COMMONWEALTH OF KENTUCKY
FLOYD CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 24-CI-00332

FILED ELECTRONICALLY

MELISSA SAMONS as Administratrix of the Estate of AMBER NICOLE SPRADLIN — PLAINTIFF

and

KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY — INTERVENING PLAINTIFF

VS. **PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

CITY OF PRESTONSBURG; PRESTONSBURG POLICE DEPARTMENT; RANDY WOODS in his Individual Capacity and Official Capacity as former Chief of Prestonsburg Police Department; FLOYD COUNTY FISCAL COURT; LES STAPLETON in his Individual Capacity and Official Capacity as former Mayor of Prestonsburg; ROBBIE WILLIAMS in his Individual Capacity and Official Capacity as County Judge Executive; MARK D. CRIDER in his Individual Capacity and his Official Capacity as a Magistrate of Floyd County Fiscal Court; GEORGE OUSLEY in his Individual Capacity as a Magistrate of the Floyd County Fiscal Court; MICHAEL K. MCKINNEY, II Individually and as Owner of THE SEASONS INN AND RESTAURANT; MICHAEL MCKINNEY, III; ROY KIDD; CHRIS MCKINNEY, Individually and d/b/a THE SEASON INN MOTEL AND RESTAURANT; THE SEASONS INN MOTEL AND RESTAURANT; and UNKNOWN DEFENDANTS — DEFENDANTS

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Comes the Plaintiff, Melissa Samons as Administratrix of the Estate of Amber Nicole Spradlin, by counsel, and, for her Supplemental Response to the Motions for

Summary Judgment filed by the County Defendants[1] and the City Defendants[2] hereby states as follows:

I. INTRODUCTION

Plaintiff in this matter has at every turn through the course of this litigation obstacles and frustration experienced as a result of the City and County Defendants strategy of refusing to comply with the rules of discovery, orders from the court, and tactics intended only to limit the amount of discovery available for her use to respond to the immunity defenses that have been raised. Despite that limited discovery, and despite being completely stonewalled in her efforts to depose the named County Defendants, the evidence which has thus far been discovery continue to demonstrate that material issues of fact exist which preclude a determination on immunity as a matter of law. As will be demonstrated below, the City and County Defendants created additional ministerial duties for themselves when the decision was made to transfer the 911 dispatch services away from the Kentucky State Police, and to the Prestonsburg 911 dispatch center. These ministerial duties are in addition to the preexisting statutory duties which are also ministerial. The ministerial duties created by the City and County Defendants are: (1) to have policies in place to ensure that the 911 dispatch center did not create a dangerous condition; (2) that the policies in place actually operated to prevent the creation of a dangerous condition; and (3) that the policies that we're put in place are enforced when

[1] Defendants Robbie Williams in his official and individual capacity as Floyd County Judge Executive; George Ousley in his official and individual capacity as Fiscal Court Magistrate; Mark Crider in his official and individual capacity as Floyd Fiscal Court Magistrate.

[2] Defendants City of Prestonsburg; the Prestonsburg Police Department; Randy Woods in his official capacity as former chief of police of the Prestonsburg Police Department; and Les Stapleton in his official capacity as former Mayor of the City of Prestonsburg.

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the City and County Defendants are on notice of a dangerous condition created by a violation(s) of those policies.

As will be demonstrated herein, the City and County Defendants not only breached their statutory duties, but in addition breached their newly created ministerial as well. As was demonstrated through the limited testimony Plaintiff has thus far been able to elicit, neither the City Defendants nor the County Defendants engaged in any of the planning or analysis necessary to determine what policies and procedures were needed to prevent the creation of a dangerous condition. Indeed, not only did the Defendants not do any planning or analysis, but they also had actual and advance knowledge that in order to prevent the creation of a dangerous condition the Floyd County Sheriff's Office would need to hire additional deputies in order to cover the gap in law enforcement coverage created as a result of the transfer. Despite that foreknowledge, the City and County Defendants entered into the Interlocal Agreement knowing that it would place the residents of Floyd County in danger. The City and County Defendants were confronted with their failure to abide by their numerous ministerial duties on June 18, 2023, when Amber Spradlin was brutally murdered at a Floyd County residence that did not have access to a law enforcement response as direct result of the City and County Defendants decision to transfer 911 dispatch services.

These gaps in law enforcement coverage were entirely preventable, and indeed in July of 2023, following the political pressure created by Amber's death and the Floyd County community's search for truth, the County Defendants provided the Floyd County Sheriff's Office with an additional $400,000.00 for the purpose of hiring additional Sheriff's Deputies. These additional funds filled the gap in law enforcement created by the transfer of 911 services and should have been provided from the outset. The City and

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County Defendants knew that these additional deputies were necessary at the time the interlocal agreement was voted upon, and despite that knowledge, continued down their chartered course with total disregard for the safety of the residents of Floyd County.

For these reasons, and those enumerated below, the City and County Defendants are not entitled to immunity and cannot continue to use that claimed immunity to avoid participation in these proceedings. As such, Plaintiff respectfully requests that this Court deny both the City and County Defendants Motions for Summary Judgement.

II. FACTS AND PROCEDURAL BACKGROUND

Amber Spradlin was murdered at the home of Defendant Michael McKinney, II ("Defendant Dr. McKinney") during the early morning of June 18, 2023. Defendant Dr. McKinney's home is located in Floyd County outside the Prestonsburg city limits. Present at the home at the time Amber was murdered were Defendant Dr. McKinney, Defendant MK, Roy Kidd, Joshua Mullins, and Joshua Mullins' girlfriend. A 911 call was placed by Defendant MK at 5:52 A.M.[3] No law enforcement or first responders were sent to Defendant Dr. McKinney's home in response to that call. A second 911 call was placed a few hours later reporting that Amber was found dead on Defendant Dr. McKinney's couch.[4]

As will be demonstrated herein, the limited discovery which has been performed thus far with respect to the City Defendants demonstrates that:

1) the interlocal agreement entered into by the City of Prestonsburg and the Floyd County Fiscal Court memorialized several additional ministerial duties which were breached in addition the preexisting ministerial duties held the City Defendants;

[3] PRESTONSBURG 0001, attached hereto as **Exhibit 1**.
[4] PRESTONSBURG 0004-0005, attached hereto as **Exhibit 2**.

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2) There were zero written policies and procedures in place for when a call for service should be responded to;

3) based on the testimony of numerous current and former employees of the City Defendants and the corporate representative of the City of Prestonsburg, an emergency response should unequivocally have been sent to the Arkansas Creek Road residence upon receipt of the first call for service on the morning of Amber Spradlin's murder;

4) the City of Prestonsburg and the Prestonsburg Police Department knew that the citizens of Floyd County who resided outside of the Prestonsburg city limits would not have access to a law enforcement response through the Prestonsburg 911 dispatch center between the hours of approximately 12:00 AM and 7:00 AM when dispatch services were transferred in January of 2023; and

5) the violation of ministerial duties held prior to the transfer, during the transfer, and following the transfer, including those memorialized in the interlocal agreement, resulted in the dispatcher taking a call for law enforcement response and having zero discretion to dispatch a response because the City Defendants' breaches ensured that there were no law enforcement resources to dispatch.

Regarding the County Defendant, the limited discovery thus far demonstrates the following:

1) they knew at the time the interlocal agreement was entered into that the citizens of Floyd County residing outside of the Prestonsburg city limits would not have access to a law enforcement response through the Prestonsburg 911 dispatch center between the hours of approximately 12:00 AM and 7:00 AM;

2) their failure to provide Floyd County residents access to law enforcement between the hours of approximately 12:00 AM and 7:00 AM represented a breach of the Fiscal Court and the County Defendants' statutory duties as outlined by the state legislature; and

3) the County Defendants' were able to provide the Floyd County Sheriff's Office (hereinafter "FCSO") with an additional ~$400,000.00 (the month after the murder of Amber Spradlin) which was explicitly provided to the FCSO for the hiring of additional Sheriff's deputies so that there would be law enforcement coverage outside of the Prestonsburg city limits at all times. Thus, the County Defendants should have allocated those funds prior the transfer of 911 services in January of 2023.

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A. In January 2023, the City and County entered into the Interlocal Agreement changing the 911 system in Floyd County.

