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.

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POINTS AND AUTHORITIES

ARGUMENT

Sandin v. Conner,
515 U.S. 472 (1995) 1

Ashley v. Snyder,
316 Ill. App. 3d 1252 (4th Dist. 2000) 1

McNeil v. Carter,
318 Ill. App. 3d 939 (3d Dist. 2001) 1

Dupree v. Hardy,
2011 IL App (4th) 100351 1

Edens v. Godinez,
2013 IL App (4th) 120297 1

I. The Code and Department regulations and directives governing internal prison operations do not create judicially enforceable rights for inmates beyond those guaranteed by the federal and state constitutions. 2

Sandin v. Conner,
515 U.S. 472 (1995) 2, 3

Ashley v. Snyder,
316 Ill. App. 3d 1252 (4th Dist. 2000) 2, 3

McNeil v. Carter,
318 Ill. App. 3d 939 (3d Dist. 2001) 3

Dupree v. Hardy,
2011 IL App (4th) 100351 3

Edens v. Godinez,
2013 IL App (4th) 120297 3

Holt v. State,
43 Ill. Ct. Cl. 195 (Nov. 8, 1990) 4

Smith v. State of Ill.,
52 Ill. Ct. Cl. 455 (May 9, 2000) 4

42 U.S.C. § 1983 4

Turner v. Safley,
482 U.S. 78 (1987) 4

Wolff v. McDonnell,
418 U.S. 539, 556 (1974) 4

Dye v. Pierce,
369 Ill. App. 3d 683 (4th Dist. 2006) 4

A. Fillmore's interpretation of the Code and this Court's cases do not support the conclusion that internal Department regulations create enforceable rights for inmates. 4

730 ILCS 5/3-8-7(a) 5

Sandin v. Conner,
515 U.S. 472 (1995) 5, 6

Ashley v. Snyder,
316 Ill. App. 3d 1252 (4th Dist. 2000) 5

Lane v. Sklodowski,
97 Ill. 2d 311 (1983) 6, 7

Wolff v. McDonnell,
418 U.S. 539, 556 (1974) 6

5 ILCS 100/5-40(d) 7

B. Illinois case law does not provide that inmates may sue to enforce all internal Department regulations. 7

People ex rel. Abner v. Kinney,
30 Ill. 2d 201 (1964) 7, 8, 9

People ex rel. Johnson v. Pate,
47 Ill. 2d 172 (1970) 8, 9

People ex rel. Tucker v. Kotsos,
68 Ill. 2d 88 (1977) 8, 9

Ashley v. Snyder,

316 Ill. App. 3d 1252 (4th Dist. 2000) 8, 10, 11

McNeil v. Carter,
318 Ill. App. 3d 939 (3d Dist. 2001) 8, 11

Dupree v. Hardy,
2011 IL App (4th) 100351 ..... 8, 10

Edens v. Godinez,
2013 IL App (4th) 120297 ..... 8, 10

Outcom, Inc. v. Ill. Dep't of Transp.,
233 Ill. 2d 324 (2009) 8

Hanrahan v. Williams,
174 Ill. 2d 268 (1996) 9

Dye v. Pierce,
369 Ill. App. 3d 683 (4th Dist. 2006) 9, 10

Jackson v. Randle,
2011 IL App (4th) 100790 10

Sandin v. Conner,
515 U.S. 472 (1995) 11

C. The policy considerations underpinning *Sandin* and *Ashley* apply with equal force to state-law claims. 12

Turner v. Safley,
482 U.S. 78 (1987) 12

Beahringer v. Page,
204 Ill. 2d 363 (2003) 12

Wolff v. McDonnell,
418 U.S. 539, 556 (1974) 12, 13

Fillmore v. Taylor,
2017 IL App (4th) 160309 13

Cebertowicz v. Baldwin,
2017 IL App (4th) 160535 13

II. This Court should deny Fillmore's request for cross-relief because the claims that he seeks to have reinstated do not state a claim for mandamus relief. 14

