No. 126856

IN THE
SUPREME COURT OF ILLINOIS

LARRY E. SCHULTZ,

Plaintiff-Appellant,

v.

ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; ST. CLAIR COUNTY CEN-COM 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.

On Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-19-0256
Heard on Appeal from the Circuit Court of St. Clair County, Illinois
No. 18-L-61
The Honorable Heinz M. Rudolph, Judge Presiding

BRIEF OF THE CITY OF CHICAGO AND THE ILLINOIS MUNICIPAL LEAGUE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES

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POINTS AND AUTHORITIES

INTEREST OF *AMICI CURIAE*

Amici Curiae, the Illinois Municipal League ("IML") and the City of Chicago, file this brief in support of St. Clair County and the other defendants-appellees, all local governmental entities or employees who allegedly failed to send police officers to prevent an individual from driving while intoxicated.

IML is a not-for-profit, non-political association of the 1,296 Illinois cities, villages, and incorporated towns in the State of Illinois, and is recognized by statute as an instrumentality of its members. 65 ILCS 5/1-8-1. IML's mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois municipalities. IML regularly files briefs as *amicus curiae* in cases that present questions of interest and concern to IML's members. Municipalities throughout Illinois provide police and 9-1-1 dispatch services to their residents. The City of Chicago, with a population of approximately 2.7 million, is the third largest city in the nation and the largest home rule municipality in Illinois. IML and Chicago have a substantial interest in the outcome of this litigation, which concerns section 4-102 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act. That provision confers immunity from liability to local public entities and their employees for the failure "to provide police protection service, or, if police protection service is provided, for failure to provide adequate police protection or service." 745 ILCS 10/4-102.

With more than 35,000 employees, Chicago's exposure to liability is

largely shaped by the immunities provided under the Tort Immunity Act. The protection provided by section 4-102 is particularly important, because it reflects the General Assembly's determination that municipalities and their taxpayers cannot reasonably be expected to shoulder the massive liabilities they would face if every shortcoming in police protection services were actionable. The protections afforded by section 4-102 are of great importance to all of IML's members, which have limited resources for police services and could find themselves subject to escalating liability without those protections. Such liability would have far-reaching negative effects on larger municipalities and impede their ability to provide the wide range of important services their residents expect and depend on, and it could financially devastate many small cities, villages, and towns, perhaps forcing some to disband police and 9-1-1 dispatch services or decline to participate directly in 9-1-1 dispatch operations. Accordingly, *amici* have a direct, resource-driven interest in the continued application of section 4-102 according to its plain terms, and in avoiding an interpretation that would limit the immunity afforded by section 4-102.

In this case, plaintiff Larry Schultz ("plaintiff") claims that defendants failed to send police to locate and intercept his wife, Laurene Schultz ("Schultz"), who was driving while intoxicated, in order to prevent her from injuring herself or others. The appellate court correctly held that section 4-102's immunity for the failure to provide adequate police protection service

applied to bar this claim. Plaintiff sought to have defendants' liability determined under section 15.1 of the Emergency Telephone System Act ("ETS Act") because the request for police services was made by a 9-1-1 call and plaintiff alleges the dispatcher failed to send police to respond. Section 15.1, unlike section 4-102, immunizes negligence but not "gross negligence, recklessness, or intentional misconduct," 50 ILCS 750/15.1, whereas the immunity provided by section 4-102 is absolute and unqualified. Plaintiff, supported in this court by *amicus curiae* Illinois Trial Lawyers Association ("ITLA"), seeks to reverse the appellate court and have plaintiff's claim evaluated under the more limited immunity provided by section 15.1. *Amici* submit this brief in support of defendants-appellees because we believe that accepting plaintiff's and ITLA's argument would improperly limit the immunity the General Assembly provided in section 4-102.

We limit our submission in support of defendants-appellees to the proper construction of section 4-102 of the Tort Immunity Act when read alongside other potentially applicable immunities, in particular section 15.1 of the ETS Act. As we explain, plaintiff's claim explicitly alleges a failure to provide police protection services, invoking section 4-102's immunity. Plaintiff's argument that section 4-102 ceases to apply whenever the failure to provide police services is allegedly attributable to a 9-1-1 dispatcher's conduct would carve out an unwarranted exception to section 4-102, and should be rejected.

STATUTES INVOLVED

Section 4-102 of the Tort Immunity Act, 745 ILCS 10/4-102 (2016):

Police Protection.