The 911 call made from Defendant Dr. McKinney's house was handled differently than if that same call had been made a year prior. A brief background is necessary to explain how 911 calls made from inside Floyd County (but outside Prestonsburg city limits) changed in the months before Amber's murder.

1. Pre-January 2023, 911 calls from the City went through the Prestonsburg Dispatch Center and 911 calls from the County went through the KSP Post 9 Dispatch Center.

There are two law enforcement agencies with jurisdiction in the unincorporated areas of Floyd County, the KSP and the FCSO.[5] In 2022, if a citizen of Floyd County residing outside of Prestonsburg city limits placed a call for emergency services using 911, their call was routed to the Kentucky State Police (hereinafter "KSP") dispatch center at Kentucky State Police Post 9.[6] The KSP dispatch center would then alert local fire and EMS for situations requiring first responders. For 911 calls requiring law enforcement, KSP Post 9 troopers would respond or the Floyd County Sheriff's office would be alerted. The primary law enforcement agency policing in Floyd County was KSP, because the FCSO **did not have the resources to respond to calls for emergency**.[7] The Post 9 dispatch center was also equipped and designed so that the Post 9 dispatcher could directly communicate with on-duty troopers, which the Prestonsburg 911 center cannot do.[8] Further, the contract for dispatch services ensured that the KSP would always be the primary law enforcement agency for the unincorporated areas of Floyd County as the calls

[5] Deposition of Ross Shurtleff at p. 57, l. 11-18, attached hereto in its entirety as **Exhibit 3.**
[6] This service was provided to Floyd County residents through a contract for service between the Floyd County Fiscal Court and the Kentucky State Police.
[7] Deposition of Sheriff John Hunt at p. 26, l. 2-16, attached hereto as **Exhibit 4.**
[8] Affidavit of Keith Bartley at ¶ 9, attached hereto as **Exhibit 5.**

were dispatched by the KSP themselves and did not have to go through a middleman. This enabled the KSP to directly dispatch a law enforcement response.

During that same time, a 911 call made from inside Prestonsburg city limits was routed to the Prestonsburg Dispatch Center.[9] From there, the Prestonsburg Fire Department, Prestonsburg EMS, and/or Prestonsburg Police Department would be alerted. The Prestonsburg dispatch center was operated exclusively for the residents of Prestonsburg.

2. KSP informed the County that the price of the dispatch services would be increasing so the County made plans to transfer its dispatch services from KSP Post 9 Dispatch Center to the Prestonsburg Dispatch Center (the Interlocal Agreement).

In August of 2022, the KSP notified Floyd County officials that the cost of those dispatch services would be increasing by $100,000.00 at the start of the new year 2023.[10] The County Defendants determined that rather than pay the new increased KSP rate, the county would instead enter into an agreement with the City of Prestonsburg to transfer the 911 dispatch services, previously provided to county residents through Post 9, to the preexisting and already operational dispatch center operated by the City of Prestonsburg.[11] This transfer, on paper, would result in cost savings for the county, additional income for the city, and was intended to ensure that all of Floyd County residents still had adequate access to emergency services.[12] The reality was that the implementation of the 911 dispatch transfer was done with the knowledge that it would

[9] Depoistion of Ross Shurtleff at p. 14, l. 4-25 (**Ex. 3**).
[10] DEF CITY PBURG 0305-0313, attached hereto as **Exhibit 6.**
[11] DEF CITY PBURG 0306-0307 (**Ex. 6**).
[12] *Id.*

be depriving residents of the county from having access to a law enforcement response through 911.

3. The City Defendants and County Defendants were aware this transfer would leave Floyd County residents in danger.

The City Defendants and County Defendants knew that the citizens of Floyd County residing outside of the Prestonsburg city limits would not have access to a law enforcement response when placing a call to 911 after the transfer. They knew that there would not be law enforcement resources available to respond to emergent situations outside of Prestonsburg city limits between 12:00 AM and 7:00 AM every day.[13] The Interlocal Agreement entered into by the City and County Defendants in this matter was voted for and executed by the Floyd County Fiscal Court at the December 21, 2022, Fiscal Court Meeting. At that meeting, the County Attorney for Floyd County, Mr. Keith Bartley, gave public comment regarding the decision to vote for the interlocal agreement.[14] Mr. Bartley's comments, in hindsight, are profoundly prescient. Over the course of Mr. Bartley's public comment regarding the interlocal agreement, he states in relevant part: "In my opinion, **the proposed changes will endanger people's lives**"[15]; "**It will cost people there lives**"[16]; "It will **far exceed what the new cost with KSP will be**"[17]; "We will **lose money while simultaneously endangering the lives of people**"[18]; "As a constituent, I would ask you not to endanger all of our lives, **because it will come back to bite you**"[19]; and "Can Prestonsburg and the Sheriff's Office service

[13] Affidavit of Keith Bartley at ¶ 14 (**Ex. 5**).
[14] 12/21/22 Video Recording of Fiscal Court Meeting, attached hereto as **Exhibit 7.**
[15] **Exhibit 7** at 00:07:04-00:07:08.
[16] **Exhibit 7** at 00:07:09-00:07:12.
[17] **Exhibit 7** at 00:13:30-00:13:40.
[18] **Exhibit 7** at 00:14:20-00:14:27.
[19] **Exhibit 7** at 00:17:00-00:17:08.

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Floyd County? Sure, **but to do so they are going to need to hire several new police officers**."[20]

As it turns out, a different interlocal agreement (hereinafter "ILA SO") was drafted to be entered **between the City of Prestonsburg and the FCSO and Sheriff John P. Hunt**.[21] The ILA SO would, if executed, have provided the Sheriff's office with full-time dispatching services through the Prestonsburg dispatch center.[22] Of significant importance to the Plaintiff and her present claims is paragraph seven of the ILA SO which reads:

> That Prestonsburg understands that **Sheriff is not currently staffed to act as the sole primary law enforcement agency of Floyd County and does not expect or anticipate that Sheriff will modify its current patrol operation protocol unless it incurs additional resources** that enables such action, rather create a direct line of communication with Sheriff as the dispatch point for Sheriff, enabling Prestonsburg's PSAP to be aware of available Sheriff resources and to direct those resources as needed.[23]

The ILA SO and Interlocal Agreement were both principally drafted by Ross Shurtleff who, at the time, was serving as Superintendent of Public Safety.[24] Shurtleff was recently deposed and was asked why the FCSO were not originally involved in the 911 consolidation, he stated:

> Q. So when the transfer that we talked about in this case occurred on January 28, 2023, **did the City of Prestonsburg then have the dispatch obligations for the sheriff's department?**
> A. **We did not.** They're an independent entity. They did not come on board until August, I believe.
> Q. Of what year?
> A. 2023
> Q. And then you did have – then you did undertake the dispatch for the sheriff's department?

[20] **Exhibit 7** at 00:23:15-00:23:27.
[21] ILA SO, attached hereto as **Exhibit 8.**
[22] *Id.* at ¶ 1.
[23] *Id.* at ¶ 7.
[24] Affidavit of Keith Bartley ¶ 5. (**Ex. 5**).

A. That is correct.
Q. **Why was that not all part of one deal?**
A. **You would have to ask Judge Williams, yes.** [25]

The undersigned has not yet been able to ask Defendant Williams why the FCSO was not initially involved, because the County Defendants continue to ignore this Court's Order requiring their participation in discovery.

Defendant Williams' conduct in these proceedings is particularly egregious, going so far as to be present during the depositions of numerous fact witnesses – including on the date he was previously subpoenaed to appear for deposition.[26] This conduct is contradictory to the immunity Defendant Williams continues to use to justify his non-participation in the litigation. As he has continued to assert, his political position as county judge executive precludes him from suffering the burden that his participation in this litigation would have on his ability to adequately represent the interests of his constituents. It is unclear, however, how his constituents are best served through his presence during depositions which in some cases last entire days. Were the immunity he claims anything more than a procedural ploy to delay his inevitable participation in discovery; his conduct would be hard to rationalize as acting in the interest of his constituents. Rather, it seems listening to the testimony of fact witnesses for the purposes of preparing for his own eventual deposition, or potentially in hopes that his presence has the effect of intimidating those fact witnesses trump his duties as the elected county judge executive of Floyd County.