Cordrey v. Prisoner Review Bd.,
2014 IL 117155..... 14

Glisson v. City of Marion,
188 Ill. 2d 211 (1999) 14

People ex rel. Birkett v. Dockery,
235 Ill. 2d 73 (2009) 14, 15

People ex rel. Madigan v. Ill. Commerce Comm'n,
231 Ill. 2d 370 (2008) 15

People v. Delvillar,
235 Ill. 2d 507 (2009) 15, 16

People v. One 1998 GMC,
2011 IL 110236..... 15

Andrews v. Foxworthy,
71 Ill. 2d 13 (1978) 15

Round v. Lamb,
2017 IL 122271..... 15, 16, 17

People v. Garstecki,
234 Ill. 2d 430 (2009) 15

People v. Robinson,
217 Ill. 2d 43 (2005) 16

Sandin v. Conner,
515 U.S. 472 (1995)..... 16

20 Ill. Admin. Code § 504.60(a) 17

Wolff v. McDonnell,
418 U.S. 539, 556 (1974) 17, 18

20 Ill. Admin. Code § 504.80(i)(4) 17

20 Ill. Admin. Code § 504.80(f)(1) 18

20 Ill. Admin. Code § 504.80(b) 18

Armstrong v. Snyder,
336 Ill. App. 3d 567 (4th Dist. 2003) 19

Northern v. Hanks,
326 F.3d 909 (7th Cir. 2003) 19

20 Ill. Admin. Code § 504.80(d) 19

Wolin v. Dep't of Fin. & Prof'l Regulation,
2012 IL App (1st) 112113 19

III. Fillmore received all the process he was due. 20

IV. The appellate court improperly rejected Defendants' petition for rehearing. 20

Ill. Sup. Ct. R. 367(e) 20

Ill. Sup. Ct. R. 367(d) 21

Committee Comments, Sup. Ct. R. 367, par. (e) 21

ARGUMENT

Statutes, regulations, and directives that govern internal prison regulations, and that are not designed to codify or implement inmates' constitutional rights, confer no judicially enforceable rights upon inmates. This longstanding principle underlies the United States Supreme Court's decision in *Sandin v. Conner,* which held that mandatory language in a state's prison regulations does not automatically create a liberty interest for inmates. 515 U.S. 472, 483 (1995). *Sandin* reached that conclusion, in part, because prison regulations are "primarily designed to guide correctional officials in the administration of a prison." *Id*. at 481-82. The Appellate Court of Illinois in *Ashley v. Snyder* followed *Sandin* and concluded that in Illinois, "[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." 316 Ill. App. 3d 1252, 1258 (4th Dist. 2000) (emphasis added).

Ashley's holding has been followed many times by Illinois courts and has been extended to the Unified Code of Corrections, *McNeil v. Carter*, 318 Ill. App. 3d 939, 943 (3d Dist. 2001), Department regulations found in the Illinois Administrative Code, *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶¶ 25-27, and Department directives, *Edens v. Godinez*, 2013 IL App (4th) 120297, ¶¶ 23-24. These holdings are legally sound and should be adopted by this Court. Fillmore's proposed rule to the contrary, which would disrupt the orderly

maintenance of prison discipline by correctional authorities, encourage inmates to pore through administrative materials in search of actionable rights, and entangle the courts in the day-to-day operation of prisons, should be rejected.

I. The Code and Department regulations and directives governing internal prison operations do not create judicially enforceable rights for inmates beyond those guaranteed by the federal and state constitutions.

As explained in defendants' opening brief, *Sandin* changed the way courts analyze prison regulations and the rights that those regulations confer on inmates. Before *Sandin*, courts analyzed whether a prison regulation contained mandatory or discretionary language to determine whether it created a constitutionally protected liberty interest for inmates. *Sandin*, 515 U.S. at 479. But *Sandin* explained that this approach was inappropriate in the prison setting, because prison regulations are "primarily designed to guide correctional officials in the administration of a prison." *Id*. at 481-82. Specifically, this approach created disincentives "for States to codify prison management procedures in the interest of uniform treatment," *id*. at 482, led "to the involvement of federal courts in the day-to-day management of prisons," *id*., and "encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges," *id*. at 481.

Ashley relied on *Sandin* to hold that because "Illinois DOC regulations, as well as the Unified Code, were designed to provide guidance to prison

officials in the administration of prisons," 316 Ill. App. 3d at 1258, such regulations "*were never intended to confer rights on inmates* or serve as a basis for constitutional claims," *id*. Before this Court, Fillmore argues that *Sandin* should not control here because it analyzed federal, not Illinois, law. *See* AE Br. at 23. What Fillmore overlooks is that *Ashley* applied the principles articulated in *Sandin* to hold squarely that "*Illinois law creates no more rights for inmates* than those which are constitutionally required." 316 Ill. App. 3d at 1258 (emphasis added). And although *Ashley* itself dealt with a due process claim based on an alleged property interest created by a prison orientation manual, 316 Ill. App. 3d at 1258, its holding has been followed and extended to inmates bringing actions based on Department regulations found in the Unified Code, *McNeil*, 318 Ill. App. at 943; the Administrative Code, *Dupree*, 2011 IL App (4th) 100351, ¶¶ 25-27; and Department directives, *Edens*, 2013 IL App (4th) 120297, ¶¶ 23-24.

