No. 126856

IN THE ILLINOIS SUPREME COURT

LARRY E. SCHULTZ, Plaintiff-Appellant, vs. **ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois**; **ST. CLAIR COUNTY CENCOM 9-1-1, a Public Safety Agency and Answering Point within the State of Illinois**; **EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY**, and **JOHN DOE/JANE DOE**, Defendants-Appellees.	)	Appeal from the Illinois Appellate Court – Fifth Judicial District Case No. 5-19-0256 There heard on Appeal from the St. Clair County Circuit Court, Twentieth Judicial Circuit Case No. 18-L-61

BRIEF OF DEFENDANTS-APPELLEES

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiff, Larry E. Schultz, as Special Administrator of the Estate of Lauren T. Schultz, filed a five-count Complaint against Defendants, St. Clair County, a unit of local government in the State of Illinois, operating as a public agency; St. Clair County CENCOM 9-1-1, a public safety agency and answering point within the State of Illinois; Emergency Telephone System Board of St. Clair County; and John Doe/Jane Doe. (C 7-18; Pl. A 3-14). The lawsuit arose from an automobile accident in which Plaintiff's wife, who was admittedly intoxicated at the time, drove her vehicle off of a highway and was killed. (C 7-18; Pl. A 3-14). Specifically, the lawsuit alleged that Defendants failed to dispatch police in response to Plaintiff's request for police assistance to prevent Plaintiff's wife from driving while intoxicated. (C 7-18; Pl. A 3-14). The trial court dismissed Plaintiff's Complaint with prejudice based upon, *inter alia*, section 4-102 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act), which provides in relevant part:

> "Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4–102 (West 2018) (C 100-103; Pl. A 15-18).

Plaintiff appeals from the Appellate Court's December 9, 2020 Opinion that affirmed the trial court's order granting Defendants' motion to dismiss Plaintiff's Complaint with prejudice pursuant to section 2-619(a) of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-619(a) (West 2018). (Pl. A 26-42).

STATUTES INVOLVED

Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a) (West 2018).

Illinois Emergency Telephone System Act, 50 ILCS 750/0.01 *et seq.* (West 2018).

Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1–101 *et seq.* (West 2018).

ISSUES PRESENTED FOR REVIEW

I. Whether Plaintiff's Complaint was properly dismissed with prejudice in entirety pursuant to section 2-619(a)(9) of the Code because Defendants are immune from civil liability.

II. Whether the Appellate Court's judgment that affirmed the trial court's dismissal of Plaintiff's Complaint should be affirmed for other reasons supported by the record.

STATEMENT OF FACTS

On January 29, 2018, Plaintiff filed his five-count Complaint against Defendants, St. Clair County (County), St. Clair County CENCOM 9-1-1 (CENCOM), Emergency Telephone System Board of St. Clair County (ETSB) and John Doe/Jane Doe (Doe), alleging claims for wrongful death under the Illinois Wrongful Death Act (740 ILCS 180/1 *et seq*.) against the County (Count I), CENCOM (Count II), ETSB (Count III) and Doe (Count IV), as well as a survival action under the Illinois Survival Act (755 ILCS 5/27-6) against the County (Count V), in relation to an incident in which Plaintiff's wife, Laurene T. Schultz, who was admittedly intoxicated at the time, drove her vehicle off the road and was killed. (C 7-18; Pl. A 3-14). The trial court dismissed Plaintiff's Complaint with prejudice in its entirety pursuant to Section 2-619(a) of the Code (735 ILCS 5/2-619(a)) based upon, *inter alia*, section 4-102 of the Tort Immunity Act. (C 100-103; Pl. A 15-18). Following the trial court's denial of Plaintiff's motion for post judgment relief, Plaintiff filed a timely notice of appeal. (C 124-126).

The Appellate Court affirmed the trial court's dismissal of Plaintiff's Complaint with prejudice. (Pl. A 26-42). Specifically, the Appellate Court held that Defendants were immune from liability based upon section 4-102 of the Tort Immunity Act, which shields local governments and its employees from any failure to provide adequate police protection or service. (Pl. A 26-35). In

addition, the Appellate Court held that section 15.1 of the Illinois Emergency Telephone System Act (ETSA) (50 ILCS 750/15.1), which provides immunity for developing or operating an emergency telephone system but immunizes only negligence, does not apply to limit the unqualified immunity provided by section 4-102 of the Tort Immunity Act. (Pl. A 26-35). Plaintiff subsequently filed a petition for leave to appeal to the Illinois Supreme Court, which this Court allowed. (Pl. A 43-58).