§ 4-102. 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. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.

Section 15.1 of the ETS Act, 50 ILCS 750/15.1 (2016):

Public body; exemption from civil liability for developing or operating emergency telephone system

§ 15.1. Public body; exemption from civil liability for developing or operating emergency telephone system.

(a) 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 system telephone 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 services required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

* * * *

(b) Exemption from civil liability for emergency instructions is as provided in the Good Samaritan Act.

* * * *

ARGUMENT

The General Assembly enacted the Tort Immunity Act to "protect local public entities and public employees from liability arising from the operation of government." DeSmet v. County of Rock Island, 219 Ill. 2d 497, 505 (2006); accord, e.g., Village of Bloomingdale v. CDG Enterprises, Inc., 196 Ill. 2d 484, 490 (2001). The immunities provided by this Act reflect the legislature's judgment that it serves the public interest to protect local governments from liability arising from the performance of customary governmental services, by preventing the diversion of public funds from their intended purposes to the payment of damage claims. E.g., DeSmet, 219 Ill. 2d at 505. In this way, the Tort Immunity Act protects local governments, their taxpayers, and the residents who depend on their services.

Section 4-102 of the Tort Immunity Act is an especially important element of that protection. Local governments across Illinois strive to provide appropriate police services to protect the safety and welfare of their residents to the greatest extent possible. But because no government can protect all individuals at all times, and because governmental resources are never sufficient to provide optimal service in every instance, imposing tort liability whenever a plaintiff is able to identify a failure to provide satisfactory police services would subject local governments to extremely costly judgments and litigation costs. The result would be the diversion of public resources from the provision of police and other services to pay for

judgments and litigation, which could ultimately operate to the detriment of public safety.

Recognizing these considerations, the General Assembly enacted section 4-102, which protects local governments from liability for, among other things, any "failure to provide adequate police protection or service." 745 ILCS 10/4-102. This immunity is "absolute," Lacey v. Village of Palatine, 232 Ill. 2d 349, 360 (2009), and immunizes "both negligence and willful and wanton misconduct," DeSmet, 219 Ill. 2d at 515.

In this case, the appellate court correctly held that plaintiff's claim, which explicitly alleged a failure to provide adequate police protection service, was barred by section 4-102. In reaching this holding, the court rejected plaintiff's argument that a different and more limited immunity, section 15.1 of the ETS Act, applied to displace section 4-102.

SECTION 4-102 OF THE TORT IMMUNITY ACT PRECLUDES LIABILITY FOR A 9-1-1 DISPATCHER'S ALLEGED FAILURE TO SEND POLICE IN RESPONSE TO A CALL FOR POLICE ASSISTANCE.

Plaintiff seeks to hold defendants, local public entities and employees, liable for the death of Schultz, which occurred after she drove her car off the road while intoxicated. Plaintiff alleges that, before the crash that caused Schultz's death, he twice called 9-1-1 to request "police assistance to prevent his wife from driving away in her car." Brief of Plaintiff-Appellant ("Plaintiff Br.") 9. Police were dispatched and responded to the first call, but when they arrived at the location plaintiff had asked them to go to, Schultz had left.

Plaintiff's second call to 9-1-1 requested that police be sent to a different location, again to prevent Schultz from driving away, but the dispatcher allegedly failed to send police to that location. Defendants are not liable for failing to prevent Schultz from driving while intoxicated.

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," 745 ILCS 10/4-102, applies by its plain terms to plaintiff's claim. By plaintiff's own description, he seeks "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." Plaintiff Br. 13. According to plaintiff, his injury resulted from defendant's failure to provide police services by dispatching officers who could have prevented Schultz from violating the statutes prohibiting driving while intoxicated. Id. Indeed, neither plaintiff nor *amicus curiae* ITLA questions that plaintiff's claim describes a failure to provide police services that falls under section 4-102. Rather, they contend that section 15.1 of the ETS Act, which provides immunity for negligence but not for "gross negligence, recklessness, or intentional misconduct" in the provision of 9-1-1 services, 50 ILCS 750/15.1, also applies and should control over section 4-102's immunity. But, as we explain, plaintiff's claim in this case alleges a quintessential failure to provide police protection service immunized by section 4-102, and that immunity should not yield to section 15.1's more limited immunity just

because the alleged failure to provide an adequate police response was premised on the failure to dispatch police in response to a 9-1-1 call.