As explained, *see* AT Br. at 30-33, *Ashley* correctly recognized that the rationales that led the *Sandin* Court to conclude that prison regulations do not create liberty interests for inmates apply with equal force in cases asserting non-constitutional state-law theories. First, *Sandin*'s concern that finding rights in mandatory language would "encourage[] prisoners to comb regulations," 515 U.S. at 481, is no less a concern for state-law causes of action. Second, deriving enforceable rights from prison regulations could discourage prison officials from codifying those rules. Finally, allowing

inmates to file lawsuits concerning any perceived violation of a Department regulation stands to increase litigation and burden the courts. *Ashley* announced a bedrock principle of prison litigation in Illinois on which the Department relied for 17 years, providing a clear and well-reasoned rule that was built upon by subsequent case law until the appellate court abruptly departed from it in the decision below.

Finally, the principle that prison regulations create no enforceable rights does not leave inmates without the ability to file lawsuits to redress alleged wrongs and injuries. As explained, *see* AT Br. at 44-45, inmates may bring claims against the Department and its employees alleging negligence, *see Holt v. State*, 43 Ill. Ct. Cl. 195, 197 (Nov. 8, 1990), and intentional torts, *see Smith v. State of Ill.*, 52 Ill. Ct. Cl. 455, 456 (May 9, 2000), and may sue to enforce constitutional rights that exist independent of the Code or Department regulations. *See* 42 U.S.C. § 1983; *see also Turner v. Safley*, 482 U.S. 78, 84 (1987); *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974); *Dye v. Pierce*, 369 Ill. App. 3d 683, 687 (4th Dist. 2006) (allegation of due process violation states cause of action in mandamus).

A. Fillmore's interpretation of the Code and this Court's cases do not support the conclusion that internal Department regulations create enforceable rights for inmates.

Nevertheless, Fillmore argues that *Ashley* was incorrectly decided and that the Illinois General Assembly intended Department regulations to give rise to judicially enforceable rights for inmates. *See* AE Br. at 12. In support,

Fillmore notes that the Code provides that "the disciplinary procedure by which [penalties] may be imposed shall be available to committed persons." AE Br. at 11 (citing 730 ILCS 5/3-8-7(a)). According to Fillmore, because the disciplinary procedure must be available to inmates, the rules that define that procedure must be judicially enforceable. *See* AE Br. at 11.

That is a non sequitur. Disciplinary regulations were enacted to provide guidance to prison officials, not for the sole benefit of inmates. AT Br. at 36-37; *Sandin*, 515 U.S. at 481-82; *Ashley* 316 Ill. App. 3d at 1258. And even assuming that such regulations are promulgated to benefit inmates and that they create enforceable rights for inmates, it does not follow that inmates may sue to enforce them. Ordinarily, to reach that conclusion, courts would analyze the regulation's language to determine whether it was meant to be permissive, mandatory, or directory, *see* AT Br. at 39-40; *see also infra* at 14-16—but that is precisely the kind of exercise *Sandin* cautioned against. *See Sandin*, 515 U.S. at 480-81 (explaining that this approach caused courts to "wrestl[e] with the language of intricate, often rather routine prison guidelines to determine whether mandatory language and substantive predicates created an enforceable expectation that the State would produce a particular outcome with respect to the prisoner's conditions of confinement").

Fillmore also relies heavily on this Court's observation in *Lane v. Sklodowski*, 97 Ill. 2d 311, 317 (1983), that the 1977 amendments to the Code restricted the Department Director's discretion to revoke good-conduct credits. *See* AE Br. at 4, 12. Fillmore argues that to give effect to that intent, prison officials must be compelled to "comply with the regulations governing discipline," AE Br. at 13, otherwise "entire provisions [would be] devoid of substance . . .," and the Code's directives "would be meaningless." *See id*. at 12. But Defendants have never disputed that the loss of good conduct credit time is a serious consequence. That is why inmates have a liberty interest in good conduct credits under the federal Due Process Clause. *See Wolff*, 418 U.S. at 557. As a result, prison officials cannot revoke such credits without affording inmates due process protections, regardless of what Department regulations provide.