The above testimony from Ross Shurtleff lacks credibility when viewed in the context provided by the Affidavit of Keith Bartley, who avers in paragraphs 6, 7 and 8:

[25] Deposition of Ross Shurtleff at pp. 64-65, l. 21-12 (**Ex 3**).
[26] Deposition of Johnson at pp. 8-9, l. 20-2, attached hereto as **Exhibit 9.**

> 6. During a conversation I had with **Ross Shurtleff in 2022** (prior to the final Interlocal Agreement being approved) about the draft interlocal agreement relating to the Floyd County Sheriff's Office, **he told me that he had taken the draft agreements to the County Judge Executive Robbie Williams for his review and approval.**
>
> 7. **Ross Shurtleff** told me (in the same conversation referenced in paragraph 6) that he **explained to Judge Willams that if the City of Prestonsburg was going to assume 911 dispatch responsibilities from the Kentucky State Police, the Floyd County Sheriff's Office would need to be involved in the interlocal agreements, and the Sheriff's Office would need to be provided with additional resources to fill the gap in law enforcement response that would be created when the 911 dispatch contract with the Kentucky State Police was not renewed.**
>
> 8. Ross Shurtleff told me that **Judge Williams would not approve the draft agreement and that Judge Williams said to him, "I don't want to give (Sheriff) John Hunt any money to fight me with."**[27]

While the ILA SO was not executed, the Interlocal Agreement was, thus needlessly exposing the residents of Floyd County to deadly harm for purely political reasons.

4. On January 23, 2023, the Prestonsburg Dispatch Center took over 911 calls for the County.

Per the Interlocal Agreement drafted and executed for the purpose of facilitating that transfer, starting on January 23, 2023, the Prestonsburg dispatch center assumed dispatch services for the entirety of Floyd County.[28] With that transfer, and the updates to equipment made in preparation for the transfer, the dispatchers at the Prestonsburg 911 Center had greater access and monitoring capacity for the dispatching of fire and EMS services.[29] This was enabled through the consolidation of the remaining Public Safety Answering Points (PSAPs) within the county.[30] This consolidation, however, **only consolidated dispatch services for Floyd County fire and EMS services – not**

[27] Affidavit of Keith Bartley at ¶ 6, 7, and 8 (**Ex. 5**).
[28] DEF CITY PBURG 0308. (**Ex. 6**).
[29] DEF CITY PBURG 0306. (**Ex. 6**).
[30] *Id.*

law enforcement.[31] This initial consolidation did not include the dispatch center operated by the Floyd County Sheriff's Office (hereinafter "FCSO") and would still require cooperation with the KSP Post 9 dispatch center for communicating and dispatching KSP resources.[32] The FCSO dispatch center was only reachable by Floyd County residents through its non-emergency line, and the Prestonsburg 911 dispatch center did not have the ability to locate or communicate directly with on-duty FCSO personnel as it now was able to with fire and EMS.[33] As such, any 911 call placed after the transfer of service that required the dispatch of FCSO personnel would be first routed through the Prestonsburg dispatch center and then relayed to the FCSO dispatch center by the Prestonsburg dispatcher for an actual response to occur.[34] This same procedure was required for the dispatching of KSP troopers through Post 9 as well.[35]

The transfer of the county's 911 dispatch services from KSP to Prestonsburg (which was initiated due to the subpar response provided by the KSP and the increase in price) resulted in even worse response times. Indeed, according to the testimony of former Prestonsburg Police Officer Josh Hinkle, in some instances the KSP response after the transfer occurred was entirely non-existent. Mr. Hinkle's perspective as a former Prestonsburg Police officer who was employed during the transition of 911 is illustrative of the impossibility created by the City and County Defendants' numerous breaches of

[31] Deposition of Ross Shurtleff at p. 64, l. 21-25 (**Ex. 3**).
[32] Deposition of Johnny Johnson at p. 16, l. 7-12, attached hereto as **Exhibit 10.**
[33] Deposition of John Hunt at p. 16, l. 4-6, attached hereto as **Exhibit 11.**
[34] The FCSO dispatch center would eventually be consolidated with the Prestonsburg 911 dispatch center in **July of 2023**, eliminating the need for Prestonsburg 911 dispatch center to continue to operate as a go-between for the FCSO. Prestonsburg 911 dispatch still does not have the capability of directly dispatching KSP resources, and continues to function as a go-between.
[35] Deposition of Johnny Johnson at p. 16, l. 7-12 (**Ex. 10**).

their ministerial duties. For example, when asked about any changes in the relationship between the KSP and local Floyd County law enforcement agencies Mr. Hinkle stated:

> A. During the – **from the transition time until the time that Floyd County Sheriff's Office in July began dispatching deputies out, KSP refused nearly every call sent to post.** That was one of the things that I kept up with for that purpose due to arguments with KSP was that they would refuse to answer any calls, and their duty sergeants would pull the troopers out of Floyd County as a result of not receiving 911 funding.[36]

When Mr. Hinkle was asked as a follow-up if he recalled specifically when the KSP first began refusing to respond to calls, he stated:

> A. **On the day that Floyd County ECC began dispatching 911**, **KSP refused to answer complaints**, even if it was a bad complaint.[37]

Mr. Hinkle went on to testify about an explosive interaction he had with a KSP sergeant after he contacted Post 9 seeking a trooper response for an overdose involving a KSP troopers' relative experiencing a medical emergency.[38] Mr. Hinkle recounted being told by the Post 9 dispatcher that they had been instructed by a sergeant not to dispatch calls from Floyd County.[39] Mr. Hinkle was able to get the sergeant who had issued that order on the phone, that conversations however which ended in insults being thrown and no resolution being achieved.[40] When asked if he had reported that incident, Mr. Hinkle stated:

> A. **Yes, I did** with the 911 call center and **had them log it** per our conversation that Sergeant Jeremy Giles with the Kentucky State Police **instructed KSP not to dispatch any calls within Floyd County per his authority**.[41]

[36] Deposition of Josh Hinkle at p. 14, l. 3-11, attached in its entirety as **Exhibit 12** (emphasis added).
[37] *Id.* at p. 14, l. 16-18 (emphasis added).
[38] *Id.* at p. 14, l. 18-24.
[39] *Id.*
[40] *Id.* at p. 14-15, l. 25-3.
[41] *Id.* at p. 17, l. 5-9 (emphasis added).

Mr. Hinkle was then asked if the KSP refusal to respond to calls in January of 2023 was related to the transfer of dispatch services, he stated:

> A. It was primarily that. Sergeant Giles told me on the phone that morning between curse words that **we wanted 911. It was our problem now. Deal with it.**[42]

Mr. Hinkle was asked if the Prestonsburg Police Department had to step in to fill the gap in coverage created by the KSP's refusal to respond to calls in out in the county. He recounted that there were some attempts made, but that their guidance was inconsistent and when they were instructed to respond to calls, it was based on what appeared to be arbitrary basis.

> Q. So **how did you-all get instructions from Mr. Shurtleff on whether – as to whether you were answering calls or not answering calls in the county** at the time?
> A. Prior to that, he had a easel brought in with a map of Floyd County. Detective Hutchinson and Detective Harold Bingham were present, and **he had them take a black sharpie and draw a line around the City of Prestonsburg.** He took it in to dispatch in front of Mr. Johnson and dispatcher Jennifer Tussey and **stated that this is the line around the City of Prestonsburg. And it was just a little bit further, not exactly, on the city limits.**
> A. And he said we can dispatch outside of that up to a couple of miles, but that's as far as we're going. And he said – and I will quote this, "**I don't care if they're getting raped at the four-way intersection of Wheelwright, boys, we ain't going.**" So **that was how far we were dispatching outside the City of Prestonsburg** was within a couple to three miles.[43]

This approach to determining when a call was responded to, and the comment regarding a rape occurring in Wheelwright, were both corroborated by the testimony of former Prestonsburg Police captain Jonathan Pack, who testified:

> A. We were in a meeting, and Mr. Shurtleff saying, **I don't care if they're getting raped at the four-way at Wheelwright, we ain't going**. Or he and – and also drawing a circles on a board saying, well, what if we go here, but we're not going here, well, if a

[42] *Id*. at p. 18, l. 19-22 (emphasis added).
[43] Id. at p. 29, l. 3-18.

