No. 122626

IN THE
SUPREME COURT OF ILLINOIS

AARON P. FILLMORE, B63343, Plaintiff-Appellee, v. GLADYSE TAYLOR, LIEF McCARTHY, and ELDON COOPER, Defendants-Appellants.	)))))))))))	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-16-0309 There on Appeal from the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, No. 15 MR 915 The Honorable RUDOLPH M. BRAUD, Judge Presiding.

BRIEF OF APPELLEE. CROSS-RELIEF REQUESTED.

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10/4/2018 12:34 PM
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INTRODUCTION

This case asks whether prison officials may add a year to a prisoner's sentence or send a prisoner to solitary confinement for a year without following the regulations that govern disciplining inmates. Prison officials accused Plaintiff Aaron Fillmore of violating two prison rules. Invoking his rights under prison regulations that the Department of Corrections ("IDOC") has codified in the Illinois Administrative Code ("IAC"), Fillmore denied the charges, asked to see the evidence against him, and identified eight witnesses to testify on his behalf. Violating those regulations, Defendants denied Fillmore the opportunity to view the evidence against him, never heard from his witnesses, and found him guilty after receiving orders to do so from senior officials. As a result of this one-sided proceeding, Fillmore lost a year of good time credits, spent a year in punitive segregation, and suffered other severe punishments.

Fillmore filed this lawsuit to vacate the unlawful guilty finding and restore his good time credits. He brought claims for mandamus and common law certiorari and alleged that Defendants violated his rights under state prison regulations and federal due process protections. The Circuit Court dismissed the case under 735 ILCS 5/2-615. The Appellate Court reversed in part and affirmed in part. Analyzing only Fillmore's claims that Defendants violated state law, it held that Fillmore had enforceable rights under IDOC prison regulations and that Fillmore adequately alleged that Defendants violated several of those rights. But it also held that Defendants had discretion under some regulations and that, with respect to those regulations, Fillmore did not state a claim for mandamus, which enforces only nondiscretionary duties.

Defendants now seek dismissal of Fillmore's complaint, arguing that prisoners have no rights under the regulations that govern disciplining inmates. Fillmore seeks cross-relief to reinstate additional portions of his complaint.

There is no merit to Defendants' argument that prison regulations are a one-way ratchet—stripping prisoners of rights while affording them no protections. Prisoners are entitled to hear the evidence against them, to marshal evidence in their defense, and to have their cases heard by impartial tribunals before prison officials may extend the duration of their confinements or punish them with segregated detention. Those protections are codified in IDOC's prison regulations, as the General Assembly commanded. And this Court has long held that prisoners may enforce prison regulations affecting the duration of their confinements. The Court should reject Defendants' call to overturn longstanding and settled Illinois law.

Fillmore also is entitled to cross-relief on several of the claims that the Appellate Court held were properly dismissed. The Appellate Court erred in concluding that these claims implicated discretionary duties that could not support mandamus relief. The court also erred in concluding that the alleged violations did not substantially injure Fillmore and therefore did not state a claim for certiorari. This Court accordingly should reinstate portions of Fillmore's complaint that allege violations of his rights under Illinois law.

Independently, Fillmore has stated claims for violations of his federal due process rights. Fillmore has a constitutionally protected liberty interest in his good time credits, and he adequately alleged that Defendants failed to honor due process requirements in revoking those credits. Accordingly, this Court should remand this case so that Fillmore may enforce his rights under both Illinois and federal law.

Finally, the Court should reject Defendants' objection to the Appellate Court's refusal to file their rehearing petition. That objection is moot because Defendants seek no affirmative relief. And the Appellate Court's action was correct under Rule 367(e) anyway.

In short, the Court should affirm the Appellate Court's holding that prisoners have enforceable rights under IDOC regulations governing inmate discipline, reinstate additional portions of Fillmore's complaint, and remand so that Fillmore may prove that Defendants violated his rights under both Illinois and federal law.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court correctly held that Defendants' actions violated Fillmore's enforceable rights under prison regulations.

2. Whether the Appellate Court erroneously declined to reinstate portions of Fillmore's complaint that allege additional violations of his rights under Illinois law.

3. Whether Fillmore adequately alleged that Defendants violated his federal due process rights.

4. Whether this Court should issue an advisory opinion that the Appellate Court correctly refused to file the second-presented rehearing petition in this case.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations at issue in this case, 730 ILCS 5/1-1-1 *et seq.* and 20 Ill. Admin. Code 504 *et seq.* (2003), are reproduced in relevant part in the Appendix to this Brief.[1]

[1] Revisions to IDOC regulations took effect in 2017. These revisions would be favorable to Fillmore, as they decrease the penalties for the charged violations. They do not govern here, however, because Fillmore's disciplinary proceeding occurred in 2014.

STATEMENT OF FACTS

A. Legal Background

"Until February 1, 1978, Illinois had a system of indeterminate sentences in which those committed to the Department of Corrections for commission of a felony were sentenced to minimum and maximum terms of imprisonment." *Johnson v. Franzen*, 77 Ill. 2d 513, 516 (1979). In 1977, the General Assembly enacted sentencing reforms that "created a determinate sentencing structure in Illinois." *Lane v. Sklodowski*, 97 Ill. 2d 311, 316 (1983). The legislation "abolished the Parole and Pardon Board, which previously had possessed broad powers to establish a prisoner's date of release, and replaced it with a Prisoner Review Board with only limited authority . . . to determine the time of release." *Id.* at 317. The legislation "carefully circumscribed" the "authority" of IDOC to "revoke . . . good-conduct credits." *Id.* More specifically, it "carefully circumscribed the authority of *every public official* charged with making *any decision* affecting the time of a prisoner's release." *Id.* at 318 (emphasis added).

An express "purpose[]" of the current statutory Code of Corrections ("Code") is to "prevent arbitrary or oppressive treatment" of inmates. 730 ILCS 5/1-1-2(c). To that end, the General Assembly commanded IDOC to promulgate regulations to govern prison disciplinary proceedings: "In disciplinary cases which may involve the imposition of disciplinary segregation and isolation, the loss of good time credit or eligibility to earn good time credit, the Director *shall establish disciplinary procedures* . . . ." *Id.* § 3-8-7(e) (listing principles) (emphasis added). The General Assembly further commanded that

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All further citations to the IAC are to the 2003 version. Citations in this brief to "Section 504.__" refer to these regulations.

"the disciplinary procedure *by which such penalties may be imposed shall be available* to committed persons." *Id.* § 3-8-7(a) (emphasis added).

Pursuant to this statutory command, IDOC promulgated the regulations at issue in this case that govern disciplining prisoners and that are codified at 20 Ill. Admin. Code Part 504.

B. Factual Background[2]

Plaintiff Aaron Fillmore is an inmate at Lawrence Correctional Center. C11. In December 2014, he received a disciplinary report ("Report") accusing him of violating prison Rules "205—Security Threat Group" and "206—Intimidation or Threats" based on his alleged involvement in the Latin Kings gang. C12, C25. The Report was based on alleged evidence "gathered through Confidential Informants, searches, monitored mail and phone calls." C25. The Report listed calls that Fillmore allegedly made, transcribed portions of alleged conversations, described "note[s]" allegedly seized from "cell searches" of unnamed inmates' cells, and made a handwriting identification that Fillmore had "authored" those notes. C25-C29. Among other things, the Report alleges that Fillmore spoke in coded gang talk with his brother, who is a U.S. Marine with top secret clearance.

Fillmore denied the Report's charges and requested a hearing pursuant to IDOC regulations. C30. He denied using the phone on several days listed in the Report. *Id.* He asked to be shown the notes that he allegedly authored. *Id.* And he identified eight inmates who would testify that he did not commit the alleged violations. *Id.*

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[2] On Defendants' motion to dismiss under section 2-615, "all well-pleaded facts in the complaint" and "any reasonable inferences that may arise from them" must be "accept[ed] as true." *Cochran v. Securitas Sec. Servs. USA, Inc.*, 2017 IL 121200, ¶ 11.

Fillmore was brought before Defendants Eldon Cooper and Lief McCarthy, who served on the prison's Adjustment Committee ("Committee"). C11, C13. Fillmore submitted a written defense. C13, C31-C33. He again denied that he used the phone on three dates listed in the Report and argued that any telephone recordings would support his defense if "played in their entirety." C31. He denied writing the notes and explained that the handwriting identification was not made by an expert. C32. Fillmore again asked to see the notes that he allegedly authored and the telephone logs that listed his alleged calls, asked to listen to the telephone recordings of his alleged conversations that the Report had quoted, and asked that his witnesses be called to testify in his defense. C14, C33.

Cooper told Fillmore at the hearing that Cooper had been instructed not to call Fillmore's witnesses by Sergeant Jerry Harper, a higher ranking officer who wrote the Report charging Fillmore with the violations. C14. Cooper also said that he was instructed to find Fillmore guilty and to revoke a year of good time credits and impose other punitive measures. *Id.* Upon hearing that the Committee had prejudged his case, Fillmore objected to the Committee's lack of impartiality. *Id.* But Defendants failed to document Fillmore's objection and refused to recuse themselves. *Id.* They also refused to show Fillmore the evidence against him or to hear from Fillmore's witnesses. C14-C16.

The Committee issued a final report finding Fillmore guilty. The report acknowledged that Fillmore had submitted a "written statement" in his defense. C34. But the report did not explain why the Committee denied Fillmore's written requests to review the evidence against him or to call witnesses on his behalf. *Id.* Instead, contrary to

Fillmore's written statements, the Committee stated that Fillmore did not request any witnesses. *Id.*

The listed "basis" for the Committee's decision was the evidence that Fillmore was not allowed to see. C17, C34. The Committee revoked one year of good time credits, ordered him to be placed in segregation for a year and in "CGrade," restricted his visitation rights, and limited him to $15 per month for a year. C35.

Fillmore filed an administrative grievance under IDOC regulations and objected to the "sham hearing" and the many violations of his rights. C18, C36-C38. IDOC, run by Defendant Gladyse Taylor, denied the grievance without a hearing, finding "no violation of [Fillmore's] due process in accordance with DR504.80 and DR504.30." C40 (referring to 20 Ill. Admin. Code 504.80 and 504.30, respectively).

As a result of these disciplinary proceedings, Fillmore lost a year of good time credits, which effectively has extended his sentence by a year.

Fillmore also was forced to serve a year in segregation—*i.e.*, solitary confinement. During that year, Fillmore sat alone in an empty cell behind a solid steel door with a slot for receiving food. He was allowed no phone calls and only one non-contact visit per month behind glass. He could shower only once per week. He had no access to the general library or the exercise yard. And on the rare occasions when he was allowed to leave his cell, Fillmore was chained and shackled. *See generally* 20 Ill. Admin. Code 504.130(a)(3), 504.620.

C. Proceedings Below

1. Fillmore filed suit in Circuit Court. C10-C24. He brought claims for mandamus, common law certiorari, and declaratory judgment. C19-C22. On Defendants' motion, the Circuit Court dismissed the case with prejudice under section 2-615. C100.

