

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

KURT ST. ANGELO,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	No. 1:19-cv-2754-JMS-DLP
	)	
WILLIAM P. BARR, CURTIS T. HILL, JR.,	)	
MARK SMOSNA, RYAN MEARS,	)	
BRYAN K. ROACH, and	)	
KERRY J. FORESTALL,	)	
	)	
<i>Defendants.</i>	)	

**ORDER**

On July 5, 2019, *pro se* Plaintiff Kurt St. Angelo filed a Complaint against the United States of America (the “Government”) and the State of Indiana (the “State”), challenging the validity of various state and federal statutes related to the regulation of controlled substances. All of the Defendants in this case moved to dismiss Mr. St. Angelo’s claims, and on February 24, 2020, the Court granted Defendants' motions, dismissed Mr. St. Angelo's claims with prejudice, and entered final judgment. [[Filing No. 76](#); [Filing No. 77](#)]. On March 10, 2020, Mr. St. Angelo filed a Motion to Alter or Amend Judgment, [[Filing No. 78](#)], which is ripe for the Court's review.

**I.  
STANDARD OF REVIEW**

A "district court possesses the power . . . to alter or amend a judgment after its entry." [Fed. R. Civ. P. 59\(e\)](#) 1946 advisory committee notes (1946)3. Relief under Rule 59(e) is an "extraordinary remed[y] reserved for the exceptional case." [Childress v. Walker](#), 787 F.3d 433, 442 (7th Cir. 2015) (quoting [Foster v. DeLuca](#), 545 F.3d 582, 584 (7th Cir. 2008)). Rule 59 motions are for the limited purpose of "correct[ing] manifest errors of law or fact or . . . present[ing]

newly discovered evidence." *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987) (citation and quotation omitted). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (quoting *Sedtrak v. Callahan*, 987 F. Supp. 1063, 1069 (N.D. Ill. 1997)). A Rule 59(e) motion "does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could and should have been presented to the district court prior to the judgment," *United States v. Resnick*, 594 F.3d 562, 568 (7th Cir. 2010) (quoting *Bordelon v. Chicago Sch. Reform Bd. of Trs.*, 233 F.3d 524, 529 (7th Cir. 2000)), nor may a party use Rule 59(e) to "rehash previously rejected arguments," *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014) (internal quotation omitted).

## II. BACKGROUND

Mr. St. Angelo originally filed a Complaint against the Government and the State. [[Filing No. 1.](#)] The State responded to the Complaint by filing a Motion to Dismiss for lack of jurisdiction and for failure to state a claim on August 23, 2019. [[Filing No. 15.](#)] In response, Mr. St. Angelo filed a Motion to Dismiss Counts #8-10 of his Complaint, [[Filing No. 18.](#)], and a Motion to Join the Indiana Attorney General and the United States Attorney General as defendants, [[Filing No. 20.](#)] Mr. St. Angelo later filed a Motion to Amend his Complaint, [[Filing No. 30.](#)], and a Motion to Join Four Additional Defendants: Bryan Mears (Marion County Prosecutor), Kerry J. Forestal (Marion County Sheriff), Bryan K. Roach (Indianapolis Metropolitan Police Department Chief), and Mark Smosna (President of the Indiana Board of Pharmacy), in their official capacities, [[Filing No. 32.](#)] On October 24, 2019, the Government filed a Motion to Dismiss for lack of jurisdiction and for failure to state a claim. [[Filing No. 33.](#)] The Court granted Mr. St. Angelo's Motion to

Amend his Complaint, [[Filing No. 37](#)], and denied as moot his Motion to Add Four Additional Defendants, [[Filing No. 38](#)]. Ultimately, Mr. St. Angelo's Amended Complaint asserted claims against the following Defendants: William P. Barr, Curtis T. Hill, Jr., Mark Smosna, Ryan Mears, Ryan K. Roach, and Kerry J. Forestal. [[Filing No. 37 at 1.](#)]

In his Amended Complaint, Mr. St. Angelo challenged various statutes that regulate controlled substances. [[Filing No. 37 at 1-2.](#)] It was his position that those state and federal statutes are invalid, and he asserted the following claims:

- Count #1 – Indiana's Delegated Arrest Authority Over Controlled Substances is Unconstitutional;
- Count #2 – Indiana's Penalty Statutes at [I.C. § 35-48-Chapter 4](#) Are Ineffectual, Unenforceable, and False;
- Count #3 – Indiana's Penalty Statutes at [I.C. § 35-48-Chapter 4](#) Are Unconstitutional;
- Count #4 – U.S. Drug Prohibitions Are Inapplicable in Indiana and Are Applicable Only in the Federal Areas;
- Count #5 – Plaintiff Has a Natural Right in Indiana to Cultivate Marijuana for His Own Use;
- Count #6 – Plaintiff Has a Legal Right to Possess Drugs in the Federal Areas, Including on Ships and Aircraft; and,
- Count #7 – The Judicial Use Within Indiana of the Police Power of Prohibition Against Drug Possession and Interstate Drug Commerce Deprives Plaintiff and Other U.S. Citizens of Their Natural Right to a Republican Form of Government.