> call is in Auxier, we can go to Auxier. We can – you know, we'll go a mile out of the city or we're not going out of the city or you know, just things of that nature.[44]

In sum, the testimony of Josh Hinkle and Jonathan Pack, both former employees of the Prestonsburg Police department, makes clear that once the City Defendants assumed the 911 dispatching responsibilities the KSP no longer considered responding to calls from Floyd County. According to the testimony of Josh Hinkle, KSP were explicitly instructed not to respond to those calls. The steps taken by the Prestonsburg Police to cover that gap were non-existent and did not provide the entirety of the County with coverage.

B. The change in 911 call centers meant the first 911 call the morning of Amber's murder went through the Prestonsburg Dispatch Center.

As mentioned above, on June 18, 2023, after the City Defendants took over the 911 calls for the County but prior to the consolidation of the FCSO dispatch center, a 911 call was placed from the residence of Defendant Dr. McKinney by Defendant MK. Because the house was outside of Prestonsburg city limits, it was within the law enforcement jurisdiction of the FCSO and the KSP, not the Prestonsburg Police Department.[45] During that call, Defendant MK requested assistance with an intoxicated individual (Defendant Roy Kidd) who Defendant MK described as being "belligerent drunk" and had suffered a fall and was now "bleeding profusely."[46] When asked directly by the dispatcher whether this individual required medical attention, Defendant MK replied with an unequivocal "yes."[47] At this point, an emergency response should have been sent, because as testified to by dispatcher Johnson, as soon as a dispatcher is told that medical assistance is needed,

[44] Deposition of Jonathan Pack at p. 33, l. 16-24, attached hereto as **Exhibit 13** (emphasis added).
[45] *Id.* at p. 50, l. 14-19.
[46] 06/18/2023 5:52 AM Arkansas Creek 911 Call recording part 2 at 00:57 and part 3 at 00:07, filed under seal as **Exhibit 14A**.
[47] *Id.* part 2 at 00:57.

nothing that is said on the call after that request should change whether an emergency response is sent.[48]

Following the conclusion of that 5:52 A.M. call, the dispatcher, Johnny Johnson, then contacted his sworn supervisor, Captain Jonathan Pack of the Prestonsburg Police Department.[49] During this subsequent call with Captain Pack, dispatcher Johnson incorrectly relayed information from that call, indicating to Captain Pack that the intoxicated individual was in fact Defendant McKinney, even though Defendant McKinney spoke to dispatcher Johnson at the end of the 5:52 A.M. call.[50] Dispatcher Johnson stated that he didn't "**know what to do**[,]" and that despite their request they couldn't remove him because they "can't kick him out of his own house."[51] Captain Pack then advised dispatcher Johnson that he did not need to do anything further, and because Defendant McKinney had a familial relationship and was in the words of Captain Pack a "big buddy" of then Chief of Prestonsburg Police Department Defendant Randy Woods, that if another call was received form the residence, they would just let Defendant Woods handle it.[52] No further action was taken with respect to that 5:52 A.M. call, and **Dispatcher Johnson made no attempts to notify or relay the information from that call to either the FCSO dispatch center or the KSP Post 9 dispatch center.**[53]

The next 911 call received from the McKinney residence was placed at 10:30 A.M. and again answered by dispatcher Johnson. On this second call, Defendant Dr. McKinney

[48] Deposition of Johnny Johnson at p. 62, l. 16-21, attached hereto as **Exhibit 15**.
[49] 06/18/2023 Dispatch call to Captain Jonathan Pack recording (emphasis added), filed under seal as **Exhibit 16.**
[50] *Id.*
[51] *Id.* at 01:05-01:10.
[52] *Id.* at 01:15-01:20.
[53] PRESTONSBURG 0003 (**Ex. 16**).

stated that Amber Spradlin was dead on his couch from a slit throat.[54] Dispatcher Johnson then contacted the FCSO, the KSP, EMS, as well as the Prestonsburg Police Department (hereinafter "PPD").[55] Defendant Randy Woods and Captain Jonathan Pack responded to that call and met personnel from FCSO, KSP, and EMS at a staging area at the start of Arkansas Creek Road whereafter they all went to the scene together.[56] Despite KSP controlling and investigating the scene, Defendant Woods and Captain Pack traveled to the residence and were present for much of the initial investigation.[57] During that time, Defendant Woods (who had a familial relationship with Defendant McKinney, and who had spoken to Defendant McKinney on the phone for approximately 8 minutes prior to placing the 10:30 A.M. 911 call) made a number of troubling comments including **suggesting that Amber Spradlin had perhaps died from natural causes, or a cocaine overdose**.[58] These comments of course were made after being told by Defendant Dr. McKinney that she had her throat slit.[59] In addition, **Defendant Woods exchanged SMS text messages with Defendant Dr. McKinney and Roy Kidd while at the scene**, and at one point helped himself to a bottle of water out of the McKinney's refrigerator.[60]

[54] 06/18/2023 10:30 AM Arkansas Creek 911 call recording part 1 at 01:05-01:10, filed under seal as **Exhibit 14B.**
[55] PRESTONSBURG 0004-0005 (**Ex. 2**).
[56] Deposition of Randy Woods at p. 100, l. 4-8, attached hereto as **Exhibit 17.**
[57] *Id.*
[58] KYBRIS SUPPLMENTAL REPORT of Kris Hall, filed under seal as **Exhibit 18.**
[59] Deposition of Randy Woods at p. 53, l. 8-12, attached hereto as **Exhibit 19**.
[60] Deposition of Randy Woods at pp. 135, 115; l. 7-13. 9-10, attached hereto as **Exhibit 20**.

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C. The murder of Amber Spradlin created political pressure on the County Defendants and as a result the deficiencies which caused her death were remedied.

Following the brutal murder of Amber Spradlin, and the community outrage that ensued, Defendant Woods resigned from his position as Chief of Police.[61] In July of 2023 the Floyd County Fiscal Court appropriated some $400,000.00 to the FCSO for the hiring of additional Sheriff's deputies to ensure that FCSO had law enforcement resources available for the County.[62] Prior to July of 2023 the FCSO did not have the resources to ensure 24/7 availability, and in fact up until July of 2023, the FCSO did not have deputies on duty between the hours of 12:00 AM and 7:00 AM.[63] In addition to the hiring of additional deputies, the FCSO dispatch center would also be consolidated with the Prestonsburg 911 dispatch center and the dispatchers would from then on be able to directly locate, communicate, and dispatch resources from the FCSO.[64]

To the relief of the family of Amber Spradlin, and the Floyd County community-at-large, indictments were finally issued in relation to her murder on August 4, 2024. Those indictments charged Defendant MK with the murder of Amber Spradlin and multiple counts of tampering with physical evidence, as well as charging Defendant McKinney with multiple counts of tampering with physical evidence. These criminal matters continue to proceed in the Floyd County Circuit Court. Both Defendant Dr. McKinney and Defendant MK continue to maintain their innocence and have insinuated that the individual who committed the murder was Roy Kidd, the intoxicated individual Defendant MK was seeking assistance with dealing with in the 5:52 A.M. 911 call.

[61] *Id.* at p. 124, l. 18-19.
[62] Deposition of John Hunt at p. 33, l. 21-25, attached hereto as **Exhibit 21.**
[63] *Id.* at p. 84, l. 14-16.
[64] Deposition of Johnny Johnson at p. 13, l. 2-12, attached hereto as **Exhibit 22.**

D. Defendants thwart Court ordered discovery regarding immunity

The City and County Defendants have adopted a strategy of delay and frustration with respect to Plaintiff's discovery since this case was first filed. The City and County Defendants have then used the lack of discovery resulting from that strategy as evidence in support of premature and inappropriate dispositive motions. This began with the City Defendants' first dispositive motion, styled as a Motion to Dismiss, but in effect a Motion for Summary Judgment.[65] This Court declined to rule on that motion because of its premature nature. Since that first Motion to dismiss, both the City and County Defendants have filed Motions for Summary Judgment and then attempted to re-notice those same motions, despite the Motions being explicitly set out so that the Plaintiff could engage in the discovery the City and County had thus far denied the Plaintiff.