2. The Appellate Court affirmed in part and reversed in part. A2-A3.[3] It held that IDOC's regulations have "'the force and effect of law'" and that courts may issue mandamus "to compel correctional officers to perform nondiscretionary duties laid down in the Department's regulations." A8.

It held that Fillmore stated two claims for mandamus:

- The Committee failed to document Fillmore's objection to Defendants' lack of impartiality, in violation of Section 504.80(d)'s requirement that, when an inmate "objects to a member of the Committee based on a lack of impartiality," "[t]he Committee shall document the basis of the objection and the decision in the Adjustment Committee summary."
- The Committee failed to summarize Fillmore's written defense, in violation of Section 504.80(*l*)(1)'s requirement that the Committee "shall" include a "written" "summary of oral and written statements and other evidence presented."

A14-A16.

The Appellate Court nevertheless held that several of Fillmore's allegations did not state a claim for mandamus because the regulations did not impose ministerial duties,

[3] Citations to "A_" refer to the appendix in Defendants' opening brief.

but rather allowed Defendants discretion in their actions. A7-A13. We discuss those holdings in Section II, *infra*.

The Appellate Court affirmed the dismissal of Fillmore's declaratory judgment claim, ruling that certiorari is the correct cause of action. A16.

Finally, the Appellate Court held that Fillmore stated claims for certiorari. A17. It ruled that Fillmore alleged "two failures" that "caused substantial injury or injustice" (A20):

- "Without explanation, the committee refused to produce the notes in the disciplinary hearing" that Fillmore "requested." *Id.* Defendants' action prevented Fillmore from "produc[ing] any relevant documents in his or her defense," which is his right under Section 504.80(f)(1). A21. This violation was "significant." *Id.*
- The Appellate Court found that it was "serious" that Defendants failed to respond to Fillmore's allegations regarding the Committee's bias. A23. "[T]he impartiality of the administrative tribunal is sufficiently in question" to authorize certiorari. *Id.*

The Appellate Court did not address Fillmore's allegations that Defendants also violated his federal due process rights. The Appellate Court remanded for further proceedings. A30.

3. Fillmore filed a petition for rehearing, which the Appellate Court denied. A31-36. Defendants then submitted their own petition for rehearing. A37-63. The Appellate Court refused to file Defendants' petition, citing Illinois Supreme Court Rule 367(e)'s bar on successive petitions. A64.

STANDARD OF REVIEW

This Court reviews *de novo* a section 2-615 dismissal, and "the question presented is whether the allegations of the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Cowper v. Nyberg*, 2015 IL 117811, ¶ 12. "All facts apparent from the face of the pleadings, including the exhibits attached thereto, may be considered," and "[a] cause of action should not be dismissed . . . unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Id.*

ARGUMENT

I. The Appellate Court Correctly Held That Defendants' Alleged Actions Violated Fillmore's Rights Under Illinois Law.

The Appellate Court reached the unassailably correct conclusion in holding that IDOC's regulations that govern inmate discipline confer enforceable rights. The regulations were issued pursuant to statutory command by a General Assembly whose expressed purpose was to reduce arbitrary punishments, including when prison officials revoke inmates' good time credits or punish inmates with segregated confinement. A long line of this Court's precedents also confirms that prisoners may enforce these rights by filing suit. Illinois law therefore is, and should remain, settled. This Court should affirm the Appellate Court's holding that Fillmore has adequately alleged that Defendants violated his rights under Illinois law.

A. The General Assembly intended that IDOC's regulations concerning inmate discipline would create enforceable rights.

The Appellate Court correctly held that the IDOC's regulations at issue in this case "ha[ve] 'the force and effect of law'" and create enforceable rights for inmates. A27 (quoting *People ex rel. Madigan v. Ill. Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008)).

That conclusion flows directly from the statutory language in the Code of Corrections. The General Assembly enacted the Code to "prevent arbitrary or oppressive treatment of persons adjudicated offenders." 730 ILCS 5/1-1-2(c). The Code requires IDOC to issue regulations to "establish disciplinary procedures" for "disciplinary cases which may involve the imposition of disciplinary segregation and isolation[] [or] the loss of good time credit." *Id.* § 3-8-7(e). The regulations at issue in this case were promulgated pursuant to that statutory command. *See* 20 Ill. Admin. Code 504.60, .80.

The Code also provides that "the disciplinary procedure by which [the loss of good time credits and disciplinary segregation] may be imposed shall be available to committed persons." 730 ILCS 5/3-8-7(a). This provision is unambiguous. If prison officials violate "the disciplinary procedure by which such penalties may be imposed" (*id.*), then imposing those penalties is *unlawful*; the "penalties may" *not* "be imposed." Moreover, the General Assembly required that these procedures must "be available to committed persons" so that inmates would be aware of them and treat them as legally binding and enforceable. *Id.*

Respect for the Code's plain language and the General Assembly's stated intent requires allowing prisoners to enforce these regulations when prison officials violate them. Inmates are the only people who would ever sue to enforce the regulations that govern *inmate* disciplinary proceedings. Defendants do not suggest that anyone else would, or even could, enforce these regulations against prison officials. Unless inmates may enforce the regulations, the statute's directives to IDOC would be meaningless.

Such an interpretation cannot be correct. It is bedrock law that a court "must not read a statute so as to render any part superfluous or meaningless." *People ex rel. Ill.*

Dep't of Corr. v. Hawkins, 2011 IL 110792, ¶ 23. In *Hawkins*, for example, IDOC argued that a statute entitling it to recover "any assets which ought to be subjected to the claim of the Department under this Section" allowed it to seize "any assets" belonging to the inmate. *Id.* ¶¶ 28-29 (quoting 730 ILCS 5/3-7-6(e)(3)). This Court rejected IDOC's construction because it made the statutory language "which ought to be subjected to the claim of the Department under this Section" "superfluous and unnecessary." *Id.* ¶ 29.

Defendants' position in this case would do even more damage to the Code. Rather than ignoring merely part of a sentence, Defendants' interpretation would render entire provisions devoid of substance. The requirement that IDOC "establish . . . procedures" (730 ILCS 5/3-8-7(e)) for disciplinary proceedings is pointless if prison officials cannot be compelled to comply with those procedures. The Code cannot "prevent arbitrary or oppressive treatment" (*id.* § 1-1-2(c)) of inmates during disciplinary proceedings if the regulations that establish uniform procedures may not be enforced. And the Code's directives would be meaningless if prison officials could strip inmates of their earned good time credits or punish inmates with segregated confinement without following "the disciplinary procedure by which such penalties may be imposed." *Id.* § 3-8-7(a). These are rights-creating statutory provisions that were "enacted to protect a particular class of individuals." *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 386 (1982). The only way to "give effect to every word, clause, and sentence" of these provisions is to allow inmates to enforce IDOC's regulations. *Hawkins*, 2011 IL 110792, ¶ 23.

The Code's history also compels this conclusion. In enacting sentencing reform in the 1970s, the General Assembly sought to curb prison officials' "broad discretion in revoking good-conduct credits as a penalty for prison rule infractions." *Lane*, 97 Ill. 2d at

317. Giving effect to that intent requires compelling prison officials to comply with the regulations governing discipline. Denying inmates the ability to enforce these regulations would undermine the General Assembly's sentencing reforms.

Moreover, as this Court has held, the Code and IDOC regulations confer "legitimate reliance interests that prisoners possess in their accumulated credits for meritorious service." *Lane*, 97 Ill. 2d at 319. "[T]he revocation of good time is considered to be an *extremely serious consequence*." *Id.* at 320 (emphasis added) (quoting Memorandum from Acting Director of Corrections Michael P. Lane to All Wardens (Mar. 31, 1981)). "It is one of the most serious negative consequences that can be directed to an inmate's behavior." *Id.* It is imperative, therefore, that prison officials comply with IDOC regulations when they attempt to impose the extremely serious punishment of depriving inmates of good time credits and thereby extend prison sentences.

Interpreting these regulations to create enforceable rights also advances the purpose of the Illinois Administrative Procedure Act ("IAPA"). Like other administrative regulations, IDOC's regulations underwent notice and comment pursuant to the IAPA before promulgation. *E.g.*, 8 Ill. Reg. 12394 (1983) (IDOC proposing rules for codification in Part 504); *see also* 5 ILCS 100/1-5(a) (IAPA generally "applies to every agency"); *id.* § 5-5 ("All rules of agencies shall be adopted in accordance with this Article."); *id.* §§ 5-35(a)-(b), 5-40(a) (requiring notice and comment for agency regulations); *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944, 957 (2d Dist. 2004) ("In adopting rules, administrative agencies must comply with the public notice and comment requirements set forth in the Procedure Act."). Moreover, under the IAPA,

"[e]ach rule" adopted pursuant to notice and comment generally "is effective upon filing." 5 ILCS 100/5-40(d). To make IDOC's regulations "effective," prisoners must be able to enforce these regulations when prison officials violate them.

Notice and comment serves vital purposes:

> The agency benefits from the experience and input of comments by the public, which help ensure informed agency decisionmaking. The notice and comment procedure also is designed to encourage public participation in the administrative process. Additionally, the process helps ensure that the agency maintains a flexible and open-minded attitude towards its own rules because the opportunity to comment must be a meaningful opportunity.

N.C. Growers' Ass'n, Inc. v. United Farm Workers, 702 F.3d 755, 763 (4th Cir. 2012) (internal citations and quotation marks omitted) (discussing the analogous federal Administrative Procedure Act). Because IDOC's regulations were promulgated after notice and comment, they are and should be treated as the product of informed agency decision-making. The Court should require Defendants to comply with the regulations that IDOC itself has established after studied consideration.

For all of these reasons, the General Assembly's statutes leave no doubt that IDOC's regulations that govern inmate discipline confer enforceable rights.

B. Illinois courts have long recognized that inmates may file suit to enforce their regulatory rights.

A long line of precedent also demonstrates that Fillmore may enforce compliance with IDOC's regulations. This Court has several times affirmed inmates' right to seek mandamus, and the Appellate Court has allowed certiorari actions to proceed when inmates challenge their quasi-judicial disciplinary proceedings.

1. This Court has allowed inmates to seek mandamus to compel compliance with regulations.

The Court has concluded several times that mandamus will issue when an inmate seeks to compel prison officials to comply with prison regulations affecting the duration of their sentences. In *People ex rel. Abner v. Kinney*, 30 Ill. 2d 201 (1964), for example, the Court granted mandamus to an inmate seeking a parole hearing pursuant to a Department of Public Safety regulation. *Id.* at 202. The Parole Board had refused to hold a hearing based on its policy to grant hearings only to inmates who had achieved a certain merit classification, which rested on the sole discretion of prison officials. *Id.* at 203-04. Because the inmate in *Kinney* had not achieved the necessary classification under that policy, he was not afforded a hearing, even though he was eligible for one under the regulation. *Id.* at 203. This Court rejected the Parole Board's policy as an "unauthorized delegation of power." *Id.* at 206-07. It held that, once a prisoner became "eligible for parole" under the Department of Public Safety's regulation, the Parole Board had "a mandatory duty to hear his application for parole." *Id.* at 206. Because the inmate was eligible under the regulation, this Court held that "the writ of mandamus should issue" to compel the Parole Board to give him a hearing. *Id.* at 207.