A. Section 4-102 Governs Plaintiff's Claim That Defendants Failed To Send Police To Prevent Schultz From Driving While Intoxicated.

Plaintiff's claim in this case, that defendants failed to dispatch police in response to a 9-1-1 call asking for police to intercept Schultz and prevent her from driving while intoxicated, falls squarely within section 4-102's immunity. Indeed, this court has expressly held that claims arising from the failure to dispatch police in response to a call for emergency assistance – precisely the type of claim asserted here – fall within the scope of police protection or service under section 4-102. DeSmet, 219 Ill. 2d at 501, 512-14. As this court explained in DeSmet, allegations that a local governmental entity "failed to have in force procedures which would ensure that all emergency calls for assistance are responded to in a timely fashion," and failed "to timely dispatch appropriate law enforcement personnel," implicate "the adequacy of police protection services that defendants provide to the general public." Id. at 513-14. When such claims are asserted, "section 4-102 governs" and provides absolute immunity. Id. at 514.

If anything, section 4-102 fits this case even more neatly than DeSmet, where the call for assistance involved a car accident that had already occurred, 219 Ill. 2d at 500, rather than a request for police intervention to prevent an intoxicated person from driving. There, section 4-102 applied

notwithstanding the plaintiff's argument that the circumstances indicated that "there was no particular need for police assistance," id. at 511, and that what was needed instead was emergency medical assistance, id. at 512. Here, in contrast, it is inarguable from plaintiff's own characterization of his allegations that a police response was requested.

Moreover, DeSmet illustrates that it is irrelevant under section 4-102 whether plaintiff lays the blame for the failure to provide adequate police services on members of the police department or on other local government employees. In DeSmet, as here, the plaintiff alleged that it was the failure of the call-takers to dispatch emergency personnel that led to the failure to assist the decedent. 219 Ill. 2d at 511-13. There, as we note above, this court squarely held that the failure to timely dispatch law enforcement personnel implicates section 4-102, id. at 514, explaining that "these governmental defendants rendered police services to the general public via their dispatch centers. The 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. at 513; see also McLellan v. City of Chicago Heights, 61 F.3d 577, 578 (7th Cir. 1995) ("immunity under section 4-102 attaches to 'police services,' not police departments"). Thus, where employees provide police services, they are immunized under section 4-102, whatever their position.

Nor is it material under section 4-102 whether defendants had a reasonable justification for failing to dispatch a police response. Plaintiff complains that when he called 9-1-1 asking for police to be sent to "Sax's" convenience store, the dispatcher would not send police unless plaintiff provided an address, even though plaintiff told the dispatcher that local police knew where the store was. Plaintiff Br. 9. Whatever the reason for the dispatcher's failure to send police as requested, section 4-102 precludes liability. Again, DeSmet is instructive. There, this court specifically rejected the argument that section 4-102 does not apply where a failure to respond to a call for emergency assistance "is the consequence of human error rather than any exercise of discretion." 219 Ill. 2d at 512.

It also does not matter if such an error was merely negligent or willful and wanton. This is because, as we have explained, section 4-102 contains no exception for willful and wanton conduct, in contrast to other provisions in the Tort Immunity Act that expressly provide that the immunity conferred does not extend to such misconduct, see, e.g., 745 ILCS 10/2-202, 10/2-207, 10/2-210, 10/3-106, 10/3-108, 10/3-109(c)(2), 10/4-105, 10/5-103(b), 10/5-106, and other statutes with their own immunity provisions, some containing similar exceptions for willful and wanton conduct see, e.g., 750 ILCS 60/305. Section 4-102 and other unqualified immunities also stand in contrast to section 15.1 of the ETS Act, which plaintiff urges should apply here instead of 4-102; section 15.1 states that it does not apply to "gross negligence,

recklessness, or intentional misconduct." 50 ILCS 750/15.1. Sections of the Tort Immunity Act, such as section 4-102, that contain no such exception bar claims for willful and wanton conduct as well as negligence claims. E.g., DeSmet, 219 Ill. 2d at 514; In re Chicago Flood Litigation, 176 Ill. 2d 179, 196 (1997). And, as we now explain, the fact that section 15.1 could also apply to this case (because the alleged failure to provide police protection services arose from a 9-1-1 call-taker's conduct) does not mean that section 15.1's more limited immunity controls over section 4-102.