By contrast, as *Sandin* recognized, ordinary prison regulations that do not implement constitutional protections are directed primarily to prison officials, not to inmates. The Supreme Court explained that prison regulations are drafted to "curb the discretion of staff," and to "instruct subordinate employees how to exercise discretion vested by the State in the warden, and to confine the authority of prison personnel in order to avoid widely different treatment of similar incidents." *Sandin*, 515 U.S. at 482. With this purpose in mind, *Sandin* concluded that mandatory language in prison regulations does not create liberty interests for inmates. *Id*. at 483. Thus, even accepting that

prison statutes or regulations are meant to limit officials' discretion, it does not follow that those statutes or regulations must be enforceable by inmates.

Indeed, *Lane* itself did not involve *inmates* suing to enforce Department regulations. Rather, State's Attorneys had filed proceedings in various circuit courts against the Director, and the Director then sought writs of "mandamus and prohibition or a supervisory order directing the respondents [judges of the circuit courts]" to dismiss the proceedings initiated by the State's Attorneys. *Id*. at 313. *Lane* therefore does not stand as precedent supporting judicial enforcement of disciplinary regulations by inmates.

Next, Fillmore points out that the Department regulations were enacted pursuant to the Illinois Administrative Procedure Act (IAPA) and under that statute, rules are generally effective upon filing. *See* AE Br. at 13-14 (quoting 5 ILCS 100/5-40(d)). Thus, Fillmore argues, "to make IDOC regulations 'effective,' prisoners must be able to enforce these regulations when prison officials violate them." *Id*. at 14. But the fact that a rule is "effective," *i.e.*, legally operative, for purposes of the IAPA says nothing about whether it is judicially enforceable at the behest of any particular class of would-be plaintiffs.

B. Illinois case law does not provide that inmates may sue to enforce all internal Department regulations.

Fillmore argues that "[a] long line of precedent also demonstrates that Fillmore may enforce compliance with IDOC's regulations." AE Br. at 14. That is incorrect. First, the three cases that he cites, *People ex rel. Abner v.*

Kinney, 30 Ill. 2d 201 (1964), *People ex rel. Johnson v. Pate*, 47 Ill. 2d 172 (1970), and *People ex. rel. Tucker v. Kotsos*, 68 Ill. 2d 88 (1977), all pre-date *Sandin*'s recognition of the undesirable effects that could occur if mandatory language in regulations created liberty interests for inmates, *see* 515 U.S. at 482-83. As *Ashley* recognized, those considerations apply with equal force to cases where inmates assert nonconstitutional state-law theories. *See* 316 Ill. App. 3d at 1255; AT Br. at 30. Indeed, *Ashley*'s holding was extended to apply to cases where inmates sought state-law mandamus actions to enforce Code provisions, administrative regulations, and Department directives. *See McNeil*, 318 Ill. App. at 943; *Dupree*, 2011 IL App (4th) 100351, ¶¶ 25-27; *Edens*, 2013 IL App (4th) 120297, ¶¶ 23-24. Thus, *Ashley* and the cases following it cast doubt on the continuing vitality of the cases relied on by Fillmore.

Second, as discussed in the opening brief, AT Br. at 40-42, in *Kinney,* this Court issued mandamus to compel the parole board to provide an inmate with a hearing. 30 Ill. 2d at 207. But in that case, the parole board had enacted rules that "change[d] the statutory provisions of eligibility for parole." *Id*. at 206. And because "administrative rules can neither limit nor extend the scope of a statute," *Outcom, Inc. v. Ill. Dep't of Transp*., 233 Ill. 2d 324, 340 (2009), courts may entertain a claim that a regulation is facially in excess of the statutory authority granted to a department or agency.

Third, *Kinney*, *Pate*, and *Kotsos* are all distinguishable from this case. In *Kinney*, the inmate sought an order of mandamus to receive a hearing on whether he should be released from prison on parole. 30 Ill. 2d at 202-03. And in *Pate* and *Kotsos*, inmates who had been released from prison on parole but were then arrested for parole violations and returned to prison argued that they should be released from prison on bail pending the outcome of parole revocation proceedings. *See* 47 Ill. 2d at 173; 68 Ill. 2d at 92. None of these cases involved inmates suing to enforce internal Department regulations governing disciplinary proceedings.