Six years later, the Court reaffirmed that an inmate may seek "relief under a writ of Mandamus directing the Parole and Pardon Board to comply with the provisions of its own [regulation]." *People ex rel. Johnson v. Pate*, 47 Ill. 2d 172, 177 (1970) (citing *Kinney*). In *Pate*, a parolee sought habeas corpus relief after being re-incarcerated pending a determination whether he had violated his parole. *Id.* at 173. The Court rejected the parolee's habeas claim, but explained that he could pursue mandamus relief if the Parole Board failed to comply with the regulation requiring a timely administrative

hearing. *Id.* at 176-77; *see also People ex rel. Tucker v. Kotsos*, 68 Ill. 2d 88, 99 (1977) ("[M]andamus will lie to enforce the accused parole violator's right to a reasonably prompt final revocation hearing.").

Applying this Court's holdings, the Appellate Court has held that mandamus lies to enforce compliance with prison regulations. *E.g.*, *Taylor v. Franzen*, 93 Ill. App. 3d 758, 765 (5th Dist. 1981) (citing *Kinney* in holding that IDOC officials "have a nondiscretionary duty to comply with the requirements" of IDOC regulations and that "mandamus is the correct means to enforce compliance"); *Freeman v. Lane*, 129 Ill. App. 3d 1061, 1063-64 (3d Dist. 1985) (allowing a mandamus action to proceed when the inmate sought to enforce his prison's policy relating to the award of good time credits).

These cases leave no doubt that IDOC regulations create rights for inmates when prison officials attempt to affect an inmate's confinement status or duration. Of course, mandamus will issue only if the petitioner "establish[es] a clear, affirmative right to relief." *People ex rel. Waller v. McKoski*, 195 Ill. 2d 393, 398 (2001). But the fact that mandamus can and has issued to enforce prison regulations shows that these regulations create enforceable rights.

Notably, Defendants limit their argument to a contention that IDOC regulations create no enforceable rights at all. Defendants never contend that the Appellate Court otherwise misinterpreted IDOC regulations in holding that Fillmore states two claims for mandamus relief. *See* A14-A16. Defendants therefore have "forfeited" any such challenge (Ill. Sup. Ct. R. 341(h)(7)), which would lack merit in any event. This Court accordingly should hold that IDOC regulations governing inmate disciplinary procedures create enforceable rights. And after reaching that conclusion, it should affirm the

Appellate Court's otherwise uncontested judgment that Fillmore has stated two claims for mandamus relief.

2. Courts have allowed inmates to obtain judicial review of the Committee's decisions through common law certiorari.

In addition to a mandamus action, Fillmore also may seek review of his hearing by petitioning for a common law writ of certiorari. This writ is the "general method for obtaining circuit court review of administrative actions when the act conferring power on the agency does not expressly adopt the Administrative Review Law and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996). Because the Code of Corrections "neither adopt[s] the Administrative Review Law nor provide[s] another method of judicial review of disciplinary procedures, *certiorari* review of prison discipline in the circuit court is appropriate." *Oliver v. Pierce*, 2012 IL App (4th) 110005, ¶ 12; *accord Alicea v. Snyder*, 321 Ill. App. 3d 248, 253 (4th Dist. 2001).

In a certiorari action, "the entire [agency] record" is "brought before the court to determine, from the record alone, whether that body proceeded according to the applicable law." *Stratton v. Wenona Cmty. Unit Dist. No. 1*, 133 Ill. 2d 413, 427 (1990). Courts may set aside agency action if the agency's exercise of "discretion is arbitrary and capricious" or if "the agency action is against the manifest weight of the evidence." *Hanrahan*, 174 Ill. 2d at 273. The plaintiff also must establish that he has suffered "substantial injury or injustice." *Stratton*, 133 Ill. 2d at 428.

Certiorari will lie to set aside prison officials' failures to comply with regulations governing disciplinary proceedings. In *Oliver v. Pierce*, for example, the Appellate Court reversed the dismissal of an inmate's certiorari claim under section 2-615. 2012 IL App (4th) 110005, ¶ 18. The court held that the inmate had stated a claim for certiorari

because no evidence supported the Adjustment Committee's finding of guilt, and IDOC regulations required that such findings be based on "some evidence that the offender committed the offense." *Id.* ¶ 14 (quoting 20 Ill. Admin. Code 504.80(j)(1)).

This line of cases also confirms that IDOC regulations governing disciplinary proceedings create enforceable rights. And just as Defendants have not challenged the substance of the Appellate Court's mandamus decision beyond arguing that IDOC's regulations create no rights at all, they similarly have not challenged the Appellate Court's judgment that Fillmore stated two claims for certiorari relief. Any such challenge has been forfeited. Ill. Sup. Ct. R. 341(h)(7). This Court should affirm the Appellate Court's otherwise uncontested judgment that Fillmore stated two claims for certiorari relief.[4]

C. Defendants' arguments lack merit.

1. Defendants' arguments contravene the General Assembly's statutes and longstanding court precedent.

The foregoing discussion puts the lie to Defendants' refrain that there is some "longstanding principle of Illinois law that statutes [and IDOC's] regulations . . . confer no judicially enforceable rights upon inmates." Op. Br. 24. The *actual* longstanding principle of Illinois law is precisely the contrary: Illinois statutes and IDOC regulations do, in fact, create judicially enforceable rights for inmates.

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[4] As Defendants acknowledge (Op. Br. 39), Fillmore's right to obtain mandamus and certiorari answer Defendants' argument that Fillmore lacks an implied private right of action (Op. Br. 35-39). *See Noyola v. Bd. of Educ. of City of Chi.*, 179 Ill. 2d 121, 128-32 (1997) (rejecting similar implied-right-of-action argument and holding that courts "most certainly have the authority" to "compel" "public officials" to "comply with requirements imposed by statute"); *Clarke v. Cmty. Unit Sch. Dist. 303*, 2012 IL App (2d) 110705, ¶¶ 22-23 (similar).

Defendants barely acknowledge the statutory language in the Code of Corrections. They fail to note that the General Assembly *required* IDOC to "establish" the regulations at issue and *required* IDOC to make prisoners aware of the "disciplinary procedure by which" the loss of good time credits and punitive segregation "may be imposed." 730 ILCS 5/3-8-7(a), (e); *see supra* Section I.A. Defendants also never acknowledge that the General Assembly transformed Illinois sentencing law from a system in which prison officials had tremendous discretion to change inmates' release dates to a system that cabined that discretion. Defendants' arguments would defeat the purpose of the Code's language and the reforms that were enacted to create order and predictability in inmate discipline.

Defendants do acknowledge "the Code's purpose of preventing arbitrary treatment of inmates." Op. Br. 32 (citing 730 ILCS 5/1-1-2). But the claim that their arguments advance that purpose is absurd. The way to prevent arbitrary treatment of inmates is to require prison officials to follow IDOC regulations that establish uniform disciplinary procedures. Defendants' request to violate those regulations at will would inject the very arbitrariness into inmate discipline that the Code prohibits.

Defendants also say not a word about the IAPA or the fact that IDOC's regulations were promulgated through notice and comment, which means that they are binding and effective under general principles of administrative law. Defendants instead argue for a *sui generis* exception for prison regulations without identifying any statutory basis to support that result. The Court should reject Defendants' arguments, which fly in the face of Illinois administrative law.

Finally, Defendants fail to overcome 50 years of this Court's precedents holding that prison regulations create judicially enforceable rights. Defendants concede that "this Court has sometimes allowed inmates to use mandamus to compel prison officials to comply with certain regulations." Op. Br. 40 (citing cases including *People ex rel. Abner v. Kinney*, 30 Ill. 2d 201 (1964)).[5] That concession should end this case. It is an acknowledgment by Defendants that prison regulations can create enforceable rights, just as the Appellate Court held.

Defendants nevertheless attempt to sidestep this Court's holdings by offering meritless distinctions. First, they argue that "*Kinney* involved liberty interests under the federal Due Process Clause." Op. Br. 40. But this case likewise involves liberty interests under the federal Due Process Clause. Indeed, Defendants never contend that Fillmore lacks a federally protected liberty interest in his good time credits. They argue only that Fillmore was given the process that is due to safeguard that interest. *See* Op. Br. 45-54; *see also infra* Section III.A (demonstrating that Fillmore has a liberty interest).

More importantly, *Kinney* was decided squarely on state law grounds—*not* on federal due process grounds, as Defendants imply. In *Kinney*, this Court mentioned due process only in describing a contemporaneous federal district court case. 30 Ill. 2d at 206. The federal Constitution otherwise played no role in the Court's analysis, which addressed Illinois statues and regulations at length.

"Second," Defendants argue that this Court's decisions "pre-date" the U.S. Supreme Court's decision in *Sandin v. Conner*, 515 U.S. 472 (1995), and "thus were not

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[5] Defendants do not mention, much less distinguish, *People ex rel. Johnson v. Pate*, 47 Ill. 2d 172 (1970), or *People ex rel. Tucker v. Kotsos*, 68 Ill. 2d 88 (1977). *See supra* Section I.B.1.

based on a modern understanding of prison litigation and correctional statutes and regulations." Op. Br. 40. We discuss *Sandin*, which interpreted the federal Due Process Clause and not Illinois law, below. *Sandin* does not and cannot overturn this Court's longstanding precedents interpreting Illinois law.

Moreover, Defendants' suggestion that this Court's holdings stop retaining their force due to a recently discovered "modern understanding of prison litigation" is an affront to *stare decisis*. "*Stare decisis* is the means by which courts ensure that the law will develop in a principled and intelligible fashion, and will not merely change erratically." *People v. Espinoza*, 2015 IL 118218, ¶ 26. There is "no merit" to Defendants' suggestion that this Court's unbroken line of precedent is "an 'antiquated formality' which justifies a departure from *stare decisis*." *Id.* ¶ 39.

"Third," Defendants argue that *Kinney* is "factually dissimilar" because it was "about an agency . . . contradicting relevant statutes." Op. Br. 40, 42. That too is incorrect. To be sure, this Court in *Kinney* did conclude that the Parole Board's policy contravened the Parole Act. 30 Ill. 2d at 207. But that ruling did not create the inmate's right to the parole hearing. Rather, the inmate had a right to a parole hearing because the Department of Public Safety's *regulation* made him eligible for one. *See id.* at 202-03. To enforce that regulatory right, this Court ordered mandamus to issue. And, in any event, as we have explained, Defendants' position in this case also *does* contradict relevant statutes—specifically, the Code of Corrections and the IAPA. *See supra* Section I.A.

In short, Defendants' position is contrary to the statutes and regulations that govern this case and to this Court's longstanding precedents. This Court should reject Defendants' attempt to rewrite Illinois law.

2. Defendants' reliance on Sandin *and* Ashley *is misplaced.*

Defendants' principal argument is that the U.S. Supreme Court's decision in *Sandin* worked a sea change in Illinois law, making irrelevant the General Assembly's intent in enacting the Code of Corrections and *sub silentio* overruling this Court's precedents on Illinois law. *See* Op. Br. 26-28. There is no merit to that argument.