B. Section 15.1 Of The ETS Act Does Not Supplant Section 4-102's Immunity.

Plaintiff argues that because he alleges a failure to dispatch police in response to his second 9-1-1 call, section 15.1 should govern, e.g., Plaintiff Br. 12, and under that provision, defendants are not immune if plaintiff can show "gross negligence, recklessness, or intentional misconduct," 50 ILCS 750/15.1. But imposing this limitation on the immunity afforded to a local government for the failure to provide adequate police services or prevent a crime, wherever such an alleged failure also involves the governmental defendant's response to a 9-1-1 call, would carve out a substantial and unwarranted exception to section 4-102.

For purposes of this brief, we do not dispute that section 15.1 of the ETS Act may reach claims alleging an improper response to 9-1-1 calls and provide the applicable immunity in the absence of another applicable immunity, such as section 4-102. But here, as we have explained, section 4-

102 applies by its plain terms, and it contains no exception for willful and wanton conduct. Statutory immunities without such an exception are absolute and must be applied as written. E.g., DeSmet, 219 Ill. 2d at 514; CDG Enterprises, Inc., 196 Ill. 2d at 490-94. The fact that section 15.1 provides a different, limited immunity is no basis to limit section 4-102's application.

1. This court's holding in DeSmet recognizes section 4-102's applicability to a claim involving the failure to dispatch emergency services.

To begin, the notion that section 15.1 takes precedence over section 4-102, when both potentially apply, runs headlong into this court's holding in DeSmet that alleged failures to ensure that emergency calls seeking assistance implicate the "adequacy of police protection services" and are governed by section 4-102. 219 Ill. 2d at 513-14. The court reached this conclusion even though the facts in DeSmet, like this case, implicated section 15.1 as well as section 4-102.

In DeSmet, the witness who initially reported the car crash called the Village of Orion clerk rather than 9-1-1, but the Orion clerk then contacted the Henry County dispatch center to relay the information. 219 Ill. 2d at 501. In turn, the Henry County dispatcher contacted the Moline-East Moline dispatch center, which then contacted the Rock Island County dispatch center. Id. at 501-02. Although this court's opinion does not include this, the plaintiff's brief to this court in DeSmet states that the Village of Orion clerk

contacted Henry County via the 9-1-1 system, DeSmet v. County of Rock Island, No. 100261, Brief of Plaintiff-Appellant Mary L. DeSmet, 2005 WL 4814886, *16, and, furthermore, plaintiff cited the ETS Act as the statute governing the 9-1-1 response systems that received the reports about the accident in that case, id. at *16, *29. Thus, plaintiff's assertion that DeSmet "did not involve an alleged failure of 9-1-1 services created under the ETSA," Plaintiff Br. 23, is incorrect.

To be sure, this court in DeSmet did not explicitly address the ETS Act or the potential applicability of section 15.1. However, that issue was raised in the briefing and this court nevertheless unequivocally held that section 4-102 applied. Although the plaintiff in DeSmet did not explicitly argue that the ETS Act, rather than section 4-102, provided the applicable immunity, defendant Village of Orion raised this issue on its own because some of the cases the plaintiff cited involved the ETS Act. DeSmet v. County of Rock Island, No. 100261, Brief of Village of Orion and Lori Sampson, Defendants-Appellees, 2005 WL 4814889, *13-14. Other defendants likewise distinguished cases involving the ETS Act and in particular section 15.1. Id.; Brief of County of Rock Island, Michael Grchan, and Myrtle DeWitte, Defendants-Appellees, 2005 WL 4814891, *10-*11.

In sum, DeSmet emphatically rejects the notion that section 4-102 does not apply to claims involving the failure to respond to an emergency call. That conclusion governs this case as well.

2. The ETS Act evinces no legislative intent that it should supplant section 4-102's immunity in cases involving both a response to a 9-1-1 call and a failure to provide police protection services.

Additionally, there is no indication that the legislature intended section 15.1 of the ETS Act to displace section 4-102 in cases in which both might apply. As *amicus* ITLA notes, section 4-102 predates section 15.1, which the General Assembly first enacted in 1977, and then twice amended, in 1996 and again in 2015. *Amicus Curiae* Brief of Illinois Trial Lawyers Association, In Support Of Plaintiff-Appellant ("ITLA Br.") 8.[1] ITLA contends that these later amendments indicate that section 15.1 should control over section 4-102 where both apply to the facts of a case, id. at 8-9, but offers no persuasive argument in support.