These cases, therefore, stand for the proposition that an inmate may seek an order of mandamus to ensure that parole (or parole revocation) hearings take place when they are required by statute. *See Kinney*, 30 Ill. 2d at 206-07; *Pate*, Ill. 2d at 176-77; *Kotsos*, 68 Ill. 2d at 99; *see also Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996) ("In the parole context, a writ of mandamus may be used to compel the Board to exercise its discretion, but may not be used to compel the Board to exercise its discretion in a certain manner."). They fall well short, however, of establishing that mandamus review is available whenever an inmate alleges that the Department has failed to comply with one of its ordinary procedural regulations governing discipline. As explained in the opening brief, AT Br. at 45, when such noncompliance rises to the level of a procedural due process violation, it may be remedied via certiorari or mandamus, *see Dye*, 369 Ill. App. 3d at 687 (allegation of due

process violation states cause of action in mandamus). But *Sandin* and *Ashley* caution against elevating day-to-day disciplinary regulations into sources of judicially enforceable rights.

Ashley's holding that "Illinois law creates no more *rights* for inmates than those which are constitutionally required," 316 Ill. App. 3d at 1258, has been followed numerous times. Fillmore argues that these cases are not dispositive because none involved Department regulations concerning disciplinary proceedings. *See* AE Br. at 26. But each case cited *Ashley* and reiterated its categorical and unqualified holding that prison regulations *do not create enforceable rights for inmates*. *See Edens v. Godinez*, 2013 IL App (4th) 120297, ¶ 23 ("prison regulations, *such as those found in the Illinois Administrative Code*, were designed to provide guidance to prison officials in the administration of prisons and were *never* intended to confer rights on inmates or serve as a basis for constitutional claims") (emphasis added); *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17 ("DOC regulations and the Unified Code were designed to provide guidance to prison officials in the administration of prisons, *not to create more rights for inmates than those that are constitutionally required*") (emphasis added); *Dupree*, 2011 IL App (4th) 100351, ¶ 25 (explaining that rationale behind *Ashley* was to "(1) prevent inmates . . . from searching through prison regulations and state statutes in search of mandatory language on which to base their purported rights and (2) extract courts from what essentially amounts to daily prison managerial

decisions"); *McNeil*, 318 Ill. App. 3d at 943 (finding that primary purpose and function of Code is to "protect the public," and citing *Ashley*'s holding that "prison regulations were never intended to confer rights on inmates or serve as a basis for constitutional claims").

Fillmore also argues that *Ashley*'s holding that prison regulations confer no rights on inmates was dictum. *See* AE Br. at 25. That is incorrect: the relevant analysis in *Ashley* was central to the court's holding. The inmate in *Ashley* brought both constitutional and statutory claims, *see* 316 Ill. App. 3d at 1257-58, and the Court's carefully considered, two-page-long "Epilogue" explained why *Sandin*'s insights should make courts reluctant to find enforceable rights in the language of prison regulations. *See*, *e.g.*, *id*. at 1259 (explaining that pre-*Sandin* methodology "led courts to inject themselves deeply in the day-to-day management of prisons and to second-guess what are essentially prison managerial decisions"). Certainly the many appellate court decisions that have cited and followed *Ashley*'s reasoning did not consider it dicta, *see* AT Br. at 29-30, and while Fillmore tries to distinguish those cases as not involving disciplinary proceedings, AE Br. at 26, he does not deny that their holdings were grounded in *Ashley*'s analysis.

Fillmore also notes that *Sandin* encourages inmates to enforce their rights under state law. *See* AE Br. at 23. Fillmore is correct that *Sandin*, in a footnote, states that inmates "may draw upon internal prison grievance procedures and state judicial review *where available*." 515 U.S. at 487 at n.11

(emphasis added). But this merely begs the question whether state-court review is available in a given context. And while Fillmore cites two out-of-state cases that allowed inmates to proceed with state-law claims of violations of correctional department directives, *see* AE Br. at 23, other States, following *Sandin*, have concluded that inmates may not sue to enforce prison regulations, *see* AT Br. at 34-35.