STANDARD OF REVIEW

As set forth above, this matter is before this Court from the Appellate Court's Opinion that affirmed the trial court's dismissal of Plaintiff's Complaint with prejudice pursuant to section 2-619(a) of the Code. 735 ILCS 5/2-619(a) (West 2018). "A motion to dismiss, pursuant to section 2–619 of the Code, admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Section 2–619 motions present a question of law; therefore, this Court reviews rulings thereon *de novo*. *Id.*

If a cause of action is dismissed pursuant to section 2–619, the questions on appeal are whether a genuine issue of material fact exists and whether the defendant is entitled to a judgment as a matter of law. *Wright v. City of Danville*, 174 Ill. 2d 391, 398-99 (1996). A motion to dismiss under 2-619 admits well-pleaded facts, but does not admit conclusions of law or conclusory factual allegations unsupported by allegations of specific facts. *Better Government Association v. Illinois High School Association*, 2017 IL 121124, ¶ 21. In any section 2–619(a) motion to dismiss, once an affirmative matter is properly raised by the defendant which could defeat the claim, the plaintiff must then come forward with some evidence at least establishing a genuine issue of material fact, otherwise the motion will be granted. *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620,

642 (2010). Furthermore, a dismissal pursuant to section 2–619 may be affirmed on any grounds that are supported by the record, regardless of whether the lower court relied on those grounds or whether the lower court's reasoning was correct. *Wright*, 174 Ill. 2d at 399.

The construction of a statute is also a question of law, which this Court reviews *de novo*. *DeLuna*, 223 Ill. 2d at 59. The primary objective of this Court when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature. *Id*. The plain language of a statute is the most reliable indication of the legislature's objectives in enacting that particular law, and when the language of the statute is clear, it must be applied as written without resort to aids or other tools of interpretation. *Id*. It is appropriate statutory construction to consider similar and related enactments, though not strictly *in pari materia*. *Id*. at 59-60. Under the doctrine of *in pari materia*, two statutes dealing with the same subject will be considered with reference to each other such that they may be given harmonious effect. *Collinsville Community Unit School Dist. No. 10 v. Regional Bd. of School Trustees of St. Clair County*, 218 Ill. 2d 175, 185 (2006).

This Court must presume that several statutes relating to the same subject are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious. *DeLuna*, 223 Ill. 2d at 60. It is a fundamental and well-settled principle of statutory interpretation that statutes relating to the same subject matter should be construed so that effect may be given to the provisions of each. *Williams v. Illinois State Scholarship Com'n*, 139 111.2d 24, 52 (1990). Even if an apparent conflict exists, the courts must construe the statutes in harmony with each other, unless it is not reasonably possible to do so. *Id*.

ARGUMENT

I. Plaintiff's Complaint was properly dismissed with prejudice in entirety pursuant to section 2-619(a)(9) of the Code because Defendants are immune from civil liability under Section 4-102 of the Tort Immunity Act.

On appeal to this Court, Plaintiff argues that the Appellate Court incorrectly applied the immunity provision under section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102) rather than the immunity provision under Section 15.1 of the ETSA (50 ILCS 750/15.1) to the allegations in Plaintiff's Complaint. The crux of Plaintiff's argument centers around his assertion that, by enacting section 15.1 of the ETSA, the legislature intended to override the immunities provided under the Tort Immunity Act, albeit without citation to any valid legal authority for this contention that section 15.1 of the ETSA somehow usurps the Tort Immunity Act. Plaintiff contends that the Appellate Court's decision should be reversed in conformity with this Court's prior decisions that construe public safety statutes enacted subsequent to the Tort Immunity Act to impose liability for proven willful and wanton conduct in a governmental unit's provision of specific services that protect the general public. Pl. Br. at 14. Specifically, Plaintiff asserts:

> "Since the Tort Immunity Act was passed in 1965, public safety statutes have been construed by this Court to limit immunity for government units that would otherwise have absolute immunity under the Tort Immunity Act where allegations of willful and wanton conduct within the governmental unit conflict with the legislature's stated purpose for the act and such conduct is adequately alleged and may be proven." Pl. Br. at 13.