Sandin involved an inmate in Hawaii, and it addressed a federal constitutional question: whether "state prison regulations afford inmates a liberty interest protected by the Due Process Clause." 515 U.S. at 474. The Court held that "States may under certain circumstances create liberty interests which are protected by the Due Process Clause," but only when the deprivation of a prisoner's liberty "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 483-84. The Court held that placing the Hawaiian prisoner in solitary confinement for 30 days did not rise to the standard of atypical and significant hardship and therefore did not violate his liberty interests under the Due Process Clause. *Id.* at 486.

In reaching that holding, the Supreme Court explained that its prior decision in *Wolff v. McDonnell*, 418 U.S. 539 (1974), had "correctly established and applied" "due process principles." *Sandin*, 515 U.S. at 483. *Wolff* held that state regulations governing good time credits can create federally protected liberty interests, which prison officials cannot take away without providing the process that is due under federal law. The Supreme Court in *Sandin* found the 30 days of solitary confinement to be distinguishable from the loss of good time credits because that solitary confinement did not "inevitably affect the duration of [the inmate's] sentence." *Id.* at 487. The *Sandin* Court further emphasized that the prisoner had been "afforded procedural protection" under Hawaiian state law. *Id.* And the Court acknowledged that "[p]risoners . . . of course . . . may draw

upon internal prison grievance procedures *and state judicial review* where available." *Id.* at 487 n.11 (emphasis added).

Sandin does not control for several reasons. First, Illinois law was not at issue or even mentioned in *Sandin*, which addressed only the scope of the federal Due Process Clause. Accordingly, this Court's precedents interpreting Illinois law, discussed above, remain binding. Indeed, this Court—not the U.S. Supreme Court—is the final arbiter of Illinois law. And Defendants do not and cannot argue that it would be unconstitutional to grant Fillmore the relief he seeks under Illinois law. Thus, the Appellate Court correctly observed that *Sandin* "does not mean" that "it is impossible for a state statute to create other, nonconstitutional rights for inmates," as Illinois has done. A28.

Second, *Sandin* encourages inmates to enforce their rights under state law and not to make a federal case out of all prison litigation. 515 U.S. at 487 & n.11. That is exactly what Fillmore is attempting to do by seeking to vindicate his rights under state law based on Defendants' violations of IDOC's regulations. Resolving this case in Fillmore's favor on state law grounds is exactly the result that *Sandin* favors. *See, e.g.*, *Abdullah v. Roach*, 668 A.2d 801, 809 (D.C. 1995) (ruling for the prisoner on non-federal grounds, distinguishing *Sandin* on that basis, and observing that *Sandin* "explicitly noted" that prisoners may "draw upon" state law in protecting their rights); *Moses v. Mitchell*, 2017 WL 5329443, at *2 (Mass. Super. Oct. 23, 2017) ("We do not believe that it was the intention of the Supreme Court [in *Sandin*] to divest an inmate of the ability to challenge the use of alleged improper procedures in the conduct of a disciplinary proceeding because the sanctions did not implicate a liberty interest.").

Third, as explained more fully in Section III *infra*, while the prisoner in *Sandin* did not have a liberty interest at stake, Fillmore does. Defendants' deprivation of a year of Fillmore's good time credits "will inevitably affect the duration of his sentence." *Sandin*, 515 U.S. at 487. *Sandin* thus recognizes that Fillmore's right to good time credits is "an interest of 'real substance,'" protected by the Due Process Clause. *Id.* at 480. Under *Sandin*, not only should Fillmore prevail on state law grounds, but he should prevail on federal law grounds too.

Defendants' reliance on *Ashley v. Snyder*, 316 Ill. App. 3d 1252 (4th Dist. 2000), is similarly misplaced. Op. Br. 28-30. *Ashley* did not involve the revocation of good time credits or a disciplinary proceeding. Rather, the inmate sought "to enjoin the implementation of a DOC regulation restricting the quantity of personal property an inmate could possess while incarcerated." 316 Ill. App. 3d at 1253. As part of his due process claim, the inmate argued that his "inmate orientation manual . . . created a liberty interest, guaranteeing his right to keep his excess personal property in his cell." *Id.* at 1255. The court rejected this argument on the ground that the manual did not create a liberty interest. *Id.* at 1255-56.

Like *Sandin*, then, the relevant part of *Ashley* concerned the scope of the Due Process Clause rather than Illinois law, as Defendants acknowledge (Op. Br. 28-29). Moreover, the inmate relied only on his particular facility's internal orientation manual, not a regulation required by statute and promulgated through notice and comment. The court therefore had no reason to decide whether inmates can enforce *any* regulation under the IAC, let alone those required by statute to govern disciplinary proceedings. Nonetheless, after resolving the inmate's appeal, the *Ashley* court declared—in a section

entitled "Epilogue"—that "[p]rison regulations, such as those contained in the inmate orientation manual relied on here, were *never* intended to confer rights on inmates or serve as a basis for constitutional claims." *Id.* at 1258. It is this broad language that Defendants invoke to argue that inmates may "not sue to enforce the [IAC] or Department regulations and directives." Op. Br. 29-30.

Ashley's statement in its Epilogue is quintessential dicta. Whether inmates may "sue to enforce the [IAC]" was not at issue, since that inmate sued to enforce only his rights under an orientation manual. *See* 316 Ill. App. 3d at 1253. Furthermore, the only authority the court cited for its pronouncement was *Sandin*, which, as discussed, says nothing about the enforceability of prison regulations under *state law*, except to explain that inmates may vindicate their rights under state law. 515 U.S. at 487 n.11. To the extent that *Ashley*'s dicta could be stretched to apply here, it is inconsistent with Illinois statutes, regulations, and jurisprudence for the reasons discussed above.

The Appellate Court in this case correctly distinguished *Ashley*. After observing that the inmate there raised constitutional claims and relied on a manual rather than the IAC (A24-27), the court distilled the problems with Defendants' sweeping reading of *Ashley*'s Epilogue: "To say that 'Illinois law,' including the [IAC], 'creates no more *rights* for inmates than those which are constitutionally required' would be to say that, for inmates, Illinois law is redundant and superfluous—it might as well not exist for them." A27 (quoting *Ashley*, 316 Ill. App. 3d at 1258). The Appellate Court held that such a result is "irreconcilable with case law preceding *Ashley*," as "[i]t had always been the law that, in prison disciplinary proceedings, [IDOC] had to follow its own promulgated regulations and that inmates could sue to compel correctional officers to perform

nondiscretionary duties set forth in [IDOC's] regulations." A27 (internal citations omitted) (collecting cases). As shown above, the Appellate Court was unquestionably correct. *Supra*, Section I.B.

Subsequent decisions invoking *Ashley* that Defendants cite are inapplicable and unpersuasive. Op. Br. 29-30 (citing cases). None of those cases independently assessed whether prison regulations create rights for inmates; instead, they parroted *Ashley*'s dicta. Furthermore, in none of those cases did an inmate sue to enforce IAC regulations governing disciplinary proceedings. *See Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶¶ 14-15 (inmate alleged that jail conditions violated "county jail standards"); *Ruhl v. Dep't of Corr.*, 2015 IL App (3d) 130728, ¶¶ 24-25 (inmates had "no constitutionally protected rights to commissary items at a specified price"); *Edens v. Godinez*, 2013 IL App (4th) 120297, ¶¶ 22-25 (inmates had no "constitutional right to have their sentences calculated in . . . a manner" described in administrative directive guidelines); *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶¶ 16-18 (inmate had no "constitutionally protected 'rights' to commissary items at a specified price"); *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶¶ 24-26 (inmate had no right to certain amount of time in prison exercise yard); *McNeil v. Carter*, 318 Ill. App. 3d 939, 943 (3d Dist. 2001) (Code does not create "private right of action for an inmate who receives inadequate medical attention"). These decisions add nothing to *Ashley*'s dicta, which, for the reasons discussed above, is inapplicable, contrary to this Court's precedents, and not binding on this Court or the Appellate Court.

3. Defendants' policy arguments are unpersuasive.

Defendants ultimately acknowledge that *Sandin* and *Ashley* did not concern "non-constitutional state-law theories." Op. Br. 30. They nevertheless try to expand those

decisions beyond their federal constitutional limitations by arguing that the "public policy rationales" that those cases relied on "apply with equal force" to the IAC's prison regulations. *Id.* Specifically, Defendants contend that (1) "prison administrators should be accorded wide deference in adopting and implementing rules to maintain order and discipline," and (2) the Court should curb prisoner litigation to avoid "discourag[ing] States from codifying rules" and "increas[ing] . . . burdens" on prosecutors and the judiciary. Op. Br. 30-32.

Whatever "public policy rationales" that *Sandin* and *Ashley* articulate as a generalized proposition, they have no salience when it comes to the content of Illinois law. As we have discussed, the General Assembly required these regulations to issue to reduce arbitrary punishments of inmates, and the General Assembly intended that IDOC's regulations would have force. But even on their own terms, Defendants' public policy rationales are not persuasive.

Regarding Defendants' first argument, this case does not involve the type of "urgent problems of prison administration and reform" that prison officials are specially equipped to handle. Op. Br. 24 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 375 (2003)). The cases Defendants cite—*Bell v. Wolfish*, *Turner v. Safley*, and *Beahringer*—underscore this point. *Id.* at 24, 30. Not one of those cases concerned disciplinary proceedings. They involved searches of inmates' persons and cells (*Bell*, 441 U.S. 520, 555-60 (1979)), limitations on the property inmates could possess (*Bell*, 441 U.S. at 548-55; *Beahringer*, 204 Ill. 2d at 365-66), and restrictions on inmates' ability to marry and correspond with one another (*Turner*, 482 U.S. 78, 81-82 (1987)). Only some of these rules were upheld, and only on the ground that they were needed to prevent contraband

from coming into the prison or the active coordination of prison violence. *Turner*, 482 U.S. at 91-93; *Bell*, 441 U.S. at 548-60.[6]

No similar penological threat is present here. This is not a case in which prison officials limited contraband or quelled a riot in the face of an emergency. This case concerns a mine-run disciplinary hearing. These hearings are conducted with deliberation; IDOC officials have defined roles as investigators, prosecutors, adjudicators, and reviewers; and the inmate is endowed with a series of protections because of the enormity of punishments at stake, including an extra year of incarceration and a year of solitary confinement with almost no human contact.

Defendants are thus left with the extraordinary suggestion that courts are not equipped to review these quasi-judicial proceedings. But courts are *especially* competent in this arena. Courts have expertise assessing government actors' compliance with the law, ensuring that officials obey their nondiscretionary duties, and making certain that agencies do not act arbitrarily and capriciously or make findings that are against the manifest weight of the evidence. Administrative "adjudication resembles what courts do in deciding cases." *Highland Park Convalescent Ctr., Inc. v. Ill. Health Facilities Planning Bd.*, 217 Ill. App. 3d 1088, 1095 (1st Dist. 1991). And the whole "purpose of *certiorari* review" is to "determine, from the record alone, whether the tribunal proceeded according to applicable law." *Reichert v. Court of Claims*, 203 Ill. 2d 257, 260 (2003).