Just over a month after the City Defendants Motion to Dismiss, the Plaintiff propounded upon the City and County Defendants' notices to take the depositions of their designated corporate representatives pursuant to CR 30.02 on January 28, 2025. The City and County Defendants refused to produce those representatives despite Plaintiff requesting dates for those depositions on at least five occasions, and meeting with counsel for both the City and County Defendants over zoom to try and resolve the issues cooperatively.[66] Despite the efforts of Plaintiff, she was forced to move this Court to intercede, including a Motion to Compel Depositions on March 27, 2025; a second Motion to Compel Depositions, and a Motion to Compel Discovery Responses and for CR 37 Sanctions on September 05, 2025. Plaintiff filed on December 4, 2025, another request for CR 37 sanctions for the County Defendants refusals to appear for depositions.

[65] 6/27/2024 City Defendants Motion to Dismiss, attached hereto as **Exhibit 23.**
[66] 01/28/2025, 02/17/2025, 03/05/2025, 03/13/2025, 10/3/2025 & 10/15/2025 Correspondence requesting dates for depositions attached hereto as **Exhibit 24.**

In response to the Defendants' continued discovery abuses, this Court has been forced to enter two separate Orders on June 12, 2025, and September 24, 2025, ordering the Defendants participation in discovery. Those Orders were successful in eliciting participation in discovery on the part of the City Defendants, but the County Defendants have continued their contumacious behavior.

To be heard contemporaneously herewith, Plaintiff has filed a reply to the County Defendants response to Plaintiff's December 4, 2025, Motion for CR 37 Sanctions. That reply explores the various discovery abuses more in depth and demonstrates that the County Defendants have continually engaged in sanctionable behavior by ignoring the orders of this Court and Plaintiff's numerous attempts to conduct discovery. Also included in that reply is an examination of documents provided to the Plaintiff which were produced pursuant to the Open Records Act. Those documents are responsive to previously propounded discovery requests and have been improperly withheld. Furthermore, those documents all contain evidence which refutes the immunity defenses raised by the City and the County Defendants and serve to further highlight the Defendants inappropriate discovery conduct. Nevertheless, both the City and County Defendants continue to point to a supposed lack of evidence as their basis for the dismissal of the Plaintiff's claims. As will be explored more fully below, however, the limited discovery Plaintiff has been able to conduct thus far is still sufficient to demonstrate that the City and County Defendants' immunity defenses are inapplicable.

III. THE LIMITED DISCOVERY CONTINUES TO DEMONSTRATE SUMMARY JUDGMENT IS IMPROPER

Plaintiff hereby adopts, reincorporates, and reiterates those arguments raised in Plaintiff's initial responses to the Defendants' Motions for Summary Judgment as though raised fully herein.

Due to the procedural posture briefly outlined above, the Plaintiff has not been able to engage in sufficient discovery for this Court to rule on the City Defendants' and County Defendants' renewed motions. For this reason alone, Defendants' motions should be denied. However, the limited discovery that has occurred demonstrates there exist genuine issues of material fact precluding a ruling that the City Defendants and/or County Defendants are entitled to immunity as a matter of law.

A. NEITHER THE CITY OR COUNTY DEFENDANTS ARE ENTITELD TO QUALIFIED IMMUNITY IN THEIR INDIVIDUAL CAPACITY.

The City and County Defendants who have been named in their individual capacity are potentially entitled to qualified official immunity because their actions were ministerial and not discretionary. *Yanero v. Davis* makes clear that government officials and employees do not qualify for official immunity for any negligent ministerial acts. 65 S.W. 3d 510 (Ky. 2001). In fact, qualified immunity only protects an officer when (1) he performed a discretionary duty, (2) in good faith, (3) within the scope of his authority as an employee or officer. *Id.* at 522. Discretionary acts "are those involving quasi-judicial or policy-making decisions." *Marson v. Thomason*, 438 S.W.3d 292, 297 (Ky. 2014). "The distinction between discretionary acts and mandatory acts is essentially the difference between making **higher-level** decisions and giving orders to effectuate those decisions and simply following orders." *Id.* In contract, "an official duty is ministerial when it is

absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts; that a necessity may exist for the ascertainment of those facts does not operate to convert the act into one discretionary in manner." *Gaither v. Justice & Public Safety Cabinet*, 447 S.W.3d 628, 634 (Ky. 2014) (emphasis added). Further, "an act is not necessarily taken out of the class styled 'ministerial' because the officer performing it is vested with a discretion respecting the means or method to be employed." *Id*. In other words, **just because an act may involve discretion with respect to the means or method to be employed, it does not make it discretionary.** *Yanero*, at 522.

Simply labelling a decision "discretionary" is not enough to meet the standard. Kentucky's appellate courts have repeatedly emphasized "[t]hat a necessity may exist for the ascertainment of those facts does not operate to convert that act into one discretionary in nature." *Mucker v. Brown*, 462 S.W.3d 719, 721 (Ky App. 2015) (citing *Yanero* at 522) (quoting *Upchurch v. Clinton County*, 330 S.W.2d 428, 430 (Ky. 1959)).

The best way to understand the Kentucky case law regarding qualified official immunity, and its inapplicability to the City or County Defendants in the present case, is by way of analogy. Under Kentucky Law, a governmental entity's decision to erect a building is one of discretion and would be found to be a discretionary act under Kentucky law. The governmental entity creating and instituting a building code that ensures that buildings are built in a manner that does not create a foreseeable risk of harm is a ministerial act. If once a decision to build a building has been made, and the governmental entity drafts construction plans for the building, ensuring that the building plans have footers placed in accordance with that building code is ministerial. If the governmental entity exercised discretion and decided to build a building, and it drafted construction

plans for the building with the footers in accordance with the building code, but the footers were nevertheless poured in the incorrect location, if the governmental entity had notice that they were poured incorrectly – remedying the dangerous condition created by those faulty footers is ministerial.

As such. (1) ensuring policies are created and/or in effect to ensure buildings are built in a structurally safe manner and do not create a dangerous condition is a ministerial duty; (2) ensuring that those policies are drafted such that the buildings built in accordance with the policies do not create a dangerous condition is a ministerial duty; and (3) if the entity and it's officials are on notice that a building is in violation of those policies and therefore create a dangerous condition, enforcing those policies to remedy the dangerous condition is a ministerial duty. Herein, the individual capacity City and County Defendants' decision to transfer 911 dispatch services was discretionary. However, the City and County Defendant's decision created ministerial duties which they subsequently breached. That decision, however, created the following ministerial duties for the City and County Defendants: (1) to have policies in place to ensure that the 911 dispatch center did not create a dangerous condition; (2) that the policies in place actually operated to prevent the creation of a dangerous condition; and (3) that the policies that we're put in place are enforced when the City and County Defendants are on notice of a dangerous condition created by a violation(s) of those policies.

Furthermore, and as will be detailed more fully *infra*, the City and County Defendants' contention that they are entitled to qualified official immunity is premised entirely upon affidavits which lack such credibility to warrant this Court not considering their contents. Even were those affidavits credible, they would still not be sufficient to prove their conduct was discretionary. For the City and County Defendants to be

protected by qualified official immunity under the holding in *Yanero*, the individual capacity City and County Defendants must demonstrate that they were exercising a discretionary duty, in good-faith, and within their scope of employment. As discussed above, the decision to transfer 911 was discretionary, but nevertheless created several ministerial duties which the City and County subsequently breached. Further, it is uncontroverted that the individual City and County Defendants were acting within their scope of employment. As such, this Court should find that the individual capacity City or County Defendants are not entitled to official qualified immunity and deny their Motion for Summary Judgment.

B. THE CITY DEFENDANTS ARE NOT ENTITLED TO IMMUNITY.

The City Defendants assert that their claimed immunity are derived from the Claims Against Local Government Acts (hereinafter "CALGA") and qualified official immunity for the individual City Defendants in their official capacity.

1. The City Defendants are not entitled to immunity under CALGA because the operation of utility systems, like 911 call centers, is ministerial, is not judicial, and is not legislative.