In support of his argument, Plaintiff cites to several cases that discuss the scope of immunity provided under the Emergency Medical Services Act and the Domestic Violence Act.

Throughout the proceedings in this case, Plaintiff has attempted to circumvent the applicability of section 4-102 of the Tort Immunity Act as it pertains to the conduct alleged in his Complaint. 745 ILCS 10/4–102 (West 2018). For the following reasons, this Court should reject Plaintiff's attempt to eradicate the longstanding, unqualified immunity afforded to Defendants in this case as to the conduct alleged in Plaintiff's Complaint.

A. Section 4-102 of the Tort Immunity Act immunizes Defendants from the misconduct alleged in Plaintiff's Complaint.

The Tort Immunity Act was enacted in 1965, and its purpose is to protect local public entities and public employees from liability arising from the operation of government. *DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497, 505 (2006). " 'By providing immunity, the legislature sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims.' " *Id*., quoting *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 490 (2001), quoting *Bubb v. Springfield School District 186*, 167 Ill. 2d 372, 378 (1995). Section 4-102 of the Tort Immunity Act provides, in relevant part:

> "Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4–102 (West 2018).

Section 4–102 immunizes both negligence and willful and wanton misconduct. *Id*. at 515. As this Court has observed, section 4-102 of the Tort Immunity Act codifies, as an immunity, the common law "public duty rule," resulting in a blanket immunity which immunizes a local government and its employees for failure to provide police protection. *Id*. at 508. Section 4–102 provides unqualified immunity to local governments and their employees and *only the explicit language of the statute* can limit the immunity provided. (Emphasis added.) *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 195–96 (1997).

When construing the Tort Immunity Act, this Court has instructed:

> "[T]his court must, if possible, give effect to each paragraph, sentence, clause, and word. A court should construe a statute, if possible, so that no term is rendered superfluous or meaningless. In interpreting an immunity provision, our primary goal is to ascertain and give effect to the intention of the legislature. We seek that intent primarily from the language used in the Tort Immunity Act. Where an enactment is clear and unambiguous, we are not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. This court may not legislate, rewrite or extend legislation. If a statute, as enacted, seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to this court." (Internal citations omitted.) *DeSmet*, 219 Ill. 2d at 509-10.

Here, Plaintiff expressly alleges in his Complaint that he called 9-1-1 to request assistance from police to prevent his wife, whom Plaintiff reported was driving under the influence of alcohol, from driving her car. (C 7-18; Pl. A 3-14). Plaintiff further expressly alleges in his Complaint that Defendants acted in reckless disregard and indifference in its provision of dispatch services. (C 7-18; Pl. A 3-14). Section 4-102 of the Tort Immunity Act, which precludes liability against local public entities from claims "for failure to provide adequate police protection or service," applies by its plain terms to Plaintiff's allegations. By Plaintiff's own admission, he is seeking "damages for his wife's death from an auto accident that Plaintiff claims could have been prevented by sending police in response to his 9-1-1 call." Pl. Br. at 13. However, Plaintiff does not contest that his allegations describe a "failure to provide adequate police protection or service" within the meaning of section 4-102 of the Tort Immunity Act. Rather, Plaintiff contends that section 15.1 of the ETSA (50 ILCS 750/15.1), which provides immunity for negligence but not for "gross negligence, recklessness, or intentional misconduct" in the provision of 9-1-1 services, also applies and should displace the immunity provided under section 4-102 of the Tort Immunity Act. In other words, Plaintiff asks this Court to apply the immunity provision under section 15.1 of the ETSA in its analysis of this case while completely ignoring the long-established provisions of the Tort Immunity Act.