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[6] The U.S. Supreme Court struck down the marriage restriction in *Turner* because it was not reasonably related to either of the proffered institutional concerns—preventing "love triangles" and encouraging rehabilitation. 482 U.S. at 97-99. *Beahringer*, meanwhile, did not reach the merits of the inmate's claims, holding only that he had failed to exhaust administrative remedies. 204 Ill. 2d at 377-78. Neither case directs courts to turn a blind eye to prison officials' violations of rules governing disciplinary proceedings.

Moreover, Defendants' contention that prison operations are "'exclusively within the province of the legislative and executive branches of government'" supports *Fillmore's* position. Op. Br. 25 (quoting *Beahringer*, 204 Ill. 2d at 375-76). As discussed above, the General Assembly ordered IDOC to issue these regulations to cabin prison administrators' discretion in changing inmate release dates and punishing inmates with segregated confinement. And the rules that IDOC promulgated "to maintain order and discipline" (Op. Br. 30) are the very regulations that Fillmore seeks to enforce. Deference to the General Assembly and prison authorities therefore means requiring Defendants to comply with IDOC's rules. The Court should enforce these rules that, in IDOC's considered judgment, balance inmates' rights with institutional concerns. It should not allow unfettered departure from them. *Turner*, 482 U.S. at 89; *Bell*, 441 U.S. at 547; *Beahringer*, 204 Ill. 2d at 375-76.[7]

Defendants' second policy argument—that lawsuits like Fillmore's will flood the courts—is baseless. As cases like *Kinney*, *Pate*, *Taylor*, and *Oliver* illustrate, Fillmore's action breaks no new ground; Illinois courts have allowed inmates to enforce the rules of administrative proceedings affecting their confinement status for more than a half-century. And contrary to Defendants' contentions (Op. Br. 32-33), Illinois courts have had no trouble weeding out insubstantial claims. Indeed, the very case Defendants discuss proves the point. In *Cebertowicz v. Baldwin*, 2017 IL App (4th) 160535, the Appellate Court affirmed the dismissal of an inmate's mandamus petition concerning the price of

[7] Defendants' assurance that "prison rules would not be ineffective without judicial enforcement because inmates may file grievances concerning any claimed violations" is hollow. Op. Br. 38. Under Defendants' logic, prison officials could disregard those grievance procedures (as they did in this case), and inmates would have no right to judicial review.

photocopies because the alleged violation did not sufficiently prejudice him. *See id.* ¶¶ 3, 47-48. It defies reason for Defendants to suggest that the *dismissal* of an *insubstantial* lawsuit "shows that *Fillmore* created an unworkable standard." Op. Br. 33. *Cebertowicz* shows the opposite.

Defendants' concern is particularly overblown because they frame the issue too broadly. The question before the Court is *not* whether inmates may sue to enforce *any* IDOC policy, guideline, or internal suggestion, no matter its form or context, or whether inmates have the right to file "frivolous" suits. Op. Br. 32. This case asks only whether inmates such as Fillmore have a state-law right to require prison officials to comply with IDOC's own regulations, promulgated pursuant to statutory command and notice and comment, when officials are imposing serious punishments like extending the duration of inmates' sentences or sending them to solitary confinement for a year. The Code, the IAPA, and this Court's precedents squarely answer that question in the affirmative.

Last, Defendants argue that allowing inmates to enforce prison regulations will chill administrators' incentives to "codify rules," which would leave inmates at the whim of prison officials' "standardless discretion." Op. Br. 32. To begin with, IDOC does not have that choice. The General Assembly *required* IDOC to promulgate the regulations at issue in this case that govern disciplinary proceedings. 730 ILCS 5/3-8-7(e).

In any event, a ruling for Defendants would result in the very "standardless discretion" that Defendants claim to abhor. If prison officials are not required to follow the nondiscretionary duties imposed by prison regulations, then compliance with those regulations depends on prison officials' whims. The way to impose standardization is to *enforce* IDOC's uniform policies, not to allow prison officials to follow them at their

convenience. And to the extent that IDOC's regulations prove unworkable, then IDOC may reconsider its regulations, consistent with the Code of Correction's principles, after notice, public comment, and studied consideration of alternatives. The fact that these regulations can be amended if experience proves them unworkable or unwise is a virtue—not a vice—of administrative law principles.

There also should be no mistake about the consequence of Defendants' position. If inmates cannot enforce these regulations, no one will. Prison officials would be free to disregard them with impunity. The rules would have no practical effect, even though they are required by statute and subject to the rigors of notice and comment. Such a result is flatly at odds with the Code, the IAPA, and this Court's longstanding jurisprudence.

The Appellate Court correctly held that IDOC's regulations governing inmate discipline create enforceable rights. This Court accordingly should affirm the Appellate Court's judgment that reinstated portions of Fillmore's complaint.

II. The Court Should Grant Fillmore Cross-Relief By Reinstating Additional Claims That Defendants Violated Fillmore's Rights Under Illinois Law.

While the Appellate Court correctly held that Fillmore has enforceable rights under IDOC regulations, it nevertheless erred in holding that he was not entitled to mandamus or certiorari relief on several of his allegations that Defendants violated state law. This Court should grant Fillmore cross-relief by reinstating these portions of Fillmore's complaint.

First, Fillmore stated a claim for relief in alleging that Defendants failed to appoint a hearing investigator to review his disciplinary report. The IAC requires the Chief Administrative Officer to "appoint one or more Hearing Investigators who shall review all major disciplinary reports." 20 Ill. Admin. Code 504.60(a). Fillmore's

disciplinary report leaves a blank space for the signature of the "Hearing Investigator's Review," and no hearing investigator signed that report. C25. Defendants' failure to appoint a hearing investigator violated the plain terms of this regulation.

The Appellate Court held that Fillmore did not state a claim for mandamus, reasoning that the decision to appoint a hearing investigator was discretionary because it "was a matter of judgment whether a disciplinary report was 'major.'" A9. That was error. Prison officials charged Fillmore with committing two 200-series offenses: "205—Security Threat Group" and "206—Intimidation or Threats." C25; *see also* 20 Ill. Admin. Code 504 App. A (listing offense levels). Under IDOC regulations, "any offense listed in" the "200 . . . series . . . shall be considered a major offense." 20 Ill. Admin. Code 504.50(d)(3)(A). This is mandatory, not discretionary, language. *See People v. Reed*, 177 Ill. 2d 389, 393 (1997) ("use of the word 'shall' is generally considered to express a mandatory reading"). Fillmore's alleged offenses were therefore "major" as a matter of law. Indeed, prison officials in this case checked the box for "Major Infraction," acknowledging that Fillmore's alleged infractions were "major." C25. Defendants therefore had a ministerial duty to appoint a hearing investigator to review Fillmore's disciplinary report, and they violated that duty. Fillmore's allegation states a claim for mandamus.

Second, the Appellate Court erred in holding that Fillmore failed to state a claim for mandamus with respect to the Committee's failure to provide a written reason for rejecting his request to have witnesses testify on his behalf. IDOC regulations state that "[i]f any witness request is denied, a written reason shall be provided." 20 Ill. Admin.

Code 504.80(h)(4). This too is mandatory language, imposing a ministerial duty on Defendants to comply.

In his December 16, 2014 written request for a hearing, Fillmore identified by name eight inmates who would each "testify that inmate Fillmore did not order or direct any security threat group activity within IDOC ever." C30. And in his subsequent written "defense to the charges," Fillmore again "request[ed] that [his] December 16, 2014 witness . . . request be reviewed and considered as exculpatory evidence by the Committee." C31, C33. The Committee acknowledged that Fillmore "submitted a written statement" in his defense. C34. And yet contrary to Fillmore's written statement, the Committee found that "[n]o [w]itnesses" were "[r]equested." *Id.* That finding is contrary to Fillmore's written request, it suggests that Defendants never read or considered Fillmore's statement, and it violates the IDOC requirement that "a written reason shall be provided" "[i]f any witness request is denied." 20 Ill. Admin. Code 504.80(h)(4).

The Appellate Court nevertheless found that Fillmore's witness request was "unclear" because Fillmore had cited both the rule governing pre-hearing witness interviews and the rule governing witness testimony at disciplinary hearings. A11-12. It ruled that, "[b]ecause of this ambiguity in his request, [Defendants] had no 'clear duty' to provide a written reason for denying the request." A12. But Fillmore's request was perfectly clear. He requested *both* that the witnesses be interviewed *and* that they appear at his hearing. Moreover, on Defendants' section 2-615 motion, the Appellate Court should have read Fillmore's complaint "in a light most favorable to the plaintiff" and given Fillmore the benefit of any doubt. *Cowper*, 2015 IL 117811, ¶ 12. That is especially appropriate here, considering that Defendants never mentioned any alleged

ambiguity in denying Fillmore's witness requests. Instead, the Committee found that Fillmore requested no witnesses, which is belied by Fillmore's written statements that did request witnesses. Because Fillmore has adequately alleged that Defendants violated IDOC regulations in denying his request for witness testimony without explanation, Fillmore has stated a claim for mandamus, and this portion of his complaint should be reinstated.

Third, although the Appellate Court correctly held that Fillmore has stated a claim for certiorari in alleging that Defendants wrongfully refused to allow Fillmore to see the evidence against him (A20-A22), it erroneously held that Fillmore did not also state a claim for mandamus based on the same wrongful withholding of documents (A14). Section 504.80(f)(1) states that "[t]he offender may . . . produce any relevant documents in his or her defense." 20 Ill. Admin. Code 504.80(f)(1). This provision imposes a nondiscretionary duty on prison officials to allow the inmate to see the evidence that will be used against him.

The Appellate Court disagreed, ruling that the "determination of relevancy requires an exercise of judgment." A14. But prison officials had already determined that this evidence was relevant by using it as the basis of their charges against Fillmore. It requires no exercise of discretion to disclose the evidence that prison officials will use against the inmate to ensure that the inmate may adequately present his defense, including by producing the very documents that prison officials are using against the inmate. *Accord* A21 (holding that Fillmore stated a claim for certiorari because "it would be untenable to characterize the notes as irrelevant" when "the disciplinary report cited the notes as evidence against [Fillmore]"). Fillmore has stated a claim for mandamus.

Fourth, Defendants failed to notify Fillmore of all facts presented against him. The IAC requires that an inmate "shall receive written notice of the facts and charges being presented against him or her no less than 24 hours prior to the Adjustment Committee hearing." 20 Ill. Admin. Code 504.80(b). This language imposes a mandatory duty on Defendants.

One of the facts the Committee relied on to reach its decision was "OTS [Offender Tracking System] identifying . . . Fillmore as a Latin King [security threat group] member." C34. However, the charging Report made no mention of OTS evidence. C25-C29. The Committee therefore ruled against Fillmore based on facts that Fillmore was not allowed to see or to dispute, in violation of 20 Ill. Admin. Code 504.80(b).

In his administrative grievance, Fillmore challenged the Committee's use of "OTS evidence" that was "not alleged" in the charging Report. C37. But instead of finding that the Committee wrongfully used this undisclosed evidence against Fillmore, the reviewing grievance officer "recommend[ed] that [Fillmore's] grievance be denied" "[b]ased" in part "on OTS identifying . . . Fillmore as a Latin King" member. C39. The grievance officer thus doubled down on the Committee's violation of 20 Ill. Admin. Code 504.80(b). And the chief administrative officer concurred in that wrongful result, as did Defendant Taylor. C39-40.