Immunity under CALGA is not limitless. It only applies to the exercise of judicial and legislative authority and it explicitly does not "exempt a local government from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial duties." KRS 65.2003. CALGA's application to municipalities and their municipal departments was recently implicated by the Kentucky Supreme Court in *Louisville & Jefferson Cnty. Metro. Sewer Dist. v. Albright*, No. 2023-SC-0079-DG, 2025 WL 890812 (Ky. Mar. 20, 2025), reh'g denied (June 20, 2025), opinion ordered depublished (June 20, 2025). In *Albright*, the Supreme Court first noted that municipalities (like Prestonsburg and Louisville) have historically been subject to liability

for alleged negligence regarding the maintenance and repair of its utility systems. *Id*. at *9. By contrast, municipalities have not been found liable for regulatory functions – i.e., those that are judicial, legislative, quasi-judicial, or quasi-legislative. *Id*. at *10 (citing *Gas Service Co., Inc. v. City of London*, 687 S.W.2d 144 (Ky. 1985)). CALGA codified this common law, rather than modifying it. *Id*. at *10-11 (citing KRS 65.2001(2); 65.2003(3)). Thus, the Supreme Court found, "entities such as MSD have a ministerial duty to non-negligently maintain and repair the sewer and water systems for which they are responsible" and while a "jury may or may not agree with Albright's assertion that MSD's failure to place a grate or warning signage was a negligent failure to satisfy its ministerial duty, [] such a claim must nevertheless go to a jury." *Id*. at *15. Unpersuasive to the Supreme Court was MSD's assertion that it "determined how to use its limited resources considering the competing demands and public safety risks and adopted a rule implementing its decision [not to install grates] and did not make an inspection of the pipe at issue consistent with that rule." *Id*. at *16; *see also id*. at *17. The Supreme Court ultimately held:

> MSD cannot be permitted to place or leave be an unreasonably dangerous drainage system in a location where it will inevitably by encountered by the public, do nothing to warn or protect the public against its dangers, and then cloak itself in municipal immunity by claiming that its decision not to protect or warn the public was the result of its exercise of its legislative or quasi-legislative authority. If this Court were to adopt MSD's reasoning that it is entitled to municipal immunity simply because it made a decision, then it is difficult to envision a circumstance when a municipality could *ever* be subjected to liability for its alleged negligence. This, in turn, would regress our jurisprudence back into a place we have been trying to avoid since *Haney v. City of Lexington*, 386 S.W.2d 738 (Ky. 1964)] in which immunity is the rule and liability is the exception.

Id. at *19 (emphasis original).

Also instructive for the present dispute is *Madden v. City of Louisville*, No. 2003-CA-001162-MR, 2004 WL 1588279 (Ky. App. July 16, 2004). In *Madden,* the plaintiff sued the City of Louisville for flooding that damaged her property and that she alleged was caused by the City of Louisville's negligence. The Court of Appeals specifically examined the plaintiff's claim asserting negligence resulting from the "designing [of] drainage ditches or other means to properly drain the natural flow of water." *Id*. at *1. The City of Louisville argued that it was entitled to immunity and that the claimed negligence resulted from a discretionary rather than ministerial duty. *Id* at *4. The Court disagreed however, stating that: "while the decision whether to establish Iroquois Park and Golf Course would be discretionary, **their actual construction, grading, and maintenance involve purely ministerial duties**." *Id*. (emphasis added). Given this conclusion, the Court in *Madden* held that the claims of negligence asserted against the City of Louisville were improperly dismissed by the lower court through summary judgment. *Id* at *5. Accordingly, Kentucky case law has clearly established that the design and maintenance of municipal infrastructure is a ministerial duty not protected by CALGA.

a. The City Defendants knew they were leaving 911 callers from outside Prestonsburg city limits without law enforcement response and therefore under *Albright* the City Defendants cannot be immune for the dangerous condition they created and the resulting foreseeable injury

The present dispute involves the City Defendants' assumption and facilitation of the transfer of 911 dispatch services from KSP through the executed interlocal agreement. While *Albright* and *Madden* involved the design and maintenance of sewage/drainage systems, their holdings are nevertheless analogous to the dispute at bar. A municipalities' 911 dispatch service (if that service is provided by the municipality) is just as much a

"utility" or a part of the municipal infrastructure as the systems at issue in *Albright* and *Madden*. Both are designed, operated, maintained, and provided by a municipal entity for the use of the residents of that municipality. Likewise, a city's 911 dispatch services and a city drainage system, if designed, operated, and maintained negligently, both create a foreseeable risk of injury to self or property. As established in Keith Bartley's affidavit, the City Defendants and the County Defendants both had actual notice that the transfer of 911 services would result in the residents of the unincorporated areas of Floyd County not having access to a law enforcement response.[67] Additionally, the contemplation of the ILA SO, which explicitly identifies the FCSO's inability to respond to calls, prior to the transfer of 911 services is evidence of the City and County Defendants' knowledge of a foreseeable danger and an express refusal to address that foreseeable danger.[68]

Despite the City Defendants' assertions, the present dispute does not turn on the decision to assume the responsibility of dispatch services, but rather that the City Defendants failed to design, operate, and maintain those dispatch services both prior to and after the assumption of services despite being on notice that those services would create a dangerous condition. The City Defendants had a ministerial duty to: (1) have policies in place to prevent the creation of a dangerous condition; (2) ensure that those policies and procedures actually prevented the creation of a dangerous condition; and (3) enforce those policies when on notice of a dangerous condition created in violation of those policies. These municipal duties, which make an immunity defense unavailable under CALGA, as discussed *supra*, also operate to make the individual City Defendants' immunity defense under qualified official immunity unavailable.

[67] Affidavit of Keith Bartley at ¶ 7 & 14 (**Ex. 5**).
[68] ILA SO at ¶ 7 (**Ex. 8**).

b. The Interlocal Agreement created additional ministerial duties for the City Defendants which the City Defendants breached.

The Interlocal Agreement entered into by the Floyd County Fiscal Court and the City of Prestonsburg memorialize the joint decision to transfer 911 dispatch services for the Floyd County residents who reside outside of the Prestonsburg city limits. The Interlocal Agreement provides the standard operating procedure applicable to the City Defendants' 911 call center:

> 14. The **standard operating procedure** for dispatching calls for service for law enforcement will be as follows:
>
> 1. In the event law enforcement is required for a call for service, **the PSAP will dispatch/call the appropriate law enforcement agency for the call for service** (i.e.. **Kentucky State Police**, **Floyd County Sheriff's Office**, **Prestonsburg Police Department**, Kentucky Division of Fish and Wildlife, Kentucky Park Rangers, etc.) **depending on the area and nature of call** for service.
> 2. Prestonsburg will **make every effort to ensure that the call for service is legitimate** that requires law enforcement response.
> 3. **If a call for service is outside the incorporated limits of Prestonsburg is received and either due to the inability or unwillingness of other law enforcement agencies to respond and there is no other available law enforcement, Prestonsburg Police will assess the priority and urgency of said call for service and will respond in accordance with its applicable policies and procedures.** In the event Prestonsburg is required to utilize additional resources to mitigate said call for service, Prestonsburg will request compensation for those services as deemed appropriate by the Fiscal Court.[69]

Standard operating procedures adopted by municipalities create ministerial duties. *See Meinhart v. Louisville Metro Gov't*, 627 S.W.3d 824, 832 (Ky. 2021); *Mattingly v. Mitchell*, 425 S.W.3d 85, 90 (Ky. App. 2013). The breach of ministerial duties precludes immunity under CALGA and/or the qualified official immunity doctrine. With respect to

[69] DEF CITY PBURG 0310 (**Ex. 6**) (emphasis added). Notably, this provision alone outlines the standard operating procedure for calls for service for law enforcement outside of the Prestonsburg Police Department's jurisdiction. As discussed in the next section, there are no other policies or procedures.

the first 911 call received from Defendant Dr. McKinney's Arkansas Creek Residence, the City Defendants breached all three ministerial duties created by the Interlocal Agreement and therefore are not entitled to immunity. Furthermore, the City Defendants would never have been able to satisfy their ministerial duties with respect to responding to calls for law enforcement on the morning of June 18, 2023, because of the policies and procedures of the Prestonsburg Police Department which in part requires there to be two officers inside Prestonsburg city limits at all time.[70] On the morning of June 18, 2023, there were only two Prestonsburg Police Officers on duty.[71] Therefore, under their own policies, those officers could not have responded to the first call for service if they had even wanted to.

i. The City Defendants had a ministerial duty to dispatch the call.