Dispositive of Plaintiff's argument on appeal is this Court's decision in *DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497 (2006), which, as the Appellate Court accurately observed in its Opinion, specifically "held that section 4-102 of the Tort Immunity Act is implicated where dispatch services are called upon to dispatch police in response to a request for such services and the police do not respond." (Internal citation omitted.) *Schultz v. St. Clair County*, 2020 IL App (5th) 190256, ¶ 12. In *DeSmet*, the plaintiff brought suit against numerous

governmental entities and government employees to recover damages for the death of Doris Hays (Hays). *DeSmet*, 219 Ill. 2d at 502-03. The facts of *DeSmet* stem from an automobile accident in which Hays was driving her vehicle near the county line between Rock Island County and Henry County when her car left the road and crashed into a ditch. *Id*. at 500. A passing motorist observed Hays's car leave the road and called the clerk of the Village of Orion to report the accident. *Id*. at 500–01. The village clerk subsequently contacted a dispatcher for Henry County, who then contacted the dispatcher for the City of Moline and the City of East Moline, who in turn contacted the sheriff's department for Rock Island County. *Id*. at 501. However, no emergency services were dispatched to the scene of the accident. *Id*. at 502. Several days later, Hays's body was discovered outside of her vehicle at the scene of the accident. *Id*.

Similar to the case at bar, the plaintiff in *DeSmet* asserted wrongful death and survival claims against Rock Island County, Henry County, the Village of Orion, the City of Moline, the City of East Moline, and several individuals in their official capacities. *Id*. at 502–03. The trial court dismissed the plaintiff's complaint with prejudice after finding the defendants were immune from tort liability under section 4–102 of the Tort Immunity Act. *Id*. at 503. Thereafter, the Appellate Court affirmed the judgment of the trial court. *Id*. at 503–04.

This Court affirmed the dismissal of the plaintiff's complaint with prejudice. Specifically, this Court concluded that section 4–102 is implicated where "the assistance required *** falls within the statutory umbrella of 'police protection services.' " *Id*. at 512. This Court further agreed with previous Appellate Court decisions that held "police protection service" under section 4–102 is implicated where police are called upon to assist or locate motorists who have driven off the roadway. *Id*. In reaching its decision, this Court rejected the plaintiff's argument that the defendants' failure to respond to an emergency call equated to the failure to provide any police

services; instead, this Court found that the "governmental defendants rendered police protection service to the general public via their dispatch centers[,]" despite the fact that no emergency services were dispatched. *Id*. at 513. As this Court explained, "[t]he dispatch services simply proved inadequate in this instance insofar as they failed to deliver personalized police services to the scene in a timely manner." *Id*. Furthermore, this Court rejected the plaintiff's argument that section 4-102 of the Tort Immunity Act does not apply where the failure to respond to a call for emergency assistance is a consequence of human error rather than an exercise of discretion. *Id.* at 512-13. As this Court noted, because section 4-102 contains no exception for willful and wanton misconduct, the defendants were immunized from liability for both negligence and willful and wanton misconduct. *Id*. at 514.

Based on this Court's holding in *DeSmet*, this Court's analysis can conclude here, as Plaintiff's allegations, all of which arise from Defendants' alleged failure to dispatch police in response to a call for emergency assistance, fall squarely under the scope of police protection or service within the meaning of section 4-102 of the Tort Immunity Act. Nevertheless, Defendants deem it necessary to address Plaintiff's misguided argument that section 15.1 of the ETSA somehow supplants the long-established provisions of the Tort Immunity Act.

B. Section 15.1 of the ETSA does not supplant the longstanding provisions of the Tort Immunity Act.

As previously stated, Plaintiff contends that section 15.1 of the ETSA (50 ILCS 750/15.1), which provides immunity for negligence but not for "gross negligence, recklessness, or intentional misconduct" in the provision of 9-1-1 services, applies to the conduct alleged in his Complaint and, therefore, should displace the unqualified immunity provided under section 4-102 of the Tort Immunity Act. Although this Court's Opinion in *DeSmet* does not specifically address the ETSA, the plaintiff's brief in *DeSmet* states that Henry County was contacted via the 9-1-1 system, and

the plaintiff cited the ETSA as the statute which governed the 9-1-1 response systems that received the reports about the accident in that case. *DeSmet v. County of Rock Island*, No. 100261, Brief of Plaintiff-Appellant Mary L. DeSmet, 2005 WL 4814886, at 16, 29. Thus, plaintiff's misleading argument that *DeSmet* "did not involve an alleged failure of 9-1-1 services created under the ETSA" is simply untrue. Pl. Br. at 23. Actually, this Court was made well aware of the ETSA, including the applicable immunity under section 15.1 therein, and still held that section 4-102 applied where there was a failure to provide police protection service in the form of dispatch services. See *DeSmet v. County of Rock Island*, No. 100261, Brief of Village of Orion and Lori Sampson, Defendants-Appellees, 2005 WL 4814889, at 13-14; Brief of County of Rock Island, Michael Grchan, and Myrtle DeWitte, Defendants-Appellees, 2005 WL 4814891, at 10-11.