In fact, the legislature's actions subsequent to the enactment of the ETS Act indicate the opposite. Effective January 1, 1996, the General Assembly amended the Tort Immunity Act to expand the definition of "local public entity" to include "emergency telephone system board." P.A. 89-0403; see 745 ILCS 10/1-206. By this, it is evident that the legislature intended for the provisions of the Tort Immunity Act to apply by their terms to local public entities providing 9-1-1 services.

Furthermore, in the 15 years since DeSmet explicitly held that section 4-102 applied in a case where failures in the operation of emergency telephone systems were also alleged, the legislature has enacted minor amendments to section 15.1 on two occasions, P.A. 99-0006 and P.A. 100-0020, but made no changes indicating that section 15.1 should take precedence in cases where section 4-102 applies. Because the legislature, in amending a statute, is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge, it is also presumed that the legislature acquiesces in the judiciary's interpretation unless it indicates otherwise. E.g., Morris v. William L. Dawson Nursing Center, Inc., 187 Ill. 2d 494, 499 (1999).

Thus, ITLA, in arguing that section 15.1 controls over the Tort Immunity Act because the current version of section 15.1 post-dates DeSmet, ITLA Br. 8-9, has it exactly backwards. ITLA notes that section 15.1, although it was twice amended since DeSmet was decided, is silent on the question whether that provision should control over section 4-102 in a case where both provisions apply, id., but this undermines rather than supports plaintiff's position here. Given the clear holding of DeSmet that section 4-102 applied to the facts of that case, which also involved alleged failures in the

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[1] ITLA states that section 4-102 "was enacted in 1986 and has never been amended." ITLA Br. 8. It is true that section 4-102 has existed in its current form since 1986, but in fact, it was included as part of the Tort Immunity Act as originally enacted in 1965, then amended in 1986 to add language stating that the immunity is not waived by contracting with a private security

operation of emergency telephone systems, the fact that the legislature did not, when amending section 15.1, indicate that section 4-102's absolute immunity gives way to section 15.1 in such cases where both apply signals acceptance of this court's holding in DeSmet.

Plaintiff also implies that the relative recency of the 2017 amendment to the ETS Act means that section 15.1 should be the controlling immunity, relying on the ETS Act's statement of purpose, Plaintiff Br. 12, but this effort is badly misguided. As plaintiff notes, section 1 of the ETS Act states that its purpose is to establish 9-1-1 "'as the primary emergency telephone number for use in this State and to encourage units of local government . . . to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number '9-1-1' seeking police, fire, medical, rescue, and other emergency services.'" Id. (quoting 50 ILCS 750/1). This statement of purpose was part of the original version of the ETS Act enacted in 1975, see P.A. 79-1092, § 1, eff. Sept. 25, 1975, and has remained unchanged through subsequent amendments of the ETS Act, see P.A. 85-0978, § 4, eff. Dec. 16, 1987; P.A. 100-0020, § 15, eff. July 1, 2017. Thus, plaintiff's statement that the legislature "enacted [this] statement of purpose and intention" on "July 1, 2017," Plaintiff Br. 12, is inaccurate. The General Assembly did not adopt this statement of purpose mere "months" before the incident at issue in this

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service. See P.A. 84-1431, Art. 1, § 2, eff. Nov. 25, 1986.

case, as plaintiff contends, id., but decades earlier, pre-dating by far this court's decision in DeSmet.

But even more misleading is plaintiff's reliance on language he claims is part of the ETS Act's statement of purpose, but is actually from a different, and entirely inapplicable, section of the ETS Act. In a passage from section 1, plaintiff also includes the following sentence, which he highlights in bold: "The General Assembly finds and declares that the most critical aspect of the design of any system is the procedure established for handling a telephone request for emergency services." Plaintiff Br. 12. That language is not from section 1 of the ETS Act, but from section 6, titled "Capabilities of system; pay telephones," 50 ILCS 750/6, which is expressly concerned with the technical design of pay telephones to ensure that they have the capability to be used to dial 9-1-1 to access emergency services, id. That section does not address potential liability for dispatchers' handling of 9-1-1 calls at all, and it certainly has no bearing on section 4-102's applicability to cases that also implicate the ETS Act.