[[Filing No. 37 at 1-2.](#)]

Mr. St. Angelo asserted that the cited statutes are unconstitutional when read in conjunction with each other because: (1) they delegate arrest authority "over subject matter that is not criminal and that is not subject to arrest," [[Filing No. 37 at 9](#)]; (2) "only *malum in se* behavior constitutes a crime or criminal case within Indiana under the U.S. and Indiana constitutions," [[Filing No. 37 at](#)

[10](#)]; (3) people have a "natural right" to possess controlled substances, [[Filing No. 37 at 10](#)]; and (4) dealing controlled substances without Indiana or U.S. administrative permissions is a regulatory violation, not a criminal matter that makes a person subject to arrest, [[Filing No. 37 at 10](#)]. Mr. St. Angelo alleged that end users of controlled substances—whom he called "ultimate users"—"may 'lawfully possess' these drugs for their own use and use of their households." [[Filing No. 37 at 11](#).] He also asserted that dealing drugs is an activity that is "subject to the police power of regulation, and is not subject to arrest under the police power of prohibition." [[Filing No. 37 at 11-12](#).] Mr. St. Angelo argued that drug dealers have rights to administrative due process. [[Filing No. 37 at 13](#).] Mr. St. Angelo contended that "all persons who manufacture, distribute or dispense controlled substances within Indiana are regulated by the Drug Enforcement Administration and the Indiana Board of Pharmacy." [[Filing No. 37 at 24](#).] In his Amended Complaint, he sought declaratory and injunctive relief, [[Filing No. 37 at 1](#)], including the "release from custody [of] all people incarcerated as the result of these unconstitutional provisions or unlawful enforcement" and "the expunging of the pertinent arrest and criminal records of victims of false arrest." [[Filing No. 37 at 20](#).]

All of the Defendants filed motions to dismiss Mr. St. Angelo's claims, which were granted by the Court on February 24, 2020. [[Filing No. 76](#).]

In its Order granting Defendants' motions to dismiss, the Court first considered whether it had jurisdiction to address the merits of Mr. St. Angelo's claims, and it addressed the threshold jurisdictional question of whether he had standing to sue. [[Filing No. 76 at 11](#).] The Court concluded that Mr. St. Angelo did not have standing because he did not make "any allegations regarding: (1) how he has been actually injured by the statute[s]; (2) how the injury can be fairly traced to the conduct of the Defendants; or (3) that the injury is likely to be redressed by a favorable

decision from this Court." [[Filing No. 76 at 13](#) (citing *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016).] The Court determined that Mr. St. Angelo's alleged injuries were hypothetical and, therefore, could not form the basis for Article III standing. [[Filing No. 76 at 13.](#)] In ruling that Mr. St. Angelo lacked standing, the Court also noted that "arrest and prosecution for drug crimes are not 'invasion[s] of a legally protected interest.'" [[Filing No. 76 at 13](#) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (citing *Steffel v. Thompson*, 415 U.S. 452, 455 (1974) and *Gonzales v. Raich*, 545 U.S. 1, 14 (2005) (where the Supreme Court acknowledged that "the manufacture, distribution, or possession of marijuana [is] a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration preapproved research study"))].] The Court explained that although dismissal of a complaint for lack of standing is usually without prejudice, *Harris v. Quinn*, 656 F.3d 692, 701 (7th Cir. 2011), the dismissal of Mr. St. Angelo's claims would be with prejudice because he had already had the opportunity to amend his Complaint after being put on notice of the issues regarding Article III standing, and his Amended Complaint did not demonstrate that he had standing to bring his lawsuit. [[Filing No. 76 at 14-15.](#)]

### III. DISCUSSION

In his Motion to Alter or Amend Judgment, Mr. St. Angelo asks the Court to vacate its dismissal with prejudice and instead enter a dismissal without prejudice. [[Filing No. 79 at 1.](#)] He alleges, again, that 21 U.S.C. § 822(c) provides a constitutional right for private citizens as "ultimate users" to "lawfully possess" controlled substances, and that his arguments in support of this position were not rebutted by Defendants and were not mentioned by the Court in its February 24, 2020 Order. [[Filing No. 79 at 1-2.](#)] Mr. St. Angelo argues that the Court's Order did not address the merits of his claims—specifically, "the existence of 21 U.S.C. § 822(c) and [his]

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