C. The policy considerations underpinning *Sandin* and *Ashley* apply with equal force to state-law claims.

As argued in the opening brief, prison safety and security concerns have led courts to hold that prison administrators should be accorded wide deference in adopting and implementing rules to maintain order and discipline. AT Br. at 30 (citing *Turner*, 482 U.S. at 84; *Beahringer*, 204 Ill. 2d at 375). Courts should defer to prison officials' decisions about how to implement and enforce internal prison regulations. Fillmore argues that "this case does not involve the type of urgent problems of prison administration and reform that prison officials are specially equipped to handle." AE Br. at 27 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 375 (2003)). But he never explains why this is so. And indeed, *Wolff,* which addressed prison disciplinary proceedings, acknowledged the security concerns that may arise depending on how those proceedings are conducted. *See* 418 U.S. at 566 ("[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a *risk of reprisal or undermine authority*," and noting that courts "*should not be too ready to*

exercise oversight and put aside the judgment of prison administrators") (emphasis added).

Fillmore attempts to limit the broad sweep of the appellate court's holding here by arguing that 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 . . . when officials are imposing serious punishments like extending the duration of inmates' sentences or sending them to solitary confinement for a year." AE Br. at 30. But the holding was not so limited. Instead, the appellate court generally held that "[t]he supreme court has long held that by an action for mandamus, a prisoner may compel the performance of a purely statutory duty." *Fillmore*, 2017 IL App (4th) 160309, ¶ 99; A 29.

Any doubt that the court's holding swept beyond regulations concerning disciplinary proceedings was erased by its subsequent decision in *Cebertowicz v. Baldwin*, 2017 IL App (4th) 160535. The inmate in *Cebertowicz* brought a mandamus action involving a section of the Code and a Department regulation concerning the price of photocopies. *Id*. at ¶ 9. Although the appellate court ultimately affirmed dismissal of the inmate's complaint because the alleged violation "inflicted no injustice upon the plaintiff," *id*. at ¶ 48, it applied that nebulous test only after analyzing the language in the regulation and concluding that it imposed a non-discretionary duty on the Department, *id*. at ¶ 42. The fact that Cebertowicz's claim was deemed reviewable at all shows that the appellate court's broad holding here has already interfered with the

ability of prison officials to administer their facilities. And, as explained in the opening brief, AT Br. at 33-34, *Cebertowicz*'s use of an amorphous "substantial justice" test on the merits injects further uncertainty into day-to-day prison management.

II. This Court should deny Fillmore's request for cross-relief because the claims that he seeks to have reinstated do not state a claim for mandamus relief.

First, as argued, *see* AT Br. at 26-30, Fillmore cannot state a mandamus claim because he has no clear right to relief, as the Department regulations do not create enforceable rights for inmates. But even if this Court were to hold otherwise, Fillmore's requests for cross-relief should be denied.

To state a mandamus claim, a plaintiff must allege "a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *Cordrey v. Prisoner Review Bd.*, 2014 IL 117155, ¶ 18. Mandamus is an "extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public officer where *no exercise of discretion* on his part is involved." *Id.* (emphasis added). And to have standing to assert a claim for a writ of certiorari, a plaintiff must allege, among other things, "some injury in fact to a legally cognizable interest." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). So, to determine whether a clear right to relief exists this Court must look to the language of the Department regulation at issue. *See People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 76-77, 80-82 (2009). Administrative regulations are "construed

under the same standards which govern the construction of statutes," *People ex rel. Madigan v. Ill. Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008), and thus can be interpreted as mandatory, permissive, or directory, *see People v. Delvillar,* 235 Ill. 2d 507, 514-15 (2009).

The use of the word "may" "generally indicates a permissive or directory reading, rather than a mandatory one." *People v. One 1998 GMC,* 2011 IL 110236, ¶ 16. In contrast, the use of "shall" or "must" "is generally regarded as mandatory." *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978). But "shall" does not have a fixed meaning, and so it can be construed as "may," "depending on the legislative intent." *Id*. Therefore, even when a regulation contains mandatory language, it must next consider whether it is truly mandatory or instead is directory. *See Delvillar*, 235 Ill. 2d at 516. The mandatory-directory dichotomy "denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates." *Id.*

"Where the language of a statute is truly mandatory, it admits of no exceptions." *Dockery*, 235 Ill. 2d at 91. But "[w]hen a requirement is directory, no specific consequence is triggered by noncompliance." *Round v. Lamb*, 2017 IL 122271, ¶ 16. Conversely, if the statute is given a mandatory reading, "a failure to comply with the particular procedural step will have the effect of invalidating the governmental action to which the procedural requirement relates." *People v. Garstecki*, 234 Ill. 2d 430, 442 (2009).