Per provision fourteen, when the first 911 call was received, the telecommunicator was required to "dispatch/call the appropriate law enforcement agency for the call for service."[72] It is uncontroverted that the Arkansas Creek residence was outside of the Prestonsburg city limits, and therefore outside of the jurisdiction of the Prestonsburg Police Department.[73] As such, the telecommunicator had a ministerial duty, created by the interlocal agreement, to "dispatch/call" either the KSP or the FSCO.

Based on the testimony of Johnny Johnson (the telecommunicator who received the first 911 call) and the recorded call between Johnson and Prestonsburg Police Captain Jonathan Pack to determine if a response would be sent, there was never an attempt to

[70] Deposition of Josh Hinkle at p. 22, l. 15-24 (**Ex. 12**).
[71] Prestonsburg Police Work Schedule, ORR 308, attached hereto as **Exhibit 25.**
[72] DEF CITY PBURG 0310 (**Ex. 6**).
[73] Deposition of Johnny Johnson at p. 50, l. 14-19, attached hereto as **Exhibit 26.**

dispatch/call either the KSP or the FSCO following the first 911 call for service.[74] This failure to contact either entity is directly contrary to the first standard operating procedure established by provision fourteen as the only law enforcement agency with jurisdiction for that residence was the KSP and the FCSO.

In addition to the fact that the Interlocal Agreement created a ministerial duty to dispatch the KSP or the FSCO in response to the first 911 call, the dispatcher still would not have had discretion with respect to dispatching resources. The dispatcher would not have discretion because **a dispatcher does not have discretion to dispatch a resource when there are no resources to dispatch**. Discretion is required when multiple routes of conduct are available to the individual exercising discretion. As has been discussed *supra*, and will be explored more fully *infra*, there were no law enforcement resources available to dispatch. **Dispatcher Johnson did not have multiple routes of conduct available to him to be decided between, and he could not have been exercising discretion when his hand was forced to not dispatch a law enforcement response to the 5:52 A.M. 911 call.** It is ultimately for the jury to determine whether the lack of a dispatch following the first 911 call was a result of the City Defendants breach of their ministerial duty to ensure adequate policies and procedures were in force and effect, or from their breach of the ministerial duty to dispatch/call the KSP and/or the FCSO in accordance with the ministerial duty created by the Interlocal Agreement. This question of fact demonstrates that summary judgment for the City Defendants is inappropriate.

[74] *Id.* at pp. 35-36, l. 24-21.

ii. The City Defendants had a ministerial duty to make every effort to ascertain whether the first 911 call was legitimate

The second standard operating procedure established by the Interlocal Agreement requires the Prestonsburg 911 telecommunicator to "make every effort to ensure that the call for service is legitimate." As written, and with no definition for the terms contained therein, the Prestonsburg telecommunicator cannot be considered to have made "every effort" to ensure the call was legitimate, particularly when no attempt was made to contact the KSP or the FSCO.[75] In this case there are no facts which would require the ascertainment of fact, as dispatcher Johnson indicated based on each individual fact that a dispatch should have. *See Patton v. Bickford*, 529 S.W.3d 717 (Ky. 2016) ("a ministerial duty does not demand the simple rote application of a set of rules. A ministerial duty may involve "ascertainment of … facts"") citing *Upchurch v. Clinton Cnty.*, 330 S.W.2d 428 (Ky. 1959). As such, this failure to abide by the second procedure established by provision fourteen of the interlocal agreement represents a breach of a ministerial duty.

iii. The City Defendants had a ministerial duty to assess and respond.

The third and final procedure established by provision fourteen of the interlocal agreement was also not followed, and as was addressed *supra*, **could not have been followed** while also following the policies and procedures of the Prestonsburg Police Department.

This disconnect as to the actual responsibilities of the City Defendants was exemplified by the testimony of Ross Shurtleff, the current Prestonsburg chief of police,

[75] *Id.*

and the designated corporate representative of the City of Prestonsburg, when he testified that:

> Q. And how was that beyond your scope?
>
> A. Because **we are responsible for dispatching the calls for service. We're not responsible for policing those areas.** The agreement was not an agreement for us to police the county. It was for us to answer and dispatch emergency calls for service, the actual call itself.[76]

This binding testimony from the Prestonsburg corporate representative represents a clear misunderstanding of the interlocal agreement that had been entered into. Prestonsburg **did have a responsibility** to respond to calls for service when there was no other agency available for response. At the time of the first 911 call, there was not another agency to respond and therefore it was up to the City of Prestonsburg and the Prestonsburg Police department to respond. They did not dispatch a response because there were no resources that could be dispatched. Even if those resources were available, because there were only two Prestonsburg Police Officers on duty at the time of the 5:52 A.M. 911 call, the PPD could not have responded even if they had wanted to.[77]

In sum, a question of material fact exists as to whether the ministerial duties created by the Interlocal Agreement were breached by the City Defendants. This question of fact is one which can only be answered by a jury, and therefore summary judgment in favor of the City Defendants based on immunity is not appropriate under Kentucky law.

c. The Prestonsburg 911 dispatch center did not have any written policies and procedures for when a telecommunicator should send an emergency response in compliance with the City of Prestonsburg's ministerial duties.

[76] Deposition of Ross Shurtleff at p. 57, l. 1-7 (**Ex. 3**).
[77] Deposition of Josh Hinkle at p. 22, l. 15-24 **(Ex. 12**).

As discussed *supra*, the decision to transfer 911 services created several ministerial duties which the City Defendants had an obligation to fulfill. One of those ministerial duties is the creation of policies and procedures designed to prevent the creation of a dangerous condition. The Prestonsburg 911 dispatch center, at the time of the murder of Amber Spradlin, did not have any written policies and procedures which would assist a 911 telecommunicator in determining when a call for service requires a response. This lack of policies and procedures therefore represents a breach of one of the ministerial duties created by the decision to transfer 911 services. Ross Shurtleff was the sworn supervisor of the 911 center during the period leading up to and following the transfer of dispatch services to the City of Prestonsburg.[78] He was intimately involved in the transfer of dispatch services and was designated to testify as the corporate representative of the City of Prestonsburg.[79] In addition, Shurtleff possesses a background in: emergency management, dispatch, and law enforcement.[80] He also was a dispatcher for KSP and for the Pikeville Police Department.[81] During his deposition as the corporate representative, Shurtleff was questioned regarding the written policies and procedures of the 911 center on the date of the murder:

> Q. **Are you aware of any documents or policies in place at the time of Amber's death that would have guided the dispatcher on whether or not to send somebody** out to that location?
> A. **I'm not.**[82]
>
> Q. But **is there a policy that clarifies what you just said, Ross, that it's a subjective analysis on the part of the dispatcher** and the dispatchers to make that call on their own?

[78] *Id*. at p. 13, l. 22-23.
[79] *Id*. at pp. 11-12, l. 23-2.
[80] Id. at pp. 45-46, l. 22-5.
[81] *Id*.
[82] *Id*. at p. 36, l.13-17 (emphasis added).

A. **Not that I'm aware of, no.**[83]

When asked if Shurtleff individually would agree that there should be some policies or writings or guidance for dispatchers for when to dispatch a resource on response to a 911 call, he stated: "My personal belief is that -- is **yes**."[84] As such, the Prestonsburg 911 dispatch center does not possess any policies that would guide a dispatcher on when to send a response, does not have any policies that indicate the decision to send a response is based purely the discretion of the dispatcher, and the individual designated as the corporate representative for the city of Prestonsburg and the individual with a supervisory position in the dispatch center believed that there should be policies and procedures which do guide a dispatcher on when a response should be sent.

