 Q And what was it about having a gun on it that sparks
20 your recollection?
21 A It violates the advertising policy.
22 Q Which part of the advertising policy does having a
23 gun in the advertisement violate? I see that your
24 counsel is having you look at Exhibit 3 of the SMART
25 deposition.

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1 A It promoted imminent lawlessness and violence.
2 Q Just so clear we're clear, I'm handing you what's
3 been marked as SMART Exhibit No. 9; is that the
4 advertisement that had the gun that was rejected?
5 A Yes.
6 Q I hand you what's been marked as SMART Exhibit No.
7 10. My understanding that the ad was subsequently
8 approved without the gun; is that correct?
9 A I believe so.
10 Q Do you recall seeing that advertisement in SMART
11 Exhibit No. 10 prior to today?
12 MR. HILDEBRANDT: Does she recall
13 ever seeing that advertisement prior to today?
14 A I think so.
15 BY MR. MUISE:
16 Q Do you know if that was an advertisement that was
17 approved by SMART?
18 A If this was approved by SMART?
19 Q Yes, ma'am, and that's Exhibit No. 10.
20 A I believe it was.
21 Q The time that you worked at SMART, do you know how
22 many advertisements were rejected because they were
23 political under the advertising guidelines?
24 A No.
25 Q You mentioned the leaving Islam advertisement and

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1 the Exhibit 7, the one dealing with abortion,
2 correct?
3 A Yes.
4 Q Was there any other that you have any recollection
5 of SMART rejecting, based on the political component
6 of its advertising guidelines?
7 A I don't recall.
8 Q Handing you what's been marked previously as
9 Exhibits 15, 16 and 17 from the SMART deposition.
10 I'll add to that Exhibit 18, as well, from the SMART
11 deposition. Do you recall seeing those
12 advertisements prior to today, ma'am?
13 A No.
14 Q Do you know if those advertisements ran on SMART's
15 property?
16 A I do not.
17 Q Do I know if those advertisements came through the
18 marketing department when you were at SMART?
19 A No, I don't recall ever seeing those.
20 Q When you look at these advertisements is there
21 anything, based on your understanding of the
22 advertising guidelines, that would prohibit them
23 from being displayed on SMART property?
24 MR. HILDEBRANDT: Calls for
25 speculation. She was not part of the review process

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1 of these ads.
2 MR. MUISE: That's fine.
3 MR. HILDEBRANDT: You're asking her a
4 hypothetical, and you're not asking her to give you
5 SMART's position, of course, because she was not
6 involved in the review of these ads.
7 MR. MUISE: If you have an objection,
8 you can state your objection. You love to make
9 these speaking objections, Mr. Hildebrandt, which
10 are totally improper.
11 MR. HILDEBRANDT: My objection is she
12 can't bind SMART.
13 MR. MUISE: That's fine, you can make
14 that objection all day. That'll be for the Court to
15 decide.
16 BY MR. MUISE:
17 Q Based on your understanding of the advertising
18 guidelines that you applied when you were working at
19 SMART, is there anything about these advertisements,
20 Exhibits 15, 16, 17 and 18, that you believe would
21 violate those guidelines?
22 MR. HILDEBRANDT: Object; calls for a
23 hypothetical; calls for speculation.
24 A I would seek an opinion from my legal department.
25

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1 BY MR. MUISE:
2 Q Why?
3 A Because I would want to have other, I would want to
4 have other opinions, and a discussion about it.
5 Q Is there anything about these advertisements, when
6 you're looking at them, that doesn't make it a
7 clear-cut decision for you that they should be
8 approved under the advertising guidelines?
9 A Again, I would seek an opinion from my legal
10 department.
11 Q Now, when you say, "seek an opinion from the legal
12 department," are you referring to how the
13 advertising guidelines would be applied to a
14 particular advertisement?
15 MR. HILDEBRANDT: Object to the form
16 of the question.
17 A I would seek opinion about the application of the
18 advertising guidelines as they are with that
19 particular ad.
20 BY MR. MUISE:
21 Q Anything else?
22 MR. HILDEBRANDT: Object to the form
23 of the question.
24 A Anything --
25 MR. HILDEBRANDT: I didn't know