Moreover, "[p]rocedural commands to government officials . . . are presumed to be directory." *Round*, 2017 IL 122271, ¶ 13. This presumption is overcome if "(1) negative language in the statute prohibits further action in the case of noncompliance or (2) the right the statute is designed to protect would generally be injured under a directory reading." *Id*. As to the second exception, it is not sufficient to simply show that the plaintiff in a particular case was injured. *See Delvillar*, 235 Ill. 2d at 518 (holding that the second exception did not apply because "a defendant's right to waive a jury trial and enter a guilty plea will not necessarily be harmed in the absence of the admonishment"). Instead, courts analyze whether the right would generally be injured by a directory reading. *See People v. Robinson*, 217 Ill. 2d 43, 57 (2005).

As an initial matter, this Court should deny Fillmore's request for cross-relief because it will require courts to analyze the language of each regulation to determine whether it was meant to be permissive, mandatory, or directory. And *Sandin* cautioned against courts analyzing the language of prison regulations to determine what rights they bestow upon inmates. *See* 515 U.S. at 480-81. For this reason alone, this Court should deny Fillmore's request. But additionally, this Court should deny each of Fillmore's claims for cross-relief.

First, section 504.60(a) of the Department's regulations provides that "[t]he Chief Administrative Officer shall appoint one or more Hearing

Investigators who shall review all major disciplinary reports." 20 Ill. Admin. Code § 504.60(a). Fillmore argues that he is entitled to mandamus relief as to this regulation because it contains the word "shall." AE Br. at 32. But this regulation should be given a directory, rather than a mandatory, reading. For one thing, there is no language in this regulation that prohibits further action by the Department in the case of noncompliance. *See Round*, 2017 IL 122271, ¶ 13. Furthermore, Fillmore has not explained what right the regulation was designed to protect that would be injured under a directory reading. Indeed, the due process protections discussed in *Wolff* do not require a hearing investigator to review major disciplinary reports. 418 U.S. at 563-71. And Fillmore received a hearing (C 34-35), as required by *Wolff*.

Second, section 504.80(i)(4) provides that if an inmate's witness request is denied, "a written reason shall be provided." 20 Ill. Admin. Code § 504.80(i)(4). Fillmore argues that he is entitled to mandamus under this regulation because it contains mandatory language, *see* AE Br. at 32-33, but his request should be denied. First, the Committee's report noted that no witnesses were requested. (C 34). That aside, this regulation should be given a directory reading. Again, there is no language that prohibits further action by the Department in the case of noncompliance. *See Round*, 2017 IL 122271, ¶ 13. Moreover, there is no right that would be injured under a directory reading because *Wolff* "did not prescribe" that prison officials must state a

reason for refusing to call a witness in their disciplinary reports. 418 U.S. at 566.

Third, section 504.80(f)(1) provides that an inmate "may make any relevant statement or produce any relevant documents in his or her defense." 20 Ill. Admin. Code § 504.80(f)(1). Fillmore argues that "[t]his provision imposes a nondiscretionary duty on prison officials to allow the inmate to see the evidence that will be used against him." AE Br. at 34. But in fact this regulation imposes no duty on any Department official to act. Instead, it explains only what the inmate may present during the hearing, not what evidence the Department must allow the inmate to see.

Fourth, section 504.80(b) provides that the 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). Fillmore argues that Defendants violated this regulation because the Committee's report included the Offender Tracking System (OTS) "identifying [Fillmore] as a Latin King STG Member" (C 34), although the OTS was not mentioned in the disciplinary report, *see* AE Br. at 35. As an initial matter, section 504.80(b) is a codification of one of the *Wolff* protections, which requires that inmates be given no less than 24 hours of "advance written notice of the claimed violation." 418 U.S. at 563-64. Fillmore received that protection here. (C 25, C 34).

Moreover, although the disciplinary report did not mention the OTS, it provided sufficient detail to apprise Fillmore of the nature of the charges against him. *See Armstrong v. Snyder*, 336 Ill. App. 3d 567, 571 (4th Dist. 2003) (inmate had sufficient notice of charge against him where disciplinary report noted that he spat on another inmate, even though the report did not indicate that he spat through an ink pen); *see also Northern v. Hanks*, 326 F.3d 909, 910 (7th Cir. 2003) ("notice should inform the inmate of the rule allegedly violated and summarize the facts underlying the charge").