In lieu of written policies and procedures, Shurtleff testified that the dispatchers working in the Prestonsburg 911 dispatch center are trained through on-the-job training with a communications training officer ("CTO").[85] Shurtleff admitted during his testimony that this training would ultimately be limited to training only on the calls received while the training is occurring[86], and as such there is no guarantee that a Prestonsburg dispatcher would actually be trained on a situation similar to those giving rise to the present action. Furthermore, the "CTO packet" that is created over the course of a specific training is only in the possession of the city of Prestonsburg if that training occurs at the Prestonsburg 911 dispatch center.[87] As a result of there being no CTO packets for dispatchers trained prior to being hired for the Prestonsburg 911 dispatch center, the City was unable to say that dispatcher Johnson, who took the 911 call at issue here, had

[83] Id. at p. 37, l. 12-16.
[84] *Id*. at p. 38, l. 24.
[85] *Id*. at pp. 40-41, l. 25-12.
[86] *Id*. at p. 41, l. 13-17.
[87] *Id*. at p. 42, l. 6-11.

ever received any on-the-job training on a situation similar to the 911 call from the Arkansas Creek Residence that he refused to dispatch:

> Q. I'm assuming that there would be no CTO packet if you had dispatchers who were already trained and were not new and uncertified; is that correct?
> A. As of now, that is correct, yes.
>
> Q. And who was the dispatcher on June 18, 2023?
> A. **Dispatcher Johnny Johnson.**
>
> Q. So I'm getting the impression that **Johnny Johnson would not have a CTO packet; is that correct?**
> A. **That is correct**.[88]

Given this absence of training materials for dispatcher Johnson, corporate representative Ross Shurtleff explained that he was able to be satisfied that dispatcher Johnson was properly trained to make the decision as to whether or a not a resource should have been dispatched the date of the murder by explaining that:

> A. Because he was accurately making those calls on a day-to-day basis.
> Q. How do you know that to be true?
> A. Various ways, be it being in the 911 center when he receives a call for and watching him work. Every morning at 8 a.m., **I get an email with every call for service that was dispatched out that day**, the previous 24-hour day, via radio traffic that I monitor probably 18 hours a day. Again, totality of the circumstances[89]

Notably, this "totality of the circumstances" approach is made entirely inapplicable to the present dispute given that **it only applies to decisions to dispatch and there was no dispatch for the call at issue**.

The absence of any written policies or procedures with respect to guiding a Prestonsburg 911 telecommunicator on deciding when an emergency response requires a response cannot be used by the City Defendants as proof that the decision is inherently

[88] *Id*. at p. 42, l. 6-17.
[89] *Id*. at pp. 44-45, l. 17-1.

discretionary. As discussed *supra*, the exercise of discretion creates a ministerial duty to prevent the creation of a dangerous condition. If the law of immunity were to be interpreted by Kentucky Courts in the manner argued by the City Defendants, it would create an incentive for immunity eligible entities to **never adopt written policies and procedures so as to make all conduct discretionary**. This is simply not how Kentucky immunity law operates and was directly addressed by the Kentucky Supreme Court when it opined that: "In some situations, **an act may be ministerial even if that act is not specifically covered by applicable statutes, or administrative regulations**." *Com., Transp. Cabinet, Dep't of Highways v. Sexton*, 256 S.W.3d 29 (Ky. 2008), *as corrected* (Aug. 26, 2008). While the city of Prestonsburg's decision to enter the interlocal agreement was one of discretion, ensuring that policies and procedures existed in order to prevent the creation of a dangerous condition was ministerial. This ministerial duty was breached when the Prestonsburg 911 dispatch center failed to have any written policies and procedures regarding when an emergency response should be sent. Additionally, the Prestonsburg dispatch center failed to adopt any policies and procedures to assist the dispatchers with complying with the standard operating procedures created by the interlocal agreement. As such, the lack of written guidance represents a clear breach of the City Defendants' ministerial duties. It also demonstrates a disregard for the residents of Floyd County located outside of the Prestonsburg city limits, and the City Defendants are therefore not entitled to immunity – neither through CALGA nor qualified immunity – and this Court should deny the City Defendants' Motion for Summary Judgment. All of the breaches of the City Defendants' ministerial duties outlined herein operated in concert to ensure that dispatcher Johnson had no ability to exercise discretion. As those breaches of ministerial duties ensured that there would not

be law enforcement resources available to respond, and therefore dispatch Johnson could not have exercised discretion with respect to dispatching resources to the 5:52 A.M.

d. Under the City Defendants' unwritten (but universally understood) standards, the first 911 call created a ministerial duty to dispatch which the City Defendants breached.

Given the complete absence of written guidance for when a call for response warrants a response, Plaintiff attempted to establish what the actual criteria for when a response is required through the testimony of the multiple current and former dispatchers, including both dispatchers on duty on the day of the murder, and the designated corporate representative of the city of Prestonsburg. These unwritten standards, as described by those individuals, reveal that the decision to not send a response to the first 911 call received was improper, and likely impacted by the familial relationship between Defendant Randy Woods and Defendant Michael McKinney. *See Morales v. City of Georgetown*, 709 S.W.3d 146, 155 (Ky. 2024), reh'g denied (Feb. 20, 2025); *Marson v. Thomason*, 438 S.W.3d 292, 301 (Ky. 2014).

In the first 911 call, Defendant MK tells the dispatcher there is a "family friend" present at the Arkansas Creek residence who was incredibly intoxicated (Roy Kidd) and for whom he was seeking a response to be sent.[90] In describing this individual's condition, Defendant MK stated that the individual was so intoxicated that the individual "has no idea what is going on" and that Defendant MK did not know how to handle the situation.[91] In response, dispatcher Johnson told Defendant MK that they could not "kick him out of his own home."[92] Dispatcher Johnson follows that statement by **asking if the**

[90] 06/18/2023 5:52 AM Arkansas Creek 911 Call recording part 1 at 0:11-0:27, filed under seal as **Exhibit 14A**.
[91] *Id.*
[92] 06/18/2023 Dispatch call to Captain Jonathan Pack recording at 01:05-01:10 (**Ex. 16**).

intoxicated individual needs medical attention, to which Defendant MK unequivocally stated "**Yes**."[93] Defendant MK then stated that the intoxicated individual "fell out of bed" and cut himself, and that he now was "bleeding profusely."[94]

As such, the first 911 call that was placed from the Arkansas Creek residence involved a caller who indicated that there was a non-resident individual who was "bleeding profusely," and was "belligerent drunk," and who the caller wanted removed from the residence, Dispatcher Johnson was questioned on these points during his deposition, wherein he was asked as a hypothetical:

> Q. Well, let's say that he was hurt. Let's say the information was that he was – to you that **he's bleeding profusely**, and let's say he was a danger to himself and others because **he fell and hurt himself to bleed profusely**, and he was described as being **belligerent or warlike** –
> A. Yes, sir.
> Q. -- to the other people, and let's say that the **other people said it was a medical emergency**. Under those circumstances, would you dispatch a vehicle out there?
> A. **Yes, sir**.
> Q. Why would you do that?
> A. **Because that situation would warrant response.**
> Q. From who?
> A. Depends. **If he's being belligerent, then I would obviously send an officer. If he's hurt, I would send an officer and EMS if he's being belligerent and hurt.**
> Q. And there is no question in your mind?
> A. **No, sir.**[95]

This testimony directly contradicts dispatcher Johnson's own actions with respect to the first 911 call that he answered and determined that there was no need for a response to be sent. Dispatcher Johnson was later asked the same question, with the same facts, but specifically implicating the residence of Defendant Dr. McKinney:

[93] *Id.* at 00:57.
[94] *Id.*
[95] Deposition of Johnny Johnson at pp. 21-22, l. 21-17, attached hereto as **Exhibit 27.**

> Q. All right. **On that first call from the McKinney home, if someone would have told you that someone was belligerent, would you send a vehicle out there?**
> ...
> A. **Yes, sir.** But also at the time, **we were calling KSP and calling the sheriff's office. I would have done that.** Now, could I say I would have sent a car? I can't say that because **I would have called KSP and said, hey, we've got a belligerent guy at this house, this address. Whether they sent anybody or not, I don't know. I just know the relationship wasn't that great at the time. And they weren't sending too many people** to much – of anything in Floyd County.
> Q. Why?
> A. **Because we took 911.**[96]

Even when adapted to fit the exact circumstances of the actual 911 call that was placed, dispatcher Johnson testified that he still would have dispatched or at least called KSP and the Sheriff's office to notify them of the call.[97] Of course, that is not what dispatcher Johnson did when he received the first call for service the day of Amber Spradlin's murder, what he actually did was call his supervisor, who was a sworn officer of the Prestonsburg Police department who told dispatcher Johnson that they would let Defendant Woods handