IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 25-12912
DISTRICT COURT DOCKET NO. 24-cv-24670-RAR

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NICOLAS A. MANZINI,

*Plaintiff-Appellant*,

v.

TALBERT CYPRESS and LUCAS K. OSCEOLA,

*Defendants-Appellees*.

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# BRIEF OF DEFENDANTS-APPELLEES

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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*Talbert Cypress and Lucas K. Osceola*

*Nicolas Manzini v. Talbert Cypress, etc., et al*

**CASE NO. 25-12912**

**CERTIFICATE OF INTERESTED PERSONS**

**AND**

**CORPORATE DISCLOSURE STATEMENT**

Defendants-Appellees, TALBERT CYPRESS, Individually and in his official capacity as Chairman of the Miccosukee General Council a/k/a Miccosukee Business Council, and the Miccosukee Gaming Agency, and LUCAS K. OSCEOLA, Individually and in his official capacity as Assistant Chairman of the Miccosukee General Council a/k/a Miccosukee Business Council, and the Miccosukee Gaming Agency, submit this list, which includes the trial judge, and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this review:

1. Ajizian, Christopher, Esq.
2. Chris Ajizian, P.A.
3. Cypress, Talbert
4. Friedman, Todd R., Esq.
5. Kula & Associates, P.A.
6. Kula, Elliot B., Esq.
7. Manzini, Nicolas
8. Miccosukee Tribe of Indians

*Nicolas Manzini v. Talbert Cypress, etc., et al*

**CASE NO. 25-12912**

**CERTIFICATE OF INTERESTED PERSONS**
**AND**
**CORPORATE DISCLOSURE STATEMENT**
(Continued)

9. Osceola, Lucas K.
10. Ruiz, Hon. Rodolfo A., II
11. Todd R. Friedman, P.A.
12. Walter, Elaine D., Esq.

Pursuant to Federal Rule of Appellate Procedures 26.1 and Eleventh Circuit Rules 26.101 through 26.1-3, Defendants-Appellees are individuals, named individually and in their official capacities as Chairman and Assistant Chairman, respectively, of the Miccosukee General Council a/k/a Miccosukee Business Council, and the Miccosukee Gaming Agency, and no publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ Elliot B. Kula
Elliot B. Kula

## STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not warranted.

Nicolas Manzini, a retired Florida attorney proceeding pro se, sued Talbert Cypress and Lucas K. Osceola after a casino's automated kiosk rounded his gambling winnings down to the nearest dollar and issued a voucher for the nominal amount remaining. Rather than cashing in the voucher with the casino cashier, Manzini filed suit alleging violations of the Indian Gaming Regulatory Act (IGRA) and the National Indian Gaming Commission regulations and seeking relief under state law and the Federal Declaratory Judgment Act.

The district court thoughtfully and correctly dismissed Manzini's amended complaint with prejudice because IGRA provides no private right of action for individuals seeking to enforce compliance with the code's provisions—a principle firmly established by this Court and sister circuits. The district court also correctly found that sovereign immunity barred Manzini's state-law claims against Cypress and Osceola because the conduct occurred on tribal lands. Finally, the district court appropriately exercised its broad discretion to decline declaratory relief where no actual controversy remained, and no viable underlying claim existed.

When Manzini moved to alter or amend the judgment under Rule 59(e), the district court correctly denied relief because Manzini presented no newly-discovered evidence or manifest errors of law or fact, but instead sought to relitigate.

The district court's orders are well reasoned and stated. And Manzini has been heard repeatedly on the issues already. No oral argument is warranted.

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## STATEMENT OF JURISDICTION

The district court had jurisdiction over the action below under 28 U.S.C. 1331, because the appellant sought relief under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq*.

This Court has jurisdiction under 28 U.S.C. 1291 for an appeal taken from a final decision of the district court.

## STATEMENT OF THE ISSUES

Whether the district court properly dismissed the appellant's action against the appellees with prejudice on sovereign immunity grounds (state law claims) and because the Indian Gaming Regulation Act does not provide for a private right of action (Federal claim), such that any amendment would be futile.

Whether the trial court properly exercised its discretion in denying the appellant's Rule 59(e) motion.

