

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, etc., et al.,)	
)	
Plaintiffs,)	
v.)	Case No. 8:17-cv-2896-T-02AAS
)	
CITY OF TAMPA, FLORIDA,)	
)	
Defendant.)	

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs, for their response to Defendant City of Tampa's Notice of Supplemental Authority in Further Support of Objection to the Report and Recommendation (Docs. 171, 172), show the Court that the City's supplemental authority, comprising nothing more than the Supreme Court's denial of a petition for certiorari, is of no precedential or persuasive benefit whatsoever to the Court or the parties. *See, e.g., Missouri v. Jenkins*, 515 U.S. 70, 85 (1995) ("Of course, '[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.'" (modification in original)); *Teague v. Lane*, 489 U.S. 288, 296 (1989) ("The 'variety of considerations [that] underlie denials of the writ' counsels against according denials of certiorari any precedential value." (modification in original; citation omitted)); *Powell v. Barrett*, 541 F.3d 1298, 1312 n.5 (11th Cir. 2008) ("For at least eight decades the Supreme Court has instructed us, time and again, over and over, that the denial of certiorari does not in any way or to any extent reflect or imply any view on the merits."))

Moreover, the decision the Supreme Court declined to review was the Third Circuit's declining to recall its 2014 mandate issued in *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014). The Third Circuit's declining to recall a four-year-old mandate, and the Supreme

Court's denial of review of the decision, could not be less relevant to any issue in this case. To be sure, this Court already has recognized what the Supreme Court thinks of the decision the Third Circuit declined to recall: "*King's* holding that intermediate-scrutiny analysis applies to counselors' speech during SOCE counseling was later abrogated in *National Institute of Family and Life Advocates* (NIFLA) v. *Becerra*, 138 S. Ct. 2361 (2018). *NIFLA* explicitly rejected *King's* holding that professional speech is subject to different standards of review under the First Amendment than other speech." (Rep. & Rec., Doc. 148, at 15, *adopted and aff'd* by Order, Doc. 162, at 2.)

Respectfully submitted,

/s/ Roger K. Gannam
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CERTIFICATE OF SERVICE

I hereby certify that on this April 19, 2019, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

/s/ Roger K. Gannam
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Attorney for Plaintiffs