Nor does section 15.1's statement that liability for emergency instructions provided through a system established by the ETS Act is governed by the Good Samaritan Act, 50 ILCS 750/15.1(b), mean that the General Assembly intended for section 15.1 to control over every other immunity that could also apply to claims involving the operation of

emergency telephone services.[2] ITLA contends that the legislature could have similarly stated in the text of section 15.1 that section 4-102 governs liability for the failure to provide police protection services, had it intended for section 4-102 to control over section 15.1 where both apply. ITLA Br. 5. This argument ignores that the Good Samaritan Act's provision of immunity for emergency operators' instructions specifically refers to the ETS Act itself. 745 ILCS 49/5. This demonstrates that the General Assembly explicitly considered the interaction of the immunities in these two statutes; thus, it only makes sense that the ETS Act likewise refers back to the Good Samaritan Act.[3]

Section 4-102, unlike the Good Samaritan Act, contains no reference to the ETS Act. Accordingly, the fact that the ETS Act does not explicitly "defer

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[2] The applicable provision of the Good Samaritan Act provides: "No person who gives emergency instructions through a system established under the Emergency Telephone System Act to persons rendering services in an emergency at another location, nor any person following the instruction in rendering the services, shall by liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful or wanton misconduct." 745 ILCS 49/5.

[3] In fact, P.A. 89-0607 constituted a codification, in a single section, of Good Samaritan immunity provisions that had been scattered throughout various Illinois statutes involving a variety of subjects, 745 ILCS 49/2, including emergency dental care, see id. 49/15, emergency care provided by physical therapists, see id. 49/45, emergency care provided to humans by veterinarians, see id. 49/60, emergency care provided by law enforcement officers or firefighters, see id. 49/70, and emergency instructions through an emergency telephone system, see id. 49/5. Thus, P.A. 89-0607 effected no substantive change to the immunity in section 15.1. The reference in section 15.1 to the Good Samaritan Act is merely an editorial note reflecting the relocation of that immunity provision into the Good Samaritan Act.

to" section 4-102 of the Tort Immunity Act, as it does to the Good Samaritan Act, ITLA Br. 5, has no bearing on whether section 4-102 (or any other applicable immunity not specifically mentioned in the ETS Act) applies, according to its plain terms, when a case also involves the provision of 9-1-1 services. The legislature's failure to mention any other immunities aside from the Good Samaritan Act does not demonstrate legislative intent for section 15.1 to apply counter to and/or irrespective of every other immunity that might also apply by its terms to the facts of a particular case.

ITLA is also incorrect that section 15.1 of the ETS Act controls because it is "more specific" in its application than section 4-102. ITLA Br. 9-10. For one thing, as this court explained in Harris v. Thompson, 2012 IL 112525, the question whether one applicable immunity is "more specific" than another is not always an appropriate inquiry, id. ¶¶ 24-25.

In Harris, where the plaintiffs were injured when their vehicle was struck by an ambulance responding to an emergency call, 2012 IL 112525, ¶¶ 3-5, this court considered whether the ambulance driver's liability was governed by section 5-106 of the Tort Immunity Act, which provides immunity for the negligent operation of a motor vehicle when responding to an emergency call, id. ¶ 18 (citing 745 ILCS 10/5-106), or by provisions of the Illinois Vehicle Code that "impose a duty on emergency vehicles to refrain from negligence," id. ¶ 22 (citing 625 ILCS 5/11-205, 5/11-907(b)). Although plaintiffs argued that the Vehicle Code provisions were "more specific," the

court found it unnecessary to compare the relative specificity of those provisions and section 5-106 of the Tort Immunity Act. Id. ¶¶ 24-25. As the court noted, the Vehicle Code applies to both public and private employees who operate emergency vehicles, while section 5-106 applies only to public employees, to whom the legislature had elected to grant immunity from negligence. Id. ¶ 25. Thus, the court concluded that the duties specified in the Vehicle Code did not abrogate the immunity provided to public employees in the Tort Immunity Act.

Similarly, here, section 15.1 applies to a wider range of entities than does section 4-102. Whereas section 15.1 provides its immunity for negligence to any public entity providing emergency telephone services, whether a unit of state or local government, 50 ILCS 750/15.1, section 4-102, like the rest of the Tort Immunity Act, applies only to local public entities and their employees, 745 ILCS 10/4-102.[4] Accordingly, as in Harris, the statutes "are not in conflict" but rather "each address[es] different actors under different circumstances," 2012 IL 112525, ¶ 24 (internal quotation omitted), obviating the need to compare the statutes' relative specificity.