## STATEMENT OF THE CASE

### I. COURSE OF PROCEEDINGS.

Plaintiff-Appellant, Nicolas A. Manzini (a retired Florida attorney proceeding pro se) filed a complaint for damages, declaratory and injunctive relief against Talbert Cypress (individually and in his official capacity as Chairman of the Miccosukee General Council a/k/a Miccosukee Business Council and the Miccosukee Gaming Agency) and Lucas K. Osceola (individually and in his official capacity as Assistant Chairman of the Miccosukee Executive Council a/k/a Miccosukee Business Council and the Miccosukee Gaming Agency). DE:1.

The district court ordered Manzini to show cause, directing him to confirm a basis for the court's jurisdiction. DE:9. Manzini responded. DE:13.

In the interim, he filed an amended complaint. DE:12. Cypress and Osceola moved to dismiss. DE:21. Manzini responded. DE:27. And Cypress and Osceola replied. DE:29.

The district court dismissed Manzini's case with prejudice. DE:40.

Manzini filed a "Rule 59 Motion." DE:41. The district court denied it, first in a paperless order and then in a paper order. DE:42; DE:44.

Manzini timely filed a notice of appeal. DE:45.

## II. STATEMENT OF THE FACTS.

### THE LAWSUIT

Nicolas Manzini sued Talbert Cypress and Lucas K. Osceola, individually and in their official capacities for their roles in the Miccosukee Tribe—specifically with regard to Miccosukee Gaming Agency. DE:1. The complaint, as amended, alleged that Cypress and Osceola violated the Indian Gaming Regulatory Act (IGRA) and National Indian Gaming Commission (NIGC) regulations. DE:12 at 4.

Manzini alleged that the Miccosukee Resort and Gaming Casino (the Casino) impermissibly shortchanged patrons when they cashed out gambling winnings vouchers at the Casino's automated voucher kiosk, by rounding the winnings down to the nearest dollar. DE:12 at 7-8. But Manzini failed to allege that he suffered any monetary damages. *See* DE:40 at 10-11. He couldn't. While the automated machine provided Manzini with a ticket informing him that the machine had rounded down

due to a coin shortage during COVID, that same ticket also informed him that he could go to a cashier window to recoup his pocket change. DE:12 at 7-8.

On these allegations, Manzini advanced two causes of action. In his first cause of action, Manzini claimed IGRA and NIGC regulation violations, and sought monetary damages under Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) upon conversion and unjust enrichment theories. DE:12 at 12-16. In his second cause of action, Manzini pursued declaratory and injunctive relief under the Federal Declaratory Judgment Act (i) declaring the Casino's practices (Cypress's and Osceola's practices) unenforceable under IGRA as violative of "equity's conscience" and (ii) enjoining their future use. DE:12 at 16-17.

**THE DISTRICT COURT'S DISMISSAL**

The district court, upon a motion to dismiss by Cypress and Osceola raising numerous grounds (DE:21),[1] dismissed Manzini's amended complaint with prejudice (DE:40), prefacing its ruling with the following summary:

> As explained herein, the Court finds that: 1) it d[id] have subject matter jurisdiction to review this action because it presents a question of federal law; 2) sovereign immunity bar[red] Plaintiff's state-law claims but not his federal claims, which fall under the Ex Parte Young doctrine; and 3) Plaintiff's federal claims ultimately fail[ed] because neither IGRA, nor the regulations of the NIGC, provide for a private right of action.

[1] Among the grounds for dismissal were (i) tribal sovereign immunity, (ii) lack of diversity, (iii) lack of federal question jurisdiction in that the amount in controversy failed to reach the jurisdictional limit, (iv) no private right to a cause of action, and (v) inability to state a claim under Florida law or for declaratory relief. DE:21.

DE:40 at 1-2.[2]

Drilling down, the district court found federal question jurisdiction to be conferred by IGRA on Manzini's federal law claims, with no sovereign immunity bar. DE:40 at 13-18 (relying on *Alabama v. PCI Gaming Authority*, F.3d 1278 (11th Cir. 2015). That was because Manzini invoked "sections of IGRA that do not include a detailed remedial scheme barring the application of Ex parte Young" and because Manzini alleged Cypress and Osceola were "committing ongoing violations of federal law outside the scope of their authority" and sought "declaratory and injunctive relief." DE:40 at 18.