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1 either, that's why I objected.
2 BY MR. MUISE:
3 Q You said you would seek advice from general
4 counsel's office as to the application of the
5 advertising guidelines to a particular advertisement
6 that came across your desk; is that correct?
7 A Yes.
8 Q Other than seeking advice about the application of
9 the advertising guidelines to a particular
10 advertisement, would there be something else that
11 you'd be asking for the general counsel's department
12 to assist with, with regard to an advertisement?
13 MR. HILDEBRANDT: Object to form.
14 A I don't understand your question.
15 BY MR. MUISE:
16 Q Based on your understanding of political, and you
17 described as a hotly-contended matter in the media
18 as a component of that definition; is that correct?
19 A Yes, that's what I said, it could be, that's one of
20 the. . .
21 Q Would conveying a message encouraging men, who have
22 sex with men, to be tested with HIV; would that be a
23 political message, based on your understanding?
24 MR. HILDEBRANDT: Calls for
25 speculation, and object to the hypothetical.

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1 A Each ad is considered independently and would be,
2 you'd have to look at the content of the ad. Do you
3 want me to turn the ringer off on my phone?
4 BY MR. MUISE:
5 Q Please. Handing you what's been previously marked
6 as SMART Exhibit No. 26. Do you recall if that
7 advertisement came across your desk when you were at
8 SMART?
9 A No.
10 Q Looking at that advertisement, based on your
11 understanding of the advertising guidelines as how
12 you would apply them when you were in the marketing
13 department at SMART, is there anything about that
14 advertisement that would violate any of those
15 guidelines?
16 MR. HILDEBRANDT: Object; calls for a
17 hypothetical; calls for speculation. This is after
18 she left SMART's employ.
19 THE WITNESS: Answer the question?
20 MR. HILDEBRANDT: Um-hum.
21 A I don't.
22 BY MR. MUISE:
23 Q And handing you what's been marked as Exhibit No. 22
24 from the SMART deposition. You see the exhibit on
25 the second page. Do you recall seeing that

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1 advertisement when you were at SMART?
2 A No.
3 Q Based on your understanding of the advertising
4 guidelines as you applied them while you were at
5 SMART, is there anything about that advertisement
6 that would violate those guidelines?
7 MR. HILDEBRANDT: Object; calls for a
8 hypothetical; calls for speculation.
9 A I would seek legal counsel advice on posting this
10 advertisement.
11 BY MR. MUISE:
12 Q Would you be comfortable approving that
13 advertisement at your level at the marketing
14 department?
15 MR. HILDEBRANDT: Object to the form
16 of the question.
17 A I did not, and, as previously stated, I would seek
18 legal counsel advice.
19 BY MR. MUISE:
20 Q And that advice would be advice as to whether or not
21 the advertising guidelines would prohibit the
22 display of that advertisement; is that correct?
23 A It would be an opinion about the employ of the
24 advertising guidelines as applied to a particular
25 outside.

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1 Q Handing you what's been marked as Exhibit No. 34
2 from the SMART deposition.
3 MR. HILDEBRANDT: Let me show it to
4 Avery first. He's more familiar with the document,
5 so he'll know which one it is quicker, and then you
6 can take a look at it. Feel free to read it.
7 A I see several pages here, so I'd like to have a
8 moment to review this.
9 BY MR. MUISE:
10 Q Absolutely. Do you recall seeing this email string
11 prior to today?
12 A Yes.
13 Q And it appears that the bottom email is from you, is
14 that correct, Elizabeth Dryden?
15 A There is an email on here from me.
16 Q And it's to Avery Gordon, correct?
17 A Yes.
18 Q General counsel for SMART.
19 A As well as John Swatosh.
20 Q Who is John Swatosh?
21 A He also worked at SMART in a leadership capacity.
22 Q And the body of the email begins with, "Avery,"
23 correct?
24 A It does.
25 Q Is the Avery referring to -- let me back up. You