Lending further support to Defendants' position that section 4-102 of the Tort Immunity Act is not supplanted by section 15.1 of the ETSA, and addressing strikingly similar circumstances, is a recent Illinois Appellate Court decision which rejected the precise argument made by Plaintiff in this case.[1] See *Carolan v. City of Chicago*, 2018 IL App (1st) 170205, ¶ 27 (the 9-1-1 call requested police protection service and "therefore involves a police protection service for the purposes of section 4–102 of the Tort Immunity Act, which is not supplanted by section 15.1 of the Emergency Telephone System Act."); see also *Galuszynski v. City of Chicago*, 131 Ill. App. 3d 505, 509 (1985) (finding that section 15.1 of statute providing for tort liability based upon misconduct on the part of police officials in operating the telephone system did not implicitly repeal section 4-102 of the Tort Immunity Act establishing immunity from tort liability for failure to provide adequate police protection).

[1] Defendants acknowledge that this Court is not bound by the Appellate Court's reasoning and may affirm for any basis presented in the record. *People v. Williams*, 2016 IL 118375, ¶ 33.

In *Carolan*, the plaintiffs sued the City of Chicago for wrongful death based on the failure to timely dispatch police in response to a 9-1-1 call that reported an armed robbery in progress at a convenience store. *Carolan*, 2018 IL App (1st) 170205, ¶ ¶ 3-4. The court found the City was immune from civil liability based upon section 4-102 of the Tort Immunity Act and this Court's decision in *DeSmet*. *Carolan*, 2018 IL App (1st) 170205, ¶ ¶ 12-16. In reaching its decision, the *Carolan* court rejected the plaintiffs' argument that section 15.1 of the ETSA provides the "controlling immunity" over the Tort Immunity Act because it is the more specific immunity. *Id*., ¶ 27.[2] Specifically, the court concluded:

> "[T]he 911 call here clearly requested police intervention in response to a robbery in progress and therefore involves a police protection service for the purposes of section 4–102 of the Tort Immunity Act, which is not supplanted by section 15.1 of the Emergency Telephone System Act." *Id*.

Likewise, Plaintiff's reliance on cases which cite to the Emergency Medical Services Act and the Domestic Violence Act in support of his argument that the ETSA should apply over the Tort Immunity Act as the more specific immunity is misplaced. Pl. Br. at 14-20. This Court has already explicitly rejected that argument and applied section 4-102 of the Tort Immunity Act to allegations concerning a failure to provide police protection service in the form of dispatch services, while being fully aware of the immunity provided under section 15.1 of the ETSA. *DeSmet*, 219 Ill. 2d at 512-13.

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[2] Defendants note that *Carolan* addresses the ETSA that was in effect prior to January 1, 2016. Although the ETSA has since been slightly modified, this a distinction without a difference as the same analysis applies to this case. Furthermore, as will be discussed, the fact that the legislature has amended the ETSA since this Court's decision in *DeSmet* without making reference to the applicability, or lack thereof, of section 4-102 in the context of allegations concerning the failure to provide police protection service in the form of dispatch services indicates the legislature's acceptance of this Court's holding in *DeSmet*.