Fillmore challenged the Committee's use of OTS evidence in his complaint. C17. He also raised that challenge in his brief to the Appellate Court (Br. at 13). But the Appellate Court did not acknowledge Fillmore's argument or rule on it. This Court accordingly should reinstate Fillmore's challenge to Defendants' improper use of OTS

evidence, which violated Defendants' mandatory duties under 20 Ill. Admin. Code 504.80(b).

Finally, both members of the Committee had a ministerial duty to recuse themselves. The complaint alleges that Cooper announced before the hearing that he and McCarthy had been ordered to find Fillmore guilty and to take away a year of good time credits and impose other severe punishments, which they then did. But IDOC regulations forbid "[a]ny person . . . who is . . . not impartial" to "serve on the Adjustment Committee." 20 Ill. Admin. Code 504.80(d). The Appellate Court held that Defendants did not have "a *ministerial* duty" to recuse themselves because the determination whether they were impartial requires "a legal evaluation." A15. But it is black letter law and common sense that someone who has been directed to find the accused guilty, agrees to do so, and then does so is not impartial. *See infra*, Section III.B.2. And reading Fillmore's complaint "in a light most favorable to the plaintiff" (*Cowper*, 2015 IL 117811, ¶ 12), that is exactly what Fillmore alleges. The allegation is adequate to state a claim for mandamus.

Each of these allegations also states a claim for certiorari. In each instance, the Committee did not act "in compliance with the law" and acted arbitrarily and capriciously in not following IDOC regulations. *Stratton*, 133 Ill. 2d at 427. Furthermore, the alleged violations resulted in a "substantial injury or injustice" (*id.* at 428) to Fillmore: He lost a year of good time credits and languished in solitary confinement for a year because a biased tribunal denied him the opportunity to examine *any* of the evidence against him and to present *any* witnesses in his defense.

Mandamus thus lies to correct Defendants' violations of their ministerial duties, and certiorari lies to remedy Defendants' failures to comply with the law. The Court accordingly should reverse in relevant part and remand with instructions that Fillmore's claims be reinstated with respect to allegations relating to: (1) the failure to have a hearing investigator review the Report; (2) the Committee's failure to provide a written reason for denying Fillmore's witness request; (3) the Committee's refusal to disclose the notes, call logs, and recordings so that Fillmore could produce them in his defense; (4) the failure to inform Fillmore of the OTS evidence that was used against him; and (5) Committee members' refusal to recuse themselves.

III. Independently, Fillmore Has Adequately Alleged That Defendants Violated His Federal Due Process Rights.

As discussed above, the federal Due Process Clause provides Fillmore with an independent source of rights that Defendants also violated. Defendants ask this Court to hold that Fillmore's disciplinary proceedings satisfied federal due process requirements. Op. Br. 44-54. This Court instead should hold that Fillmore has stated a claim that Defendants' actions violated his federal constitutional rights *in addition to* his rights under Illinois law.[8] Fillmore undisputedly has a constitutional liberty interest in his good time credits, and Defendants failed to give Fillmore the process that is due under federal law.

[8] A ruling that Defendants violated Fillmore's federal rights would not moot or reduce the importance of also finding that Defendants violated Fillmore's rights under Illinois law. As the Appellate Court observed, Illinois law provides Fillmore with greater protections than the constitutional minimums required by the Due Process Clause. A28. And, as discussed above, federal law encourages prisoners to look primarily to state law in prison litigation. *Sandin*, 515 U.S. at 487 & n.11.

A. Fillmore has a constitutional liberty interest in his good time credits.

It is uncontested that Fillmore has a federally protected liberty interest in the year of good time credits that Defendants unlawfully revoked. When state law "provide[s] a statutory right to good time," "the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." *Wolff*, 418 U.S. at 557; *see also Sandin*, 515 U.S. at 477-78 (acknowledging that *Wolff*'s liberty interest holding remains good law).

"Illinois has created a statutory right to good-conduct credit for the inmates in its prisons." *Eichwedel v. Chandler*, 696 F.3d 660, 675 (7th Cir. 2012). Illinois law authorizes good time credits (730 ILCS 5/3-6-3(a)(2)-(2.6)) and requires release to be based on the good time credits earned during incarceration. *Id.* § 3-3-3(c). As the Seventh Circuit has held, "Illinois inmates, therefore, have a liberty interest in their good-conduct credits that entitles them 'to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.'" *Eichwedel*, 696 F.3d at 675 (quoting *Wolff*, 418 U.S. at 557). Defendants do not dispute this point.[9]

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[9] Fillmore's year of confinement in segregation also implicates a federally protected liberty interest. *See Colon v. Howard*, 215 F.3d 227, 231-32 (2d Cir. 2000) (holding that an inmate's "confinement for 305 days in standard [segregation] conditions met the *Sandin* standard"). At the very least, whether that confinement constituted an "atypical and significant hardship" is a factual issue that cannot be resolved on a motion to dismiss. *See Welch v. Bartlett*, 196 F.3d 389, 392-94 (2d Cir. 1999) (quoting *Sandin*, 515 U.S. at 484) (reversing summary judgment for prison officials in case alleging due process violations in disciplinary proceeding that resulted in 90-day segregation confinement).

B. Fillmore's disciplinary proceedings did not comply with due process.

Fillmore has adequately alleged that Defendants did not give him the process that is due under federal law. "Where a prison disciplinary hearing may result in the loss of good time credits," federal law requires the inmate to receive "(1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985). Furthermore, an "impartial decision-maker" must preside over the proceedings. *Piggie v. Cotton*, 344 F.3d 674, 677 (7th Cir. 2003) ("*Piggie II*"); *see also Wolff*, 418 U.S. at 570-71 (a prison disciplinary committee must be "sufficiently impartial to satisfy the Due Process Clause").

The disciplinary hearing in this case violated these requirements. Fillmore was denied his right "to call witnesses and present documentary evidence in his defense" without adequate justification. And the Committee was not impartial.

1. Defendants violated Fillmore's due process right to call witnesses and present evidence in his defense.

It is well-established that a prison disciplinary committee is "not entitled to prevent the prisoner from offering material evidence." *Johnson v. Finnan*, 467 F.3d 693, 695 (7th Cir. 2006). Defendants ran afoul of this rule in three ways. First, the Committee refused to call any of Fillmore's witnesses without adequate explanation. Second, the Committee prevented Fillmore from presenting other, non-testimonial evidence in his defense (specifically, the recordings and logs of the telephone calls that allegedly established his membership in a security threat group). And third, the Committee refused

to let Fillmore examine key evidence against him (including the notes that he allegedly authored).

a. The Committee improperly refused to call Fillmore's witnesses.

"[I]f a proposed witness is not to be called, support for that decision and not just a broad conclusion should be reflected in the record. Prison officials should look at each proposed witness and determine whether or not he should be allowed to testify." *Hayes v. Walker*, 555 F.2d 625, 630 (7th Cir. 1977); *see id.* at 628-29 (holding that prison disciplinary board's broad finding that presentation of witnesses would be "hazardous to both witnesses and institutional security" was insufficient); *see also Forbes v. Trigg*, 976 F.2d 308, 316-17 (7th Cir. 1992) (approving case-by-case review of requested witnesses).

Defendants conducted no such review in this case. The Committee's final report states that Fillmore did not request any witnesses. C34. But that is contrary to the pleadings: Fillmore requested witnesses by name in his December 16, 2014 letter, and he reiterated his request for witnesses in his written statement to the Committee. C30, C33. The Committee acknowledged receiving this statement. C34. The complaint also alleges that Cooper told Fillmore that the Committee would not hear from Fillmore's witnesses because Sergeant Jerry Harper had "directed" Cooper "not to call any of [Fillmore's] witnesses." C14. The Court must credit these allegations at this stage of the proceedings. *Cowper*, 2015 IL 117811, ¶ 12. Cooper did not supply a valid basis for infringing Fillmore's right to call witnesses in his defense. *See Finnan*, 467 F.3d at 694 (stating that "the Constitution has been violated" if a disciplinary committee refused to call an inmate's witness without a security justification). Accordingly, Fillmore has stated a due process claim.

Defendants do not defend the final report's erroneous finding that Fillmore requested no witnesses. Instead, they proffer three new reasons why the refusal to call the witnesses did not violate his due process rights: First, that Fillmore did not properly complete a witness request form attached to the disciplinary report. Op. Br. 46-47. Second, that Fillmore's description of the witnesses' expected testimony was inadequate. *Id.* at 47. And third, that calling his witnesses would have been "unduly hazardous" and "unnecessarily cumulative." *Id.* at 47-49.

Defendants' arguments fail at the outset for two reasons. First, the Committee did not rely on these reasons in its decision. "[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be *clearly disclosed* and adequately sustained." *Reinhardt v. Bd. of Educ. of Alton Cmty. Unit Sch. Dist. No. 11*, 61 Ill. 2d 101, 103 (1975) (emphasis added) (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943)); *see also* 730 ILCS 5/3-5-2 (requiring IDOC to "maintain records of the . . . discipline of committed persons" that "contain the . . . *decision and basis therefor*") (emphasis added). Accordingly, "an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." *Chenery Corp.*, 318 U.S. at 95. Defendants' *post hoc* justifications cannot save the Committee's decision.

Second, Defendants are not reading the complaint "in a light most favorable to the plaintiff." *Cowper*, 2015 IL 117811, ¶ 12. On their section 2-615 motion, a "cause of action should not be dismissed . . . unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Id.* Defendants' attempt to spin the

complaint in their favor, without any discovery having been taken, violates these standards.

Even if Defendants' *post hoc* rationales were properly before the Court, Defendants' arguments would lack merit. The first justification—that Fillmore failed to complete a witness request form—confuses two separate regulations. Op. Br. 46-47. The form attached to the disciplinary report is required only to "request that witnesses be *interviewed*" "[p]rior to the hearing." 20 Ill. Admin. Code 504.80(f)(2) (emphasis added). A separate rule governs requests for witnesses to *appear at* the hearing. *Id.* § 504.80(h)(3). That rule says nothing about the form of the witness request. It provides that the Committee may reject witness requests only when they "are not received prior to the hearing." *Id.* Defendants therefore are incorrect in contending that the Committee could refuse to call Fillmore's witnesses for failing to use a particular form. And it is indisputable that Fillmore submitted his witness request in a timely manner. The Committee's final report acknowledged that Fillmore submitted a written statement (C34), which contained a witness request.

Nor does the case that Defendants cite support their argument. *See* Op. Br. 47 (citing *Taylor v. Frey*, 406 Ill. App. 3d 1112 (5th Dist. 2011)). Although the inmate in *Taylor* did not use the witness request form, he also did not "request[] the witnesses at the hearing" and "refused to participate in the disciplinary hearing." 406 Ill. App. 3d at 1118. Most importantly, the witness's testimony was "irrelevant" because it would "not . . . establish [the inmate's] innocence." *Id.* This was critical to the court's due process holding: "We conclude that [the inmate] was not denied due process in regard to his witness request . . . because he failed to follow Department rules for requesting witnesses

and the testimony that he wanted to elicit would not have been relevant." *Id.* (emphasis added).