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1 were the author of this email; is that right?
2 A That is true.
3 Q And so this email, at least of the body of the
4 email, was directed to Avery; is that right?
5 A That's correct.
6 Q Was this an email where you were seeking advice as
7 to an advertisement, whether it should run or not
8 run?
9 MR. HILDEBRANDT: I'm going to object
10 to the form of the question, too general.
11 A Generally the request here is to meet with Avery to
12 discuss the ad.
13 BY MR. MUISE:
14 Q And which advertisement is this referring to?
15 A This is referring to the advertisement we're
16 discussing today, your clients' advertisement.
17 Q Leaving Islam ad, and you grabbed Exhibit SS; is
18 that the one?
19 A Yes.
20 Q And there's some hyperlinks at the bottom of this
21 email; is that correct?
22 A There are.
23 Q And above the first one, it says, "This is the same
24 ad as was removed from the Miami Dade transit system
25 in April, the link is below"; did I say that

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1 correctly?
2 A You did say that correctly.
3 Q And was that something you wrote?
4 A It's in my email, yes.
5 Q Do you know what the link was to?
6 A I don't recall. It appears as though it's to an ad.
7 Q To an ad or to an article?
8 A Well, I'm not sure. I don't know. I mean, I can
9 only go off of this email, so. . .
10 Q Do you recall reviewing an article from the
11 MiamiHerald.com about the Miami-Dade Transit, saying
12 that it's not going to run this advertisement?
13 A It's on here, that is the link that it is.
14 Q What was the purpose of this email to Avery Gordon?
15 A It was to request time to meet with counsel, and
16 possibly others, to discuss the ad and posting of
17 it.
18 Q Was it to discuss whether or not it complied or did
19 not comply with the advertising guidelines?
20 MR. HILDEBRANDT: Object to the form.
21 The email speaks for itself. I mean, now you're
22 trying --
23 MR. MUISE: You can object all you
24 want. Just stop the speaking objections, please.
25 MR. HILDEBRANDT: You're getting into

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1 privileged information. Beyond what's in this
2 email, what she asked counsel, or what is beyond
3 this, is privileged information, as I indicated
4 before. The email speaks for itself. It says what
5 it refers to.
6 BY MR. MUISE:
7 Q Was the purpose of that email to discuss the
8 application of the advertising guidelines to my
9 clients' advertisement, as you apparently do with
10 many advertisements in response to my prior
11 questions?
12 MR. HILDEBRANDT: Object to the
13 mischaracterization of prior testimony.
14 A That request is to discuss the ad, among other
15 things.
16 BY MR. MUISE:
17 Q Is it to discuss the ad in the context of whether it
18 complies or does not comply with the advertising
19 guidelines?
20 A That may or may not be part of the discussion.
21 Q What other part of the discussion would be relevant?
22 MR. HILDEBRANDT: Object to the form
23 of the question. Object that it infringes on
24 privilege. And don't indicate to him anything else
25 that you've talked to Avery Gordon about; it's

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1 privileged, do not answer.
2 BY MR. MUISE:
3 Q Are you going to answer the question?
4 MR. HILDEBRANDT: You can narrow your
5 question to prevent privileged, or she's not going
6 to answer.
7 BY MR. MUISE:
8 Q I've asked the question; are you going to answer the
9 question I asked?
10 A Can you clarify your question.
11 (Page , lines were read back.)
12 MR. HILDEBRANDT: Beyond this email,
13 don't disclose anything you discussed with Avery
14 Gordon; it is privileged.
15 A Well, I don't recall the specifics of the
16 conversation.
17 BY MR. MUISE:
18 Q In this email, you say, "Let's meet to discuss/meet
19 with ACCESS about this"; you see that?
20 A I do.
21 Q Who is ACCESS?
22 A ACCESS is a community organization, an organization
23 in the community.
24 Q It's an Arab organization?
25 A It's an organization that provides services to many

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1 different people, and that's one constituency that
2 it provides services to.
3 Q Why did you suggest meeting with ACCESS about this
4 advertisement?
5 A Just for a PR marketing issue, if we needed to let
6 them know, but it was decided not to talk to them.
7 Q What PR marketing issue that you would need to let
8 them know about?
9 A I'm not sure. This was three years ago, but this is
10 the context of the email.
11 Q Was there concern that they would be concerned about
12 this advertisement running in the Detroit-Dearborn
13 area?
14 A I don't recall the specifics.
15 Q What do you recall generally about why you would
16 suggest --
17 A I don't recall the details of the conversation,
18 or -- there's no conversation; I mean, it's purely a
19 PR marketing suggestion that was not taken up.
20 Q And then my follow-up question to you is, not with
21 the discussion, in your mind, why was it important
22 for you to at least suggest to have a meeting with
23 ACCESS about this advertisement?
24 MR. HILDEBRANDT: Asked and answered.
25 A They're a constituent in the community.