Plaintiff attempts to make an issue of the legislature's 2016 amendment to the ETSA, which Plaintiff labels as "material changes" that increased the scope of actors and conduct by which liability for willful and wanton conduct may arise. Pl. Br. at 21. However, the fact that the legislature has amended the ETSA twice since this Court's decision in *DeSmet (*P.A. 99-6, § 2-10, eff. Jan. 1, 2016; Reenacted by P.A. 100-20, § 15, eff. July 1, 2017), albeit without making *any reference* to section 15.1's immunity somehow supplanting/controlling the immunity provided under section 4-102 of the Tort Immunity Act in the context of allegations concerning the failure to provide police protection service in the form of dispatch services, shows that the legislature intended to adopt this Court's decision in *DeSmet*. When "amending a statute, the legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge." *Morris v. William L. Dawson Nursing Center, Inc.*, Ill. 2d 494, 499 (1999). Based on the foregoing, this Court must presume that when the General Assembly amended the ETSA, it was aware of this Court's decision in *DeSmet*, specifically finding the absolute immunity afforded to local governmental entities under section 4-102 of the Tort Immunity Act applied where there was a failure to provide police protection service in the form of dispatch services. The General Assembly's failure to carve out what Plaintiff alleges - that section 15.1 supplants the Tort Immunity Act – repudiates Plaintiff's contention that the legislature's amendments to the ETSA have an effect on this Court's analysis in this case.

Again, the plain language of a statute is the most reliable indication of the legislature's intent in enacting that particular law, and when the language of the statute is clear, it must be applied as written without resort to aids or tools of interpretation. *DeLuna*, 223 Ill. 2d at 59. This Court has expressly concluded that 9-1-1 dispatch services are a police protection service within the meaning of section 4-102 of the Tory Immunity Act, no matter whether the dispatch services

are inadequately provided or not provided at all. *DeSmet*, 219 Ill. 2d 497 at 512-13. As this Court stated:

> "Section 4–102 of the [Tort Immunity] Act is comprehensive in the breadth of its reach, addressing situations where no police protection is provided to the general public and those in which inadequate protection is provided. Moreover, section 4–102 contains no exception for willful and wanton misconduct. We hold, given the facts of this case, that section 4–102 immunizes defendants against both negligence and willful and wanton misconduct." *Id*. at 515.

If this Court found that the immunity under section 15.1 of the ETSA controls over the immunity provided under section 4-102 of the Tort Immunity Act, this Court would essentially conclude that section 4–102 of the Tort Immunity Act was implicitly repealed by the enactment of section 15.1 of the ETSA with regard to allegations of failure to provide or inadequately provide dispatch services in response to an emergency call. Even apart from this Court's decision in *DeSmet*, holding that section 4-102 applied to allegations remarkably similar to those of Plaintiff's Complaint, this Court has consistently held that the repeal of a statute by implication is not favored, and any construction of two or more statutes which might lead to this result is to be avoided. *People v. Isaacs*, 37 Ill. 2d 205, 225-26 (1967).

Notably, on appeal, Plaintiff does not engage in any analysis of any section of the Tort Immunity Act; rather, Plaintiffs' argument rests solely on his assertion that section 15.1 of the ETSA is the controlling statutory immunity over section 4-102 of the Tort Immunity Act. Plaintiff seemingly attempts to draw some distinction between "willful and wanton conduct" as defined by section 1-210 of the Tort Immunity Act (745 ILCS 5/1-210) (" 'Willful and wanton conduct' as used in this Act means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.") and "gross negligence, recklessness, or intentional misconduct" as set forth in section 15.1 of the ETSA (50 ILCS 750/15.1). Specifically, Plaintiff exalts the phrase

"any act or omission" within section 15.1, but fails to acknowledge that the phrase "act or omission" is likewise contained within qualified immunity provisions of the Tort Immunity Act. Pl. Br. at 13. See, e.g. 745 ILCS 10/2-202 ("A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct."). Nevertheless, the fact remains that Plaintiff neither notes any meaningful difference between "willful and wanton conduct" and "gross negligence, recklessness, or intentional misconduct," nor points to specific factual allegations within Plaintiff's Complaint, that would refute the Appellate Court's analysis and conclusion that section 15.1 of the ETSA provides additional immunity to Defendants. Of course, any such difference is meaningless to Defendants' immunity under section 4-102 of the Tort Immunity Act because same provides absolute immunity without qualification for "willful and wanton conduct" and/or "gross negligence, recklessness, or intentional misconduct."

In sum, Plaintiff's assertion that section 15.1 of the ETSA controls the analysis of the allegations in Plaintiff's Complaint is clearly misplaced, as the ETSA in no way usurps the long-established provisions of the Tort Immunity Act. Plaintiff offers no valid argument or explanation in support of his contention that section 15.1 of the ETSA completely replaces the immunity provided under the Tort Immunity Act and controls the analysis of the allegations in Plaintiff's Complaint. For all of the foregoing reasons, the Appellate Court properly affirmed the trial court's dismissal of Plaintiff's Complaint on the basis of absolute immunity provided under section 4-102 of the Tort Immunity Act.

II. This Court should affirm the Appellate Court's judgment for other reasons supported by the record.

This Court is in no way constrained by the Appellate Court's reasoning. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005). Rather, it is the judgment of the Appellate Court, not the

reasons given therefor, that is before this Court for review. *Id*. Accordingly, this Court may affirm on any basis supported by the record. *Id*.

A. The trial court properly dismissed Count II of Plaintiff's Complaint against CENCOM and Count III of Plaintiff's Complaint against ETSB with prejudice pursuant to section 2-619(a)(2) of the Code because same are not separate legal entities with the capacity to be sued.

Although not addressed by the Appellate Court in its Opinion, on appeal to the Appellate Court, Plaintiff argued that the trial court committed reversible error by dismissing Counts II and III of Plaintiff's Complaint with prejudice pursuant to section 2-619(a)(2) of the Code on the basis that CENCOM and ETSB are not separate legal entities with the capacity to be sued. 735 ILCS 5/2-619(a)(2) (West 2018). In support of his argument, Plaintiff cited to section 15.1(a) of the ETSA, which pertinently provides:

> "In no event shall a public agency, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, or carrier, or its officers, employees, assigns, or agents be liable for any civil damages or criminal liability that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1(a) (West 2018).

Based on the foregoing language, Plaintiff argued the trial court erred in refusing to acknowledge that public safety agencies such as CENCOM and ETSB may be held liable under certain circumstances as alleged in Plaintiff's Complaint.

Contrary to Plaintiff's position, it is well-settled that ETSB and CENCOM are not autonomous, independent units of government with the capacity to sue or be sued. Rather, ETSB and CENCOM are agencies of the County. As the Illinois Attorney General has opined:

> "A single county ETS Board is not denominated a body politic and corporate. Consequently, the entity could not sue or be sued in its own name. Although an ETS Board

> is granted certain statutory powers exercisable only by its governing board, the powers and duties of a single county ETS Board are defined by the county[.]
>
> * * *
>
> The funding of the ETS Board is also dependent upon the county since the Board has no independent powers of taxation. After approval by referendum, the county is authorized to levy a surcharge for the 9-1-1 System. The county board, however, is not required to levy the full amount of the surcharge approved by referendum, but may determine at its own discretion the amount to be raised[.]
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> * * *
>
> The fiscal relationship between the ETS Board and the county is similar to that which exists between the county and other county agencies.
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> * * *
>
> Because the county board exercises authority over a single county ETS Board through its powers to create the Board, appoint its members and control the level of its funding, it appears that the Board is an agency of the county. Although it possesses certain powers which only the ETS Board may exercise, the Board is not an autonomous, independent unit of government." (Internal citations omitted.) Ill. Att'y Gen. Op. No. I-90-046; see also Ill. Att'y Gen. Op. No. I-07-047 ("[a] county emergency telephone system board…may not sue or be sued.")

In support of its above-referenced analysis, the Illinois Attorney General turned to section 15.4 of the ETSA (50 ILCS 750/15.4 (West 2018)), which governs the establishment of ETSB and CENCOM as it pertains to this case:

> "(a) [T]he corporate authorities of any county or municipality may establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that the board shall consist of not fewer than 5 members[.]"
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> * * *
>
> "(b) The powers and duties of the board shall be defined by ordinance of the municipality or county, or by intergovernmental agreement in the case of a joint board. The powers and duties shall include, but need not be limited to the following:
>
> (1) *Planning a 9-1-1 system.*

> (2) Coordinating and supervising the implementation, upgrading, or maintenance of the system, including the establishment of equipment specifications and coding systems.
>
> (3) Receiving moneys from the surcharge imposed under Section 15.3, or disbursed to it under Section 30, and from any other source, for deposit into the Emergency Telephone System Fund.
>
> (4) Authorizing all disbursements from the fund.
>
> (5) Hiring any staff necessary for the implementation or upgrade of the system."