Fifth, section 504.80(d) provides that "[a]ny person who . . . is otherwise not impartial shall not serve on the Adjustment Committee hearing that disciplinary report." 20 Ill. Admin. Code § 504.80(d). Fillmore argues that it is "black letter law" and "common sense that someone who has been directed to find the accused guilty, agreed to do so, and then does so is not impartial." AE Br. at 36. As explained, Adjustment Committee members are entitled to a presumption of honesty and integrity. *See* AT Br. at 52. An individual must show that the government actor was "not capable of judging a particular controversy fairly on the basis of its own circumstances." *Wolin v. Dep't of Fin. & Prof'l Regulation*, 2012 IL App (1st) 112113, ¶ 33. Here, with numerous pieces of evidence forming the basis of the Committee's decision, Fillmore's allegations that the Committee members were told to find him guilty cannot support a conclusion that they were also not capable of judging the evidence fairly.

III. Fillmore received all the process he was due.

As argued, *see* AT Br. at 46-54, Fillmore received all of the due process protections provided to him by *Wolff* during the Adjustment Committee hearing. In any event, even if this Court were to conclude that the Adjustment Committee hearing did not comply with *Wolff*'s requirements, that would not justify a departure from *Sandin*, *Ashley*, and their progeny. Instead, the Court should hold that Fillmore stated a mandamus claim based on a violation of his right to due process and remand for further proceedings on that claim.

IV. The appellate court improperly rejected Defendants' petition for rehearing.

This Court has the ability to hear Defendants' argument regarding Illinois Supreme Court Rule 367(e) and the appellate court's rejection of its petition for rehearing. Fillmore argues that this Court should not hear this argument because it would result in an advisory opinion. *See* AE Br. at 48. To be sure, in their opening brief, Defendants acknowledged that the merits of this case will be fully briefed in this Court, and thus a remand to the appellate court to rule on the petition for rehearing would be a waste of judicial resources if this Court reaches the merits. *See* AT Br. at 23-24. But Defendants also requested alternative relief in the form of an order directing the appellate court to accept and file their rehearing petition. *See id*. at 55-56. Because such an order is an available alternative form of relief, this issue is not moot.

Where an appellate court's judgment adversely affects multiple parties, and each party has a unique basis upon which to seek rehearing, Rule 367(e) permits each adversely affected party to timely file a petition for rehearing so long as the court has not already granted a petition for rehearing and entered judgment on rehearing. Rule 367(d) provides that "[n]o answer to a petition for rehearing will be received unless requested by the court or unless the petition is *granted*." Ill. Sup. Ct. R. 367(d) (emphasis added). So a court may *grant* a petition, in which case an answer may be filed by the non-movant, but ultimately deny the petitioner's request and affirm the judgment rather than alter it.

And as explained, *see* AT Br. at 19, the Committee Comments to this rule support this interpretation. Comment (e) states that "[w]hen [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." Committee Comments, Sup. Ct. R. 367, par. (e). But if a court denies a rehearing petition without calling for an answer, then it has only considered the case once and has denied the petitioner's request to consider the case a second time.

Fillmore argues that Defendants' interpretation of Rule 367(e) would mean that parties could file unlimited rehearing petitions, so long as the court denied the petitions. *See* AE Br. at 50-51. Defendants are not urging that

parties be given unlimited rehearing petitions. But where, as here, both parties are adversely affected by the court's decision and have alternative reasons to seek rehearing, Rule 367(e) allows each adversely affected party to petition the court to rehear the case.

CONCLUSION

For these reasons, Defendants-Appellants request that this Court reverse the judgment of the appellate court and hold that the Code and Department regulations and directives governing internal prison operations do not create judicially enforceable rights for inmates and that Fillmore was afforded all the process that he was due during the Adjustment Committee hearing.

Or, if this Court determines that Fillmore was not afforded due process, it should hold that Fillmore stated a mandamus claim based on his right to due process and remand for further proceedings, while also affirming that an inmate does not have an independent cause of action based on violation of the Code or Department regulations or directives that govern internal prison operations.

In the alternative, Defendants-Appellants request that this Court hold that Rule 367 does not bar a party from filing a timely petition for rehearing where the appellate court's judgment was adverse to both parties and where the appellate court has already denied a petition filed by another party, and order that their rehearing petition be accepted and filed by the appellate court.

Finally, Defendants request that this Court deny Fillmore's requests for cross-relief.

Respectfully submitted,

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December 13, 2018

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) statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 5,572 words.

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on December 13, 2018, I electronically filed the foregoing Reply Brief of Defendants-Appellants with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that a participants in this appeal, named below, are not registered service contacts on the Odyssey eFileIL system, and thus were served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by those participants on December 13, 2018.

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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.

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