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1 BY MR. MUISE:
2 Q How many other constituents in the community did you
3 suggest reaching out to for other advertisements
4 that came across your desk while you were at SMART?
5 A I don't recall.
6 Q Did you reach out to the Christian community before
7 running the atheist advertisement on SMART?
8 A I don't recall.
9 Q The fact is, ma'am, you never made a suggestion to
10 reach out to, for example, the Christian community,
11 during the discussions related to the atheist
12 advertisement; is that true?
13 MR. HILDEBRANDT: That's not a
14 question. You just told him you can't recall, and
15 now he's telling you what he thinks is true. You
16 can answer, if you can.
17 A What was your question?
18 (The last question was read back.)
19 MR. HILDEBRANDT: Argumentative;
20 asked and answered.
21 A I don't recall.
22 BY MR. MUISE:
23 Q Do you recall seeing in any of the emails or
24 documents that you were asked to review prior to
25 taking this deposition of anywhere in those emails

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1 you or anyone else with SMART suggesting to meet
2 with a constituent in the community before deciding
3 whether to accept or reject an advertisement, other
4 than the suggestion to meet with ACCESS about my
5 clients' advertisement?
6 MR. HILDEBRANDT: Object to the form
7 of the question. Remember, it started with, "Do you
8 recall."
9 A Yes, I don't recall, of the emails, all of the
10 emails I've reviewed, if there's been any other
11 suggestions.
12 BY MR. MUISE:
13 Q And just to be clear, you've recently reviewed these
14 documents for this deposition, correct?
15 A That's correct.
16 Q And are you saying that, just based on your recent
17 review, you don't recall that there are any, or can
18 you say that you there were none that you saw, other
19 than this one suggestion here in Exhibit 34 to meet
20 with a local constituent prior to deciding about the
21 advertisement.
22 A I don't recall all of the emails that I've reviewed.
23 Q Do you know what ACCESS stands for?
24 A No.
25 Q Did you have an understanding that one of the

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1 constituents that ACCESS works with is the Islamic
2 community, local Islamic community?
3 A I understand that's one of several constituents that
4 they work with.
5 Q Let me see if you recognize this name: Arab
6 Community Center for Economic and Social Services?
7 A This acronym could go with that. The organization
8 is broader than one constituency.
9 Q I'm basically asking whether or not stating that
10 name, if that refreshes your recollection as to
11 whether you know if that acronym refers to Arab
12 Community Center for Economic and Social Services;
13 does that sound familiar?
14 MR. GORDON: If you know.
15 A It sounds familiar.
16 MR. MUISE: Okay. Let's take a
17 break.
18 (Break was taken.)
19 (Dryden Deposition Exhibit Nos. 47
20 and 48 were marked for
21 identification.)
22 BY MR. MUISE:
23 Q Ma'am, I'm just going to hand you what's been marked
24 as Dryden Exhibit No. 47. I'm numbering my
25 deposition exhibits consecutively, so this is the

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1 first exhibit marked for this deposition. And I'll
2 represent to you that it's the amended deposition
3 notice, which references a subpoena, which
4 Mr. Hildebrandt graciously accepted on your behalf,
5 and it's the basis for you being here today taking
6 this deposition. I just want to make this part of
7 the record for the deposition.
8 My understanding is you probably
9 haven't seen this document prior to today, but you
10 probably saw the prior deposition notice; is that
11 right?
12 A Correct.
13 Q This one is just amended because we had to change
14 locations, and that's the only change, so I want to
15 make that as the first exhibit.
16 Handing you what's been marked
17 Exhibit No. 48, with a copy to counsel. Exhibit 48
18 appears to be a sequence of emails, or an email
19 chain, and I'll represent to you this was a document
20 produced by SMART pursuant to a request for the
21 production of documents. Do you recall seeing this
22 email string prior to today?
23 A No.
24 Q If you look at the bottom of the first page, it
25 appears that there's an email from Elizabeth Dryden;