That is not the case here. Even Defendants do not contend that the testimony of Fillmore's requested witnesses would have been irrelevant. Those witnesses, each of whom the charging Report identified by name, would have testified that "Fillmore did not order or direct any security threat group within IDOC ever." C30. Their testimony would have gone to the heart of the allegations against Fillmore and would have "establish[ed] his innocence." *Taylor*, 406 Ill. App. 3d at 1118. *Taylor* therefore is not controlling.

The bitter irony of Defendants' position also should not go unnoticed. Defendants are arguing that IDOC regulations create no enforceable rights for inmates. And they simultaneously argue that technicalities in those same regulations strip prisoners of the due process right to have witnesses called on their behalf, even when it could not be clearer that the inmate has requested witnesses and that prison officials have disregarded his requests. To deny Fillmore due process on this basis would perversely turn the IAC into rights-stripping regulations that provide no protections whatsoever. That harsh result cannot be justified.

Defendants' second contention—that Fillmore did not adequately describe his witnesses' expected testimony—does not withstand scrutiny. Op. Br. 47. Fillmore specifically stated that "[e]ach inmate will testify that inmate Fillmore did not order any security threat group within IDOC ever." C30. Their testimony would thus negate the central charge in Fillmore's disciplinary report—namely, that Fillmore had directed these

same inmates as part of a security threat group. C26-30. No more explanation was needed for Fillmore to receive the process that is constitutionally due.[10]

Finally, the pleadings do not support Defendants' argument that calling Fillmore's witnesses would have been "unduly hazardous" and "unnecessarily duplicative." Op. Br. 47-49. The bald assertion that calling Fillmore's witnesses created "obvious security concerns" (Op. Br. 48) "does not permit even limited review of the . . . Committee's exercise of discretion." *Hayes*, 555 F.2d at 630. No security concern exists in having prison officials listen to Fillmore's witnesses, and the record contains no evidence that prison officials had any such concern.

Equally meritless is Defendants' contention that the testimony would have been cumulative. Hearing from Fillmore's witnesses would not have been cumulative at all. Each witness could testify only about his own experience with Fillmore. And since the Report identified each witness as a member of the security threat group that Fillmore allegedly directed, it was relevant whether *any* of them knew him to be involved with that group. Even if the Committee might be justified in limiting the presentation of some testimony that duplicates evidence, it surely cannot preclude the presentation of *any* evidence because *some* of it might be cumulative. *None* of Fillmore's witnesses were allowed to testify on his behalf.

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[10] Defendants cite another inapposite case to support this argument. Op. Br. 47. *Snelson v. Kamm*, a medical malpractice case, had nothing to do with inmate disciplinary proceedings, and instead articulated the offer of proof an attorney must make to preserve for appellate review the exclusion of evidence on a motion *in limine*. 204 Ill. 2d 1, 23 (2003).

Because the Committee did not adequately justify its refusal to call Fillmore's witnesses, and because Defendants' *post hoc* explanations are both improper and meritless, Fillmore has stated a claim that Defendants violated his due process rights.

b. The Committee improperly refused to let Fillmore present evidence and view the evidence against him.

The Committee further violated Fillmore's due process rights by refusing to let him review or present the notes that he allegedly wrote, the alleged recordings of his own phone conversations, and the logs of those alleged calls. "[P]risoners are entitled to have exculpatory evidence disclosed unless its disclosure would unduly threaten institutional concerns." *Piggie v. McBride*, 277 F.3d 922, 925 (7th Cir. 2002). And a prison disciplinary committee may "not arbitrarily refuse to consider potentially exculpatory evidence." *Piggie II*, 344 F.3d at 678.

Once again, the Committee's final report is silent on the denial of Fillmore's right to marshal evidence in his defense. C34. And once again, Defendants belatedly try to manufacture reasons justifying these due process violations. Specifically, they argue that allowing Fillmore to review the notes would have "compromise[d] the safety and security of the prison." Op. Br. 50-51. But as explained, the Committee's decision may be upheld only on the grounds actually relied on. This is particularly true for security justifications in the prison context. "[C]ourts will not presume that the safety of individuals or the institution is the basis for refusing to provide information requested by a prisoner unless DOC specifically says so." *Armstrong v. Snyder*, 336 Ill. App. 3d 567, 570 (4th Dist. 2003). Thus, "if DOC wishes to rely on . . . safety concerns [to withhold material evidence from an inmate], it is required to say so on the inmate's ticket." *Thompson v.*

Lane, 194 Ill. App. 3d 855, 862 (4th Dist. 1990). The Committee did not do that here. Accordingly, its order cannot be upheld on the grounds presented in Defendants' brief.

Those grounds, in any event, are unavailing. Defendants argue that showing Fillmore the notes was a security risk because he denied writing them. Op. Br. 50. That argument makes no sense. There is no security risk in showing Fillmore the notes that he allegedly wrote. And if Fillmore can prove that he did not write those notes, then Defendants wrongfully used those notes against him in robbing him of a year of good time credits and punishing him with a year of isolation. Defendants' argument would create an impossible Catch-22: The only way for an inmate to obtain the evidence needed to mount a defense is to give up that defense by admitting guilt. The Due Process Clause admits of no such gamesmanship.

The grounds for denying Fillmore access to evidence of his alleged phone calls are even weaker. Regarding the call logs, Defendants argue that "it was the content of his conversations with his brother, not the dates of those conversations, that the Department used to establish that Fillmore was an active [security threat group] member." Op. Br. 50. But Fillmore requested the logs to show that the calls *never happened*. C 31. And if the calls never happened, they have no content that could support a finding of guilt.

Defendants also argue that they properly denied Fillmore the right to listen to their recordings of Fillmore's alleged phone conversations because Fillmore could still "describ[e] the content of the conversations." Op. Br. 50. That misses the point of Fillmore's request, which came many months after some of these alleged conversations took place. Fillmore wanted to rebut the Report's alleged quotations from these calls, and he could not do so without access to the recordings. C31. Moreover, Fillmore sought to

review the recordings to *corroborate* his account of those conversations. Defendants' argument ignores the vital importance of such evidence in disciplinary proceedings. Indeed, "'[m]erely corroborative' evidence is many times the most probative for it may substantiate and make credible an otherwise bald and self-serving position." *Whitlock v. Johnson*, 153 F.3d 380, 388 (7th Cir. 1998) (quoting *Graham v. Baughman*, 772 F.2d 441, 445 (8th Cir. 1985)).

The Committee violated Fillmore's due process right to present evidence in his defense by refusing him access to the notes and the call logs and the recordings without identifying an "institutional safety [or] correctional goal[]" justifying the denials. *Hill*, 472 U.S. at 454. Even at this late stage, Defendants cannot muster a single valid reason for withholding the evidence. Due process demands more.

2. The Adjustment Committee violated Fillmore's due process right to an impartial decision-maker.

Finally, Fillmore has adequately alleged that he was denied his due process right to an impartial tribunal. *See Piggie II*, 344 F.3d at 677. "[T]he floor established by the Due Process Clause clearly requires a 'fair trial in a fair tribunal,' before a judge with no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-05 (1997) (internal citation omitted) (quoting *Withrow v. Larkin,* 421 U.S. 35, 46 (1975)). "Not only is a biased decisionmaker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.'" *Withrow*, 421 U.S. at 47 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

According to the complaint, which must be taken as true, Cooper told Fillmore at the hearing that "the Committee was directed by higher up prison authorities to find

[Fillmore] guilty and revoke a year good conduct credits and impose punitive segregation and other punitive sanctions for a year." C14. The complaint thus alleges that the Committee prejudged the outcome of this disciplinary hearing—an "obvious" violation of due process. *Francis v. Coughlin*, 891 F.2d 43, 46 (2d Cir. 1989) ("[I]t would be improper for prison officials to decide the disposition of a case before it was heard."). Defendants' assertion that the Committee nonetheless was "[]able to objectively review the evidence included in the disciplinary report" (Op. Br. 53) strains credulity. And it fails to view the complaint "in a light most favorable to [Fillmore]," which is necessary on a motion to dismiss on the pleadings. *Cowper*, 2015 IL 117811, ¶ 12.

Fillmore's complaint thus adequately alleges several due process violations. The Court should remand this case with instructions that the case move forward on Fillmore's well-pleaded claims that Defendants violated his rights under both Illinois and federal law.

IV. The Appellate Court Correctly Rejected Defendants' Rehearing Petition.

Finally, Defendants argue that the Appellate Court erroneously refused to file their rehearing petition. Op. Br. 16-24. That argument is not properly before this Court because Defendants seek no affirmative relief from their argument. They admit that a remand for filing of their rehearing petition "would be a waste of judicial resources" and ask this Court "instead" to "decide the merits" of this case. *Id*. at 23-24. That request prohibits consideration of their argument about rehearing. Illinois courts do not "render advisory opinions" or decide issues that "would not result in appropriate relief." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 2016 IL 118129, ¶ 10.[11]

[11] Defendants' petition almost certainly would not have persuaded the Appellate Court to grant rehearing. The petition repeated arguments concerning *Sandin* and *Ashley*

Defendants' argument also fails on the merits. The Appellate Court correctly applied Illinois Supreme Court Rule 367(e) in refusing to file Defendants' petition. Rule 367(e) states that "[w]hen the Appellate Court has acted upon a petition for rehearing and entered judgment on rehearing no further petitions for rehearing shall be filed in that court." Both conditions of the "when" clause were satisfied: As Defendants admit, "the appellate court 'acted upon' Fillmore's petition" by denying it. Op. Br. 23. Moreover, the Appellate Court "entered judgment on rehearing" by entering the order that denied rehearing. Rule 367(e) therefore unambiguously provided that "no further petitions for rehearing shall be filed," which barred Defendants' subsequent petition.

Defendants argue that, because the Appellate Court *denied* Fillmore's petition, it never "entered judgment on rehearing" and thus Rule 367(e) did not bar their filing. Op. Br. 17-18. That interpretation jettisons the phrase "has acted upon a rehearing petition" from Rule 367(e). The words "acted upon" indicate that Rule 367(e) applies both when rehearing is granted and when rehearing is denied. Reading Rule 367(e) to apply only when rehearing is granted makes the words "acted upon" meaningless. Defendants thus violate the very principle that they trumpet (Op. Br. 20): Rules "should not be interpreted in a fashion that renders their terms meaningless or superfluous." *People v. Jones*, 168 Ill. 2d 367, 375 (1995).

In addition, Defendants read the phrase "entered judgment on rehearing" much too narrowly. As Defendants correctly note, a court enters judgment on rehearing when it grants rehearing and issues an amended opinion. But a court also enters judgment on

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that the Appellate Court had already rejected (A24-A30), violating Rule 367(b)'s instruction that "[r]eargument of the case shall not be made in the petition."

rehearing when it denies rehearing. The phrase "entered judgment on rehearing" captures both grants and denials of rehearing petitions.