But the district court's analysis also concluded, based on ample case law, that Manzini's federal claims held no purchase: "IGRA provides no private right of action and [Manzini] fail[ed] to state a claim for relief." DE:40 at 19-24 (citing *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000) ("IGRA provides no general private right of action."); *Hartman v. Kickapoo Tribe Gaming Comm'n*, 319 F.3d 1230, 1233 (10th Cir. 2003) (holding that "IGRA contains no implied private right of action in favor of an individual seeking to enforce compliance with the statute's provisions."); *Tamiami Partners,*

[2] The district court rejected diversity jurisdiction because all of the parties are Florida residents. DE:40 at 3, 12-13. And the Court found no federal question because "for [Manzini] to reach the $75,000 amount in controversy, he would need at least 75,576 maximum value ($0.99) change vouchers for himself during a period of nearly three years – approximately 56 maximum value change vouchers every day for 1399 days." DE:21 at 10; *see also* DE:40 at 3, 9-12 (stating that Manzini failed to plead or address the amount in controversy requirement and, by any calculation, it was a "legally certain that he cannot" meet the threshold).

*Ltd. By and Through Tamiami Development Corp. v. Miccosukee Tribe of Indians of Fla.*, 63 F.3d 1030, 1049 (11th Cir. 1995) ("IGRA provides it no right to relief."); and Fla. v. *Seminole Tribe of Fla.*, 181 F.3d 1237, 1242 (11th Cir. 1999) (explaining that "ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor").

On Manzini's state law claims, the district court found them to be barred by sovereign immunity. DE:40 at 18-19. It relied on this Court's opinion in *PCI Gaming Authority*, 801 F.3d at 1290. There the Court explained that "[t]he immunity tribal officials enjoy from state-law claims brought in federal court is narrower than the immunity of state officials from such claims . . . tribal officials may be subject to suit in federal court for violations of state law under the fiction *of Ex parte Young* when their conduct occurs outside of Indian lands." DE:40 at 18. But the "Individual Defendants enjoy immunity from its state law claim if the casinos are located on Indian lands." DE:40 at 18-19 (citing *PCI Gaming Authority*, 801 F.3d at 1290). And "tribal immunity 'is a matter of federal law and is not subject to diminution by the States.' " DE:40 at 19 (citing *Michigan v. Bay Mills Indian Cmty*., 572 U.S. 782, 789 (2014)).

Manzini's Federal Declaratory Judgment Act claim, the district court found, also failed. DE:40 at 24-26. The district court first noted its "broad discretion over whether to exercise jurisdiction over claims" under the Act. DE:40 at 24. Then it discussed whether an "actual controversy" existed under the facts presented by the amended complaint. DE:40 at 24-26. Finding none, "given that there is no federal cause of action under IGRA or NIGC regulations and that sovereign immunity bars

Plaintiff's remaining state-law claims, the district court determined that it had no power to review the declaratory judgment claims. DE:40, 25-26.

Finally, finding that any further amendment would be futile, the district court dismissed the entire action with prejudice. DE:40 at 27.

**THE DISTRICT COURT'S DENIAL OF RULE 59 RELIEF**

Manzini asked the district court to alter or amend its Dismissal Order and permit him to file a second amended complaint. DE:41 (the Rule 59 Motion). Manzini principally relied on *Cayuga Nation v. N.Y. State Gaming Commission*, 775 F. Supp. 3d 651 (N.D.N.Y. Mar. 31, 2025), and argued that the district court was not precluded from "issuing equitable relief." DE:41 at 16-18.

The district court, recognizing that Manzini was essentially asking to recast his complaint (DE:44 at 2), denied the Rule 59 Motion, relying on well-settled law that a party "cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment" and confirmed that "[t]he only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." DE:44 at 2 (citing *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005), and *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). But Manzini did not present any new evidence, nor did he allege any manifest errors of law or fact; rather, the district court explained, Manzini appeared to misunderstand the ruling, which was that he failed to state a claim as a factual matter and that no claim can be stated under the law. DE:44 at 2.

## III. STATEMENT OF THE STANDARDS OF REVIEW.

The Court reviews de novo the district court's grant of a motion to dismiss with prejudice, accepting the factual allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *City of Miami v. Citigroup Inc.*, 801 F.3d 1268, 1275 (11th Cir. 2015). A dismissal based on sovereign immunity grounds is also reviewed de novo by the Court. *Crum v. Ala. (In re Emp't Discrimination Litig.*, 198 F.3d 1305, 1310 (11th Cir. 1999).

Although the Court "generally review[s] the district court's decision to deny leave to amend for an abuse of discretion," it reviews de novo an order denying leave to amend on the grounds of futility as a "conclusion of law that an amended complaint would necessarily fail." *City of Miami*, 801 F.3d at 1275.

Finally, a ruling on a motion filed under Federal Rule of Civil Procedure 59(e) seeking to alter or amend a judgment is reviewed for abuse of discretion. *Mays v. U.S. Postal Serv*., 122 F.3d 43, 46 (11th Cir. 1997).

## SUMMARY OF ARGUMENT

The district court properly dismissed Manzini's claims with prejudice and correctly denied his Rule 59 Motion. Each determination was fully supported by controlling precedent and a sound exercise of judicial discretion.

**Manzini had no private right of action under IGRA**. This Court and every circuit to address the question have held that IGRA creates private causes of action only where it does so explicitly—and it provides no general private right of action for individuals to sue for alleged violations of the code or NIGC regulations. Manzini's reliance on *Cayuga Nation v. N.Y. State Gaming Commission* is

misplaced. That district court order involved a tribal nation's preemption claim against state regulatory overreach—a fundamentally different scenario than an individual plaintiff attempting to enforce IGRA's provisions against tribal officials. Here, Manzini seeks to compel the Tribe's compliance with federal gaming regulations, precisely the type of enforcement action that IGRA reserves for federal authorities, not private litigants.

**Sovereign immunity barred Manzini's state-law claims**. Under binding precedent from this Court, tribal officials enjoy immunity from state-law claims when their alleged conduct occurs on Indian lands. Manzini does not dispute that the casino operates on tribal lands. The district court correctly applied this well-established principle.

**The district court properly exercised its broad discretion to decline relief under the Federal Declaratory Judgment Act**. The court found no actual controversy remained, and the Act provides no independent basis for federal question jurisdiction where no viable underlying claim exists. This discretionary determination was amply supported and warrants deference.

**The district court did not abuse its discretion in denying Manzini's Rule 59 Motion**. Manzini presented no newly-discovered evidence or manifest errors of law or fact. His motion merely sought to relitigate issues already decided and raise arguments based on an easily distinguishable New York district court order. The district court's determination below that another attempt at amendment would be futile was correct—no set of facts would permit Manzini to state a viable claim.

For these reasons, affirmance is warranted.

## ARGUMENT

Although Manzini purports to raise four issues on appeal, the arguments are subsumed within two issues. *Compare* Opening Brief at 4-5 to 24-29. The Tribe will therefore only respond to the two issues actually included in the argument section of Manzini's brief.[3]

### I. THE DISTRICT COURT'S DISMISSAL ORDER WITH PREJUDICE IS SUPPORTED IN FACT AND LAW—A PRIVATE CAUSE OF ACTION IS UNAVAILABLE UNDER IGRA, THE STATE LAW CLAIMS WERE BARRED BY SOVEREIGN IMMUNITY, AND CAYUGA NATION DOES NOT DICTATE A DIFFERENT RESULT FOR MANZINI'S EQUITABLE CLAIMS ON APPEAL.

To be clear: Manzini had no private right of action under IGRA and his state law claims were barred by the Tribe's sovereign immunity.

The law on a private action under the IGRA and NIGC is universal: "[W]here IGRA creates a private cause of action, it does so explicitly." *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000); *see also Tamiami Partners v. Miccosukee Tribe of Indians*, 63 F.3d 1030, 1049 (11th Cir. 1995) ("[A]fter examining the IGRA regulatory scheme, we find nothing in the statute's language, or in the legislative history, to indicate that Congress implied the right of action Tamiami presents … ."); *Hartman v. Kickapoo Tribe Gaming Comm'n,* 319 F.3d 1230, 1232-33 (10th Cir. 2003) ("[T]he district court correctly

[3] Indeed, Manzini does not appeal the dismissal of his non-equitable claims. Opening Brief at 24-29. Rather, he concedes that his claims for damages were not actionable against Cypress and Osceola. *Id.* at 25-26. But he faults the district court for not permitting his declaratory claim to proceed and for not permitting him leave to amend on a variety of grounds.

pointed out that nowhere does IGRA expressly authorize private individuals to sue directly under the statute for failure of a tribe, a state, or the NIGC to comply with its provisions."); *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1299-1300 (11th Cir. 2015) ("[L]ike the district court below, we fail to discern a private right of action that would allow Alabama to bring a federal claim under IGRA to enjoin the Tribes' alleged class III gaming.").

Further, Florida "does not have jurisdiction in a suit by other persons against the Tribe." *Houghtaling v. Seminole Tribe of Fla.*, 611 So. 2d 1235, 1238 (Fla. 1993). More to the point regarding Cypress and Osceola, "[t]he immunity tribal officials enjoy from state law claims brought in federal court is narrower than the immunity of state officials from such claims … . Specifically, tribal officials may be subject to suit in federal court for violations of state law under the fiction of *Ex parte Young* when their conduct occurs outside of Indian lands." *PCI Gaming Auth.*, 801 F.3d at 1290. That is to say, Cypress and Osceola enjoy immunity from [a] state law claim if the casinos are located on Indian lands." *Id.* at 1291. There is no dispute that the casino at which Manzini gambled was on Indian lands. DE:12 at ¶ 4.

And there is no indication that the district court's dismissal was based on Manzini's amended complaint being a shotgun pleading. Opening Br. at 26. To the contrary, the district court went out of its way to explain that it was not viewing the amended complaint as a shotgun pleading and differentiated Manzini's claims in the Dismissal Order. DE:40 at 7 n.8.

Manzini appears to rest his appeal on the Northern District of New York order in *Cayuga Nation v. N.Y. State Gaming Comm'n*, 775 F. Supp 3d 651, 664-65

(N.D.N.Y. Mar. 31, 2025). Actually, he relies on a part of that court's order denying a portion of a **state's** motion to dismiss (specifically, the New York State Gaming Commission), requesting dismissal of an equitable claim by the Cayuga Nation (an Indian Tribe) under IGRA.

But he misses the point of the Northern District of New York's order in *Cayuga Nation*. There, the district court declined to dismiss the Nation's IGRA preemption claim on the basis that the court lacked equity jurisdiction. *Id.* at 664-65. And that district court did so because "the parties ha[d] not meaningfully addressed whether the Court has equitable jurisdiction," and "absent further briefing addressing the relevant considerations, the Court [could not] resolve the question of whether Congress 'inten[ded] to foreclose' equitable relief" under IGRA. *Id.* at 665. But the district court in *Cayuga Nation* denied the dismissal without prejudice for a renewed motion at a later time. *Id.*

And when the "renewed motion" to dismiss came around, the Northern District of New York let the equitable claim proceed based on a specific factor not present here: Preemption. *Cayuga Nation v. N.Y. State Gaming Comm'n*, No. 5:24-cv-53721, 2025 U.S. Dist. LEXIS 145718 *1, *1-2 & 19-21 (N.Y.N.D. Jul 30, 2025). The Nation pointed to specific examples of the State's regulatory authority impacting the Nation's gambling operations.

That's not the case here.

Here, there is no such preemption argument. Rather, Manzini is alleging that the Tribe's actions deviated from IGRA's and NIGC rules and regulations and trying to require the Tribe to follow those rules and regulations. As the district court below

so cogently stated, there is no private right to a cause of action available to Manzini in order for equitable relief to be granted in his favor **and** his state law claims are preempted under a theory of sovereign immunity. DE:40 at 19-24. And the district court recognized that Manzini's argument contravenes longstanding principles and recognized the importance of Tribal self-determination that undergird IGRA and the NIGC regulations. DE:40 at 23-24.

But there's more. The district court declined to address the declaratory judgment claim, as it was authorized to do—and further found that Manzini's claim under the Declaratory Judgment Act failed in its own right. DE:40 at 24-26.

"Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co*., 515 U.S. 277, 286, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995); *accord Cambridge Christian Sch., Inc. v. Fla. High Sch. Ath. Ass'n*, 942 F.3d 1215, 1251 (11th Cir. 2019) ("District courts have broad statutory discretion to decline declaratory relief" which is "wholly consonant with the purposes of declaratory relief."). "By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants." *Id.* "Consistent with the nonobligatory nature of the remedy, a district court is authorized, in the sound exercise of its discretion, to stay or to dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close." *Id.* "In the declaratory judgment context, the normal principle that federal

courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Id.*

As this Court has noted, "[o]verturning a district court's denial of declaratory relief, even at the motion to dismiss stage requires a heavy lift." *Cambridge Christian Sch., Inc*., 942 F.3d at 1251. The district court determination whether to provide a declaratory remedy is "nonobligatory" and "yields to considerations of practicality and wise judicial administration." *Id.* And the district court in this case determined that "no actual controversy" remained. DE:40 at 25. In light of that determination, it also found that the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), did not "provide an independent basis for federal question jurisdiction." DE:40 at 25. That was because the amended complaint didn't "contain any allegations which could reasonably support a finding that [Manzini was] likely to be subject to future injury from the application of the statute [he] challenge[d]." *Id.* (citing *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999)). The district court's discretionary call was fully supported, and this Court should let it stand.