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1 would that be you, ma'am?
2 A That is me.
3 Q And the subject was the Macomb County, quote, Report
4 Drunk Drivers, end quote, campaign?
5 A I do.
6 Q And it appears, in the body of this email, that you
7 wrote, "Please schedule time for Rich, Jim, Steve,
8 Fred and '@' to review before Thursday"; did I say
9 that correctly?
10 A That's what's written here, yes.
11 Q Do you know what this is referring to?
12 A No. The subject line appears to be a campaign.
13 Q Who is the Rich that's referred to in this email?
14 A I don't recall.
15 Q How about the Jim?
16 A Jim -- I believe it is people who were in leadership
17 at SMART at the time.
18 Q How about Steve?
19 A May have been Steve Brown.
20 Q You indicated previously that he was one of the
21 general managers at SMART while you were working
22 there.
23 A Yes.
24 Q And what is the "and '@' to review before Thursday,"
25 "at" is the '@'symbol?

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1 A Per the next line, I believe it is a typo.
2 Q Do you know if there were any issues with running
3 the Macomb County "Report Drunk Drivers" campaign
4 that necessitated this email for a meeting to
5 review?
6 A I don't recall.
7 Q It appears from the email this actual campaign was,
8 in fact, approved, according to an email from Beth
9 Gibbons?
10 A That's what it appears.
11 Q Do you have any recollection of any discussions
12 related to whether or not this Macomb County "Report
13 Drunk Drivers" campaign should or should not run on
14 SMART advertising?
15 A I'm sorry, can you please repeat the question.
16 Q Sour. Do you have any recollection of any
17 discussions about whether or not the Macomb County
18 "Report Drunk Drivers" campaign should or should not
19 run on SMART property?
20 A I don't recall those discussions.
21 Q Do you have any recollection at all of there being
22 any controversy or concerns about this Macomb County
23 "Report Drunk Drivers" campaign running on SMART
24 buses?
25 A I don't recall.

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1 (Dryden Deposition Exhibit No. 49 was
2 marked for identification.)
3 Q Handing you what's been marked Exhibit No. 49, if
4 you take a moment and look at this. Again, I'll
5 represent to you this was a document that was
6 produced by SMART pursuant to a request for document
7 production.
8 A Okay.
9 Q You testified previously that, I believe you said,
10 you came to learn that the atheist advertisement we
11 had discussed previously was vandalized through a
12 press report; is that correct?
13 A The media, I believe, I said.
14 Q And this email string, does this relate to that
15 fact, you learning about this vandalism through the
16 media?
17 A Yes.
18 Q The top email appears to be an email from you to
19 Steve Brown; is that correct?
20 A Yes.
21 Q And Steve Brown would have been the general manager
22 at the time?
23 A I believe so, yes.
24 Q Well, it says, "Interim general manager"; that's
25 what you're referring to on the exhibit, correct?

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1 A Correct.
2 Q Your email to him, you say, "Hi Steve, know we
3 discussed on the phone today, but just to be clear,"
4 and then you're talking about the reporter running
5 part of your statement; what do you recall about
6 that phone conversation you had with Steve Brown
7 about this issue?
8 A I don't recall the phone conversation.
9 Q Do you have any general recollection of any of your
10 discussions with Steve Brown about this issue?
11 A I don't recall the phone conversation with Steve.
12 Q Was there any discussion at SMART, in which you were
13 involved, and there was a discussion about whether
14 or not SMART should send out a press release in
15 response to the vandalism to the atheist
16 advertisement?
17 MR. HILDEBRANDT: I'm sorry, can you
18 read that back.
19 (The last question was read back.)
20 A I don't recall.
21 BY MR. MUISE:
22 Q Did you have any discussions with anyone at SMART
23 regarding the PR aspect, the public relations
24 aspect, associated with this vandalism to the
25 atheist advertisement?