[4] Section 15.1 may also reasonably be construed to apply to private as well as public entities, given its provision of immunity for "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 system telephone board, or unit of local government assuming the duties of an emergency system telephone board, or carrier, or its officers, employees, assigns or agents[.]" 50 ILCS 750/15.1 (emphasis added). The ETS Act defines "carrier" to include telecommunications and wireless carriers, id. 750/2, which are private entities.

In any event, in this case, the "more specific" inquiry would favor application of section 4-102. ITLA asserts that section 15.1 addresses "a very specific set of conduct – gross negligence, recklessness, or intentional misconduct in the realm of dispatcher conduct." ITLA Br. 12. This narrow characterization is flatly wrong. Section 15.1's immunity for "any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 services," 50 ILCS 750/15.1, covers a far broader array of activities than dispatcher conduct. As the appellate court recognized in this case, the ETS Act was designed, at least in part, "to ensure the infrastructure is in place to provide 9-1-1 services to all of Illinois." 2020 IL App (5th) 190256, ¶ 17. Although plaintiff and ITLA take issue with the appellate court's view that "it is reasonable to interpret section 15.1 of the statute to provide an immunity for failures within that infrastructure and technology itself," and not to dispatcher conduct, id.; see Plaintiff Br. 21-22; ITLA Br. 14-15, they do not seriously contend that section 15.1 applies only to dispatcher conduct and not to other aspects of providing 9-1-1 services.[5]

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[5] Both plaintiff and ITLA characterize the appellate court's decision as holding that section 15.1 does not apply to dispatcher conduct, but only to failures of infrastructure and technology. See Plaintiff Br. 21-22, 25; ITLA Br. 14-15. On de novo review, it is the lower court's judgment, not its reasoning, that is under review, so an incorrect analysis by the appellate court is not a basis to reverse. Harlin v. Sears Roebuck & Co., 369 Ill. App. 3d 27, 31-32 (1st Dist. 2006). But in any event, plaintiff and ITLA mischaracterize the decision below, which did not rely on excluding dispatcher conduct from the scope of section 15.1. Rather, the court merely stated that it was "not convinced" that section 15.1 covered dispatcher

The contention that section 15.1 is the more specifically-applicable immunity also ignores the breadth of services encompassed by the ETS Act, which provides for use of a single telephone number to request "police, firefighting, and emergency medical and ambulance services." 50 ILCS 750/4. Systems established pursuant to the ETS Act may also "include other emergency services," and "may incorporate private ambulance services." Id.

The scope of services under the ETS Act is thus at least as broad as, if not broader than, the police services encompassed by section 4-102, which lists a number of specific functions of police 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. And here, as we have explained, the essence of plaintiff's claim is that defendants failed to send police to apprehend Schultz or otherwise intervene to prevent her from driving while intoxicated. Given the clean alignment between this claim and section 4-102's immunity for the failure to provide adequate police services, if either of the two immunities at issue is more specifically addressed to this case, it is section 4-102 rather than section 15.1, which governs a vast array of activities in connection with the establishment and administration of an emergency telephone system.

In sum, there is no indication that the General Assembly intended for

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conduct, and that it believed it was "reasonable" to interpret the statute in a more limited fashion. Schultz, 2020 IL App (5th) 190256, ¶ 17. The court went on to hold that, assuming section 15.1 applied to this case, it did not

section 15.1 to preclude the applicability of other statutory immunities. Absent such legislative intent, this court should afford section 4-102 the full effect of its immunity as written. "Where the language of a statutory provision is clear, a court must give it effect." West v. Kirkham, 147 Ill. 2d 1, 6 (1992). Applying section 15.1 in circumstances where, as here, section 4-102 applies by its plain terms, would amount to assuming the implied repeal of section 4-102 in any case where a request for services was made by calling 9-1-1, a result unsupported by the text of section 15.1, legislative history, or substantive enactments. There is no basis to carve out such a limitation on section 4-102, particularly in a case such as this, which is a quintessential example of a case alleging the failure to provide adequate police services.

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supersede section 4-102's immunity. Id.

CONCLUSION

For the foregoing reasons, this court should affirm the judgment of the appellate court.

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 containing 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, and the certificate of service, is 24 pages.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief of the City of Chicago and the Illinois Municipal League as *Amici Curiae* in Support of Defendants-Appellees was served on all counsel of record via *File & Serve Illinois* on August 12, 2021.

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