Manzini's reliance on the fact that he was proceeding pro se (*see* Opening Brief at 26) is of no moment; that's not a barrier to affirmance. Manzini exercised his amendment as a matter of right. DE:12. And his arguments to the contrary notwithstanding (*see* Opening Brief at 26-27), there was absolutely no doubt that he was unable to prove any set of facts to support any claim by which the district court could provide him with relief. The district court's futility finding was spot on. DE:40 at 27.

## II. MANZINI FAILS TO DEMONSTRATE ANY ABUSE OF DISCRETION IN THE DENIAL OF HIS RULE 59 MOTION.

Under this Court's Rule 59 jurisprudence, leave to amend "must be granted absent a specific, significant reason for denial," such as undue prejudice to the opposing party or futility of amendment. *Spanish Broad Sys. of Fla. v. Clear Channel Commc'ns, Inc*., 376 F.3d 1065, 1077 (11th Cir. 2004).[4] But the district court, in both its final order of dismissal and it order denying Manzini's order denying his Rule 59 Motion, made specific and significant reasons for its rationale: Futility (DE:40 at 27) and Manzini can state no claim under the law on which he relied. DE:44 at 2.

Manzini's pro se status does not change the analysis or the outcome. As previously stated, Manzini used his free pass amendment in response to the district court's order to show cause (DE:9)—before Cypress and Osceola moved to dismiss or were even served with process. DE:12. That was his decision. He should not be able to attribute that decision to anyone else.

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[4] While Manzini's Opening Brief contained a standard of review for a ruling on a Rule 15(a)(2) motion, he included no argument for reversal under that rule. The issue is therefore waived. Even if the issue was reviewed under Rule 15, Manzini's bid to file a second amended complaint would fail. Southern District of Florida Local Rule 15.1 provides that a party moving to amend a pleading must "attach the original of the amendment to the motion." S.D. Fla. R. 15.1. Manzini did not attach a proposed amended complaint to his Rule 59 motions. "Although [Manzini], as a pro se litigant, was to be treated leniently and given an opportunity to amend [his] defective pleading, that leniency cannot excuse [a] failure to conform to procedural requirements prescribed by the Federal Rules of Civil Procedure and the district court's local rules." *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002). And "[a] proposed amendment may be denied for futility when the complaint as amended would still be properly dismissed." *Coventry First, LLC v. McCarty*, 605 F.3d 865, 870 (11th Cir. 2010). Rule 15 therefore provides no avenue for relief to Manzini.

And the district court's denial of the Rule 59 Motion was not a summary denial. It was a detailed order, fully addressing Manzini's arguments.

To the point, the grounds for granting a Rule 59(e) motion to reconsider are narrow under this Court's precedent. "The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *MacPhee v. MiMedx Grp., Inc*., 73 F.4th 1220, 1250 (11th Cir. 2023). Manzini's motion did not include either one. Also, "a Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Id.* (alteration in original) (quoting *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)). "In particular, courts will not address new arguments or evidence that the moving party could have raised before the decision issued." *Banister v. Davis*, 590 U.S. 504, 508, 140 S. Ct. 1698, 207 L. Ed. 2d 58 (2020). But Manzini's Rule 59 Motion largely re-argued his prior position and asserted new-found reliance on Northern District of New York's order in *Cayuga Nation*. DE:41. The district court's denial of the motion was not an abuse of discretion.

Finally, "a district court may properly deny leave to amend the complaint . . . when such amendment would be futile." *Taveras v. Bank of Am., N.A*., 89 F.4th 1279, 1288-89 (11th Cir. 2024). In other words, "[w]hen the complaint as amended would still be dismissed, the district court may properly deny a motion for leave to amend as futile." *Id*.

The district court acted properly within its discretion in denying the Rule 59 Motion and foreclosing Manzini's ability to amend his complaint.

## CONCLUSION

The Tribe respectfully request that the Court affirm the district court's final order dismissing Manzini's case and denying his Rule 59 Motion in all respects.

Respectfully submitted,


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## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief uses Times New Roman 14-point typeface and contains 4,166 words.

/s/ Elliot B. Kula
Elliot B. Kula

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2025, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system. I also hereby certify that the foregoing document is being served this day on all counsel of record identified on the Service List in the manner specified, via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Elliot B. Kula
Elliot B. Kula