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1 A I don't recall any specific or general conversations
2 about that.
3 (Dryden Deposition Exhibit No. 50 was
4 marked for identification.)
5 Q Handing you what's been marked as Exhibit No. 50.
6 Take a moment and look through this, and I'll
7 represent to you, again, this is a series of emails
8 that were produced by SMART pursuant to the request
9 for document production.
10 A Okay. Yes.
11 Q Do you recall seeing this email string prior to
12 today?
13 A Yes.
14 Q Your name appears in some of these emails, correct?
15 A Correct.
16 Q And it's your email address; I should say, although
17 it doesn't list your email address, it lists your
18 name, correct?
19 A Yes.
20 Q On the second page there's, in one of the two blocks
21 in the second email on that page, there's a Cindy
22 Gordon, do you see that, ma'am; it's the email from
23 Beth Gibbons, dated January 26, 2010.
24 A Yes.
25 Q To Anthony Chubb, Cindy Gordon, and yourself.

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1 A Yes.
2 Q Who is Cindy Gordon?
3 A I don't recall. She worked at SMART, but I don't
4 recall in what capacity.
5 MR. HILDEBRANDT: Let me represent to
6 you that sometimes emails sent to Avery Gordon were,
7 because of the similarity in names, were sometimes
8 routed to the wrong direction, to Cindy Gordon. She
9 had no role in this process.
10 MR. GORDON: She's an employee in the
11 IT department. I'm confident it was a mistake. And
12 no relation, by the way.
13 MR. HILDEBRANDT: We actually saw an
14 email that said it was misrouted.
15 MR. MUISE: Just kind of confirming
16 that here. Good.
17 BY MR. MUISE:
18 Q If you look on the first page, it's an mail from you
19 to Anthony Chubb, correct?
20 A Which one? There's several.
21 Q The top one, I'm sorry.
22 A This here?
23 Q The very top one, yes, ma'am.
24 A Yes.
25 Q In the body of the email, it says, "Merci," with an

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1 'i,' "just super brief; you see that?
2 A Yes.
3 Q What is the "brief" you're referring to?
4 A It means short in this case.
5 Q Say what?
6 A It means short; brief, short.
7 Q What is the brief that you -- let me back up. What
8 is this email referring to? It appears you say you
9 want to give something to Steve so he can alert the
10 board members; what is that referring to?
11 A I believe that I'm asking for an opinion, the
12 opinion from legal, so that I can include that in a
13 short summary to give to the general manager to
14 share with the board of directors.
15 Q Why were you preparing information to give to the
16 general manager to share with the board of directors
17 about; it appears this is about the atheist
18 advertisement, correct?
19 A In the process of deciding whether an ad should be
20 posted or not, there's general conversation, and the
21 general manager was, I would communicate with him on
22 an as-needed basis regarding ads that required
23 further review.
24 Q Why was he alerting the board members?
25 A That's just a regular course of communication.

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1 Q Who are the board members?
2 A At the time, I mean -- at this particular time, I
3 don't recall exactly the names of the members who
4 served on the board of directors.
5 Q Is the board of directors separate from the general
6 manager, then?
7 A Yes.
8 Q And do the board of directors, do they work
9 day-to-day at SMART?
10 A They do not.
11 Q Do you know, are the board of directors appointed,
12 elected, or do you know how they become a board of
13 director for SMART?
14 A They're appointed.
15 Q Do you know who they're appointed by?
16 A The heads of county, from Wayne, Oakland and Macomb.
17 Q Do you know if this information that you were
18 passing off to the general manager, that he was
19 going to then alert the board members about
20 regarding the atheist advertisement, was this prior
21 to the decision to allow the advertisement to run?
22 A I don't recall the times that everything happened.
23 Q Do you know about what time that the atheist
24 advertisement actually ran on SMART buses?
25 A I do not.

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1 (Dryden Deposition Exhibit No. 51 was
2 marked for identification.)
3 Q Handing you what's been marked as Exhibit No. 51.
4 Again, I'll represent to you this is an email that
5 was produced by SMART pursuant to the document
6 production.
7 A Okay.
8 Q Does this refresh your recollection at all as to
9 about the time frame when the atheist advertisements
10 ran on SMART buses?
11 A The date of the email is my only indication about
12 when this conversation happened, but the specifics
13 of it, of when they ran, I don't recall.
14 Q In the body of the email you say, "Ten CoR ads", and
15 the CoR ads are the atheist ads, correct?
16 A Yes.
17 Q Detroit Coalition of Reason.
18 A I believe so. That's what was on the previous --
19 this, okay.
20 Q According to the email, this is an email that you
21 wrote to Jim Fetzer, correct?
22 A Yes.
23 Q Who is Jim Fetzer?
24 A Jim Fetzer was the head of operations.
25 Q And in the email you say that, "Ten CoR ads were

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1 supposed to removed at the end of March"; do you see
2 that?
3 A I do.
4 Q Is it your understanding that the ads ran some time
5 in March of 2010?
6 A Yes.
7 Q And so looking back at the email, Exhibit No. 50,
8 would that help refresh your recollection as to
9 whether or not --
10 A Yes. Yep.
11 Q That's one of those situations where you've
12 anticipated the question. So looking at Exhibit No.
13 50, and the date of that email, is it your
14 understanding that the information you were
15 gathering to send to Steve, so he could alert the
16 board members, was information about these atheist
17 advertisements prior to them actually running on
18 SMART buses?
19 MR. HILDEBRANDT: Object to lack of
20 foundation.
21 A I don't recall that.
22 BY MR. MUISE:
23 Q Okay. What were you responding to "yes," or
24 affirmatively, anyways, prior to my question a
25 moment ago?

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1 A That the ads were to be removed at the end of March
2 and that this email was sent at the beginning of
3 April.
4 Q Okay. Then, looking at Exhibit 50, though, that
5 email was sent, it appears, in January of 2010,
6 correct?
7 A That is correct.
8 Q So sometime at the end of January 2010, you were
9 looking to gather information to send to Steve, so
10 he could alert the board members about these atheist
11 advertisements?
12 A About some point about the atheist advertisements.
13 Q Do you remember what that point was?
14 A I don't.
15 Q You're looking around for a document; is there an
16 email or something that you know that might exist
17 that has information about what it was you were
18 forwarding?
19 A No. Excuse me, no, I'm just looking at the exhibits
20 that are in front of me.
21 Q During the time that you worked at SMART, did every
22 advertisement that was approved by SMART then cause
23 you to put information together to send to board
24 members about that advertisement?
25 A No.

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1 Q What was it about this Detroit Coalition of Reason
2 advertisement that caused you to put this
3 information again to send to the board members?
4 A I don't recall.
5 (Dryden Deposition Exhibit No. 52 was
6 marked for identification.)
7 Q Handing you what's been marked as Exhibit No. 52.
8 Again, I'll represent to you it's an email that was
9 produced by SMART pursuant to a request for document
10 production.
11 A Okay.
12 Q Do you recall seeing this email string prior to
13 today, ma'am?
14 A I don't.
15 Q If you look at the second email on the first page,
16 it appears to be an email from you to Steve Brown;
17 is that correct?
18 A Yes.
19 Q And your subject is "Godless advertising on SMART
20 buses"; is that correct?
21 MR. HILDEBRANDT: Object; it
22 indicates it's a forward, so it doesn't necessarily
23 mean that's her subject, so I'm going to object to
24 the form of the question.
25

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1 BY MR. MUISE:
2 Q Does the subject line on that email referring to say
3 "Godless advertising on SMART buses"?
4 A The subject line says, "Forward: Godless
5 advertising on SMART buses."
6 Q Just to be accurate, it doesn't say, "Forward"; it
7 says, "FW," colon.
8 A Correct.
9 Q "FW," colon, "Godless advertising on SMART buses,"
10 correct?
11 A That's what it says.
12 Q Is it your understanding that you were forwarding an
13 email relating to the Detroit Coalition of Reason,
14 the atheist advertisements we've been discussing?
15 A Yes.
16 Q And it says in the body of this email, "We have what
17 may be a controversial advertisement coming up and
18 are providing you with the information below to
19 forward to board members as a head's up"; you see
20 that.
21 A I do.
22 Q Do you know if that information you're referring to
23 here is also related to that email that we were
24 looking at previously, Exhibit No. 50?
25 MR. GORDON: If you recall.

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1 A I don't recall if this email refers to this email.
2 BY MR. MUISE:
3 Q The email, looking at Exhibit 52, is referring to
4 information that's going to be forwarded to the
5 board members regarding the atheist advertisement,
6 correct?
7 A That is correct.
8 Q And Exhibit 50, as we went through, appeared to be a
9 be a communication regarding information you were
10 putting together for Steve, so he can alert the
11 board members; is that right?
12 A That is correct.
13 Q And you had also had indicated about Anthony Chubb
14 was going to write something up, in Exhibit No. 50,
15 that you wanted to be kept super brief regarding the
16 atheist advertisement; is that right?
17 A That is correct.
18 Q And if you look at Exhibit 52, in your email, and
19 you say, "Beth Gibbons and Tony Chubb worked
20 together to prepare the information contained
21 below"; you see that?
22 A I do.
23 Q Is this the information contained below that was put
24 together to send to the board members regarding the
25 atheist advertisements?

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1 A It could be.
2 Q Do you know if this information contained below was
3 ever put out in a press release or a public
4 statement all by SMART?
5 A I don't recall.
6 Q Again, referring to the information in Exhibit 52.
7 MR. HILDEBRANDT: There's no
8 question.
9 (Dryden Deposition Exhibit No. 53 was
10 marked for identification.)
11 BY MR. MUISE:
12 Q Ma'am, handing you what's been marked as Exhibit No.
13 53. I'll represent to you that this was an email
14 document produced by SMART pursuant to a request for
15 document production. Do you recall seeing this
16 email prior to today, ma'am?
17 A I do.
18 Q And what was the basis for this email exchange with
19 Beth Gibbons?
20 A Advertise with SMART copy.
21 Q You recall if the language, it looks like -- strike
22 that. There's an email from Beth Gibbons to you
23 with the subject, "Advertise with SMART copy," and
24 in that she states, "The new language is bolded,"
25 and refers to, quote, "Advertising posted on SMART

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1 property does not necessarily reflect the views or
2 opinions of SMART, its employees or riders"; did I
3 state that correctly?
4 A No.
5 Q What did I misstate?
6 A You said that "The new language is bolded"; it says,
7 "The new language is not bolded."
8 Q Thank you. "New language is not bolded." And "The
9 new language is not bolded," that is contained in
10 this email, right?
11 A The language -- there is not bolded language
12 contained in this email.
13 Q We looked at the website previously in this
14 deposition, and there was a, describe it as a
15 disclaimer, at the bottom; do you recall if this was
16 a discussion about the language that should go on
17 the website about disclaimers related to advertising
18 on SMART buses?
19 A It appears to be the case.
20 MR. HILDEBRANDT: The question was,
21 do you recall that it was.
22 A I don't recall that specifically, no.
23 BY MR. MUISE:
24 Q Looking at this email, it appears that it is a
25 communication regarding that disclaimer that was

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1 going to appear on the website; is that fair to say?
2 A I don't recall exactly what this email is about.
3 MR. HILDEBRANDT: She already said
4 that's what it appears to be.
5 BY MR. MUISE:
6 Q In your email above to Beth Gibbons, you say,
7 "Something stronger would be better"; you see that?
8 A I do.
9 Q Something stronger in what regard?
10 A I don't recall. This is three years ago.
11 (A break was taken.)
12 Q Ma'am, during the time that you worked with SMART,
13 did you ever hear any SMART employee make any
14 comments about any of my clients, referring to them
15 as Islamophobes?
16 A No.
17 MR. HILDEBRANDT: Remember who his
18 clients are, Pamela Geller, Robert Spencer, American
19 Freedom Defense Initiative; have you heard anybody
20 refer to any of them as Islamophobes or phobic?
21 A No.
22 BY MR. MUISE:
23 Q Have you ever heard any derogatory comments made
24 about my clients by any employee at SMART?
25 A No.

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1 MR. MUISE: No further questions.
2 MR. HILDEBRANDT: I have no
3 questions. Why don't we request a read and sign.
4 That gives you an opportunity to read through the
5 testimony and make corrections that might have
6 happened in the transcription or maybe because
7 speaking low, hearing, that kind of stuff. It
8 allows us to make sure that your testimony is
9 faithfully represented in the brief, so we'll take
10 that.
11 MR. MUISE: Okay, we're done.
12 (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.

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Carol Marie Hicks
CSR 3345 Notary Public
Livingston County, Michigan
My Commission expires: September 4, 2016