As the aforementioned statutory language indicates, the County is the denominated unit of government responsible for creating ETSB and the CENCOM 9-1-1 system. As such, these entities are not autonomous, independent units of government with the capacity to sue or be sued; rather, said entities are agencies of the County. Further, section 5-1001 of the Illinois Counties Code specifically provides that the County is the "body politic and corporate" that "may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter[.]" 55 ILCS 5/5-1001 (West 2018).

In sum, because CENCOM and ETSB are agencies of the County and do not exist as autonomous, independent units of government, they may not sue or be sued in a separate capacity. Accordingly, the trial court properly dismissed Counts II and III of Plaintiff's Complaint with prejudice pursuant to section 2-619(a)(2) of the Code. 735 ILCS 5/2-619(a)(2) (West 2018).

B. Plaintiff's Complaint was properly dismissed with prejudice in its entirety pursuant to section 2-619(a)(9) of the Code because the decedent's conduct was the sole proximate cause of her death.

Finally, Plaintiff's Complaint is flawed from the outset. Specifically, Plaintiff fails to allege any facts reflecting causation on the part of Defendants because the decedent's injuries were caused by the independent, illegal actions of the decedent herself, namely driving while intoxicated. Indeed, Plaintiff acknowledges in his Complaint that the decedent was driving under

the influence of alcohol on the night of her accident. (C 7-18; Pl. A 3-14). This Court has consistently held that where facts are largely undisputed and reasonable men could not differ as to the inferences to be drawn from those facts, the issue of proximate cause may be determined as a matter of law. *Harrison v. Hardin County Community Unit School Dist. No. 1*, 197 Ill. 2d 466, 476 (2001); see also *Thompson v. County of Cook*, 154 Ill. 2d 374 (1993) (finding that a driver's actions in driving drunk, speeding, and eluding the police were the sole proximate cause of the plaintiff's injuries thereby breaking any causal connection between the city's alleged negligence in failing to adequately warn motorists of a curve in the road and the plaintiff's injuries). Here, Plaintiff does not allege, nor could he allege, facts to show that Defendants facilitated the decedent's decision to drive her automobile while intoxicated, which ultimately led to the decedent's single-car rollover accident. As the trial court's dismissal order accurately observes:

> "The Illinois Appellate Court has concluded that a local government's failure to prevent an automobile crash cannot be deemed 'a contributing negligent factor to any liability which would arise from later acts.' *Veach v. Cross*, 178 Ill. App. 3d 102, 532 N.E.2d 1069 (4th Dist. 1988). The law remains that Plaintiff's allegation that his decedent was intoxicated at the time of the accident is an admission of a violation of a statute designed to protect human life or property that is *prima facie* evidence of her own negligence. *Kalata v. Anheuser Busch Companies, Inc.*, 144 Ill.2d 425 (1991). Accordingly, because such negligence on the part of Plaintiff's decedent is the sole proximate cause of her alleged injuries and death, Plaintiff's Complaint should be entirely dismissed with prejudice under Section 2-619(a)(9) of the [Code]." (C 102).

For the aforementioned reasons, Plaintiff's Complaint was properly dismissed with prejudice in entirety pursuant to section 2-619(a)(9) of the Code. 735 ILCS 5/2-619(a)(9) (West 2018).

CONCLUSION

For one or more of the foregoing reasons, Defendants, St. Clair County, a unit of local government in the State of Illinois, operating as a public agency, St. Clair County CENCOM 9-1-1, a public safety agency and answering point within the State of Illinois, and Emergency Telephone System Board of St. Clair County, respectfully request that this Court affirm the

Appellate Court's Opinion which affirmed the trial court's dismissal of Plaintiff's Complaint with prejudice, and order such other relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Brief of Defendants-Appellees was electronically filed with the Clerk of the Illinois Supreme Court on this 11th day of August, 2021. The undersigned further certifies that a copy of same was sent via electronic mail on this 11th day of August, 2021, to:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned further certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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CERTIFICATE OF COMPLIANCE

Pursuant to Illinois Supreme Court Rule 341(c), 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) table of contents and 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 19 pages.

Dated: August 11, 2021

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