The 2005 amendment to Rule 367(e) confirms that fact. Previously, Rule 367(e) barred successive rehearing petitions "[w]hen the Appellate Court has *granted* a petition for rehearing and entered judgment on rehearing." Sup. Ct. R. 367(e) (1982) (emphasis added). But this Court amended the rule in 2005 to change the word "granted" to the words "acted upon." See http://www.illinoiscourts.gov/SUPREMECOURT/Public_Hearings/Rules/2005/Rules_Comm/0124proposal04-06.pdf. This Court's Rules Committee explained that the change "clarif[ied] that, where a petition for rehearing is acted upon and is *denied or granted*, no further petitions for rehearing may be filed." Supreme Court of Illinois Rules Committee, Activity Report on Proposed Amendments to Current Rules and Proposed New Rules, Proposal Number 04-06 (2005) (emphasis added).

Defendants read Rule 367(e) as if it were never amended. But this Court "may not" "reinsert language" that was "affirmatively removed." *Ill. Landowners All., NFP v. Ill. Commerce Comm'n*, 2017 IL 121302, ¶ 42; *see also People v. Roberts*, 214 Ill. 2d 106, 116 (2005) ("The rules of statutory construction also apply to interpretation of our supreme court rules."). Moreover, Defendants' reading of Rule 367(e) rests on concurring and dissenting opinions that interpreted the *pre-amended* rule. *See* Op. Br. 18 (quoting *Berg v. Allied Sec., Inc.*, 193 Ill. 2d 186, 191 (2000) (Freeman, J., concurring), and *People v. Basler*, 193 Ill. 2d 545, 559 (2002) (McMorrow, J., dissenting)).

Worse still, Defendants' interpretation would resurrect the very problem that the 2005 amendment put to rest. Under their reading, Rule 367(e)'s bar on successive

petitions would not apply when rehearing is denied. This would mean that *unlimited* rehearing petitions could be filed in nearly every case, as the Appellate Court may grant rehearing "only in the most extreme and compelling circumstances." Ill. Sup. Ct. R. 367(a). Most commonly, rehearing is denied, and under Rule 367(e), it is that denial that prevents the filing of additional rehearing petitions. The Court should reject Defendants' request for essentially unlimited rehearing petitions to be filed in most every case and should interpret Rule 367(e) as its text commands: to bar rehearing petitions once the Appellate Court grants *or denies* rehearing.

Defendants' argument also contravenes this Court's decision in *A.J. Maggio Co. v. Willis*, 197 Ill. 2d 397 (2001). There, this Court held that Rule 367(e) prohibited the plaintiff from filing a rehearing petition because the Appellate Court had already granted the defendant's rehearing petition and amended its judgment. *Id.* at 401. The Court held that Rule 367(e) was "not ambiguous" and read it to bar the plaintiff's first and only petition. *Id.* That decision contradicts Defendants' claim that there is a "long standing practice in Illinois that permits all parties adversely affected by an appellate court's judgment to seek rehearing once." Op. Br. 21. And it further confirms that the plain language of Rule 367(e) controls. As explained above, Rule 367(e)'s plain language prohibited the filing of Defendants' rehearing petition.

This reading is consistent with Committee Comments on Rule 367(e). The Committee explained that when the Appellate Court "has twice considered a case, once initially and a second time on rehearing, there would seem to be no need for further consideration, especially when there is a higher court from which relief can be sought."

The Appellate Court "consider[s] a case" for a "second time on rehearing" just as much when it denies rehearing as when it grants rehearing.

Fillmore nevertheless agrees with Defendants that, as a policy matter, Rule 367 should allow each aggrieved party to file one rehearing petition and should not encourage a race to the courthouse. The way to achieve that result, however, is not by interpreting the rule in a manner that does damage to its plain language, the 2005 amendment, this Court's precedents, and the need to curb unlimited rehearing petitions. Rather, the Court should refer the matter to the Rules Committee for consideration of possible amendments. The Court would "benefit" from the "public hearing process before [it] decide[s] whether to amend the rule." *In re Michael D.*, 2015 IL 119178, ¶ 27. It should not decide the issue in this case, particularly since all parties have asked the Court to decide this case on the merits.

CONCLUSION

The Court should affirm the Appellate Court's judgment that IDOC regulations governing prison disciplinary proceedings create enforceable rights. It should affirm the judgment that Fillmore has stated claims for mandamus and certiorari relief.

The Court should grant cross-relief by reversing in part and reinstating portions of Fillmore's complaint that allege additional violations of his rights under Illinois law. Specifically, the Court should hold that Fillmore has stated claims for relief regarding (1) Defendants' failure to have a hearing investigator review the charging Report; (2) the Committee's failure to provide a written reason for denying Fillmore's witness request; (3) the Committee's refusal to disclose the notes, call logs, and recordings so that Fillmore could produce them in his defense; (4) the failure to inform Fillmore of the OTS

evidence that was used against him; and (5) Committee members' refusal to recuse themselves.

The Court also should hold that Fillmore has stated claims that Defendants violated his rights under federal law. Specifically, the Court should hold that Fillmore has adequately alleged that Defendants violated his due process protections by (1) refusing to call any of Fillmore's witnesses without adequate explanation; (2) preventing Fillmore from reviewing the evidence used against him (in particular, the call logs, the telephone recordings, and the notes Fillmore allegedly authored) and from presenting such evidence in his defense; and (3) refusing to provide Fillmore with impartial decision-makers.

The Court should dismiss as moot Defendants' arguments regarding their rehearing petition or should affirm the Appellate Court's refusal to file their petition.

The case should be remanded for additional proceedings consistent with this requested relief.

October 4, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,874 words.

/s/ Chad M. Clamage
Chad M. Clamage

CERTIFICATE OF FILING AND SERVICE

I certify that on October 4, 2018, I electronically filed the foregoing Brief of Appellee with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that all counsel of record were electronically served through the Odyssey eFileIL system, which sent notice of the filing to Kaitlyn N. Chenevert at the following email addresses: CivilAppeals@atg.state.il.us and kchenevert@atg.state.il.us.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Chad M. Clamage
Chad M. Clamage

PLAINTIFF'S APPENDIX

1. 730 ILCS 5/1-1-2 (2014) provided in pertinent part:

Purposes. The purposes of this Code of Corrections are to:

* * *

(c) prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents; * * *

* * *

2. 730 ILCS 5/3-3-3 (2014) provided in pertinent part:

Eligibility for Parole or Release.

* * *

(c) Except for those sentenced to a term of natural life imprisonment, every person sentenced to imprisonment under this amendatory Act of 1977 or given a release date under Section 3-3-2.1 of this Act shall serve the full term of a determinate sentence less time credit for good behavior and shall then be released under the mandatory supervised release provisions of paragraph (d) of Section 5-8-1 of this Code.

* * *

3. 730 ILCS 5/3-8-7 (2014) provided in pertinent part:

Disciplinary Procedures.

(a) All disciplinary action shall be consistent with this Chapter. Rules of behavior and conduct, the penalties for violation thereof, and the disciplinary procedure by which such penalties may be imposed shall be available to committed persons.

* * *

(e) In disciplinary cases which may involve the imposition of disciplinary segregation and isolation, the loss of good time credit or eligibility to earn good time credit, the Director shall establish disciplinary procedures consistent with the following principles:

(1) Any person or persons who initiate a disciplinary charge against a person shall not determine the disposition of the charge. The Director may establish one or more disciplinary boards to hear and determine charges.

(2) Any committed person charged with a violation of Department rules of behavior shall be given notice of the charge including a statement of the misconduct alleged and of the rules this conduct is alleged to violate.

(3) Any person charged with a violation of rules is entitled to a hearing on that charge at which time he shall have an opportunity to appear before and address the person or persons deciding the charge.

(4) The person or persons determining the disposition of the charge may also summon to testify any witnesses or other persons with relevant knowledge of the incident.

(5) If the charge is sustained, the person charged is entitled to a written statement of the decision by the persons determining the disposition of the charge which shall include the basis for the decision and the disciplinary action, if any, to be imposed.

(6) (Blank).

4. 20 Ill. Admin. Code 504.50 (2014) provided in pertinent part:

Review of Disciplinary Reports

* * *

d) The Reviewing Officer shall review each disciplinary report and determine whether:

* * *

3) The offense is major or minor in nature. * * *

A) Aiding and abetting, soliciting, attempting to commit, conspiring to commit, or committing any offense listed in the 100, 200, or 500 series of Table A or Table B shall be considered a major offense.

* * *

5. 20 Ill. Admin. Code 504.60 (2014) provided in pertinent part:

Investigation of Major Disciplinary Reports

* * *

a) The Chief Administrative Officer shall appoint one or more Hearing Investigators who shall review all major disciplinary reports.

* * *

6. 20 Ill. Admin. Code 504.80 (2014) provided in pertinent part:

Adjustment Committee Hearing Procedures

* * *

d) Any person who initiated the allegations that serve as the basis for the disciplinary report, or who conducted an investigation into those allegations, or who witnessed the incident, or who is otherwise not impartial shall not serve on the Adjustment Committee hearing that disciplinary report. An offender who objects to a member of the Committee based on a lack of impartiality must raise the matter at the beginning of the hearing. The Committee shall document the basis of the objection and the decision in the Adjustment Committee summary.

* * *

f) Any offender charged with a violation of any rules shall have the right to appear before and address the Committee. Any refusal to appear shall be documented and provided to the Committee. However, failure to appear before or address the Committee may be adversely construed against the individual by the Adjustment Committee.

1) The offender may make any relevant statement or produce any relevant documents in his or her defense.

2) Prior to the hearing, the offender may request that witnesses be interviewed. The request shall be in writing on the space provided in the disciplinary report and shall include an explanation of what the witnesses would state. If the offender fails to make the request in a timely manner before the hearing, the individual may be granted a continuance for good cause shown.

* * *

h) * * *

3) A means shall be provided in each living unit for offenders to submit witness request slips. The Committee may disapprove witness requests that are not received prior to the hearing.

4) Requests by offenders for witnesses may be denied if their testimony would be, among other matters, irrelevant or cumulative or would jeopardize the safety or disrupt the security of the facility. If any witness request is denied, a written reason shall be provided.

* * *

l) A written record shall be prepared and signed by all members of the Committee that contains:

1) A summary of oral and written statements and other evidence presented.

* * *

7. 20 Ill. Admin. Code 504 App. A (2014) provided in pertinent part:

Offense Numbers and Definitions

* * *

205. SECURITY THREAT GROUP OR UNAUTHORIZED ORGANIZATIONAL ACTIVITY

Engaging, pressuring, or authorizing others to engage in security threat group or unauthorized organizational activities, meetings, or criminal acts; displaying, wearing, possessing, or using security threat group or unauthorized organizational insignia or materials; or giving security threat group or unauthorized organizational signs. Unauthorized organizational activity shall include engaging in the above activities by or on behalf of an organization that has not been approved pursuant to 20 Ill. Adm. Code 445 or 450.

206. INTIMIDATION OR THREATS

Expressing by words, actions, or other behavior an intent to injure any person or property that creates the reasonable belief that physical, monetary, or economic harm to that person or to another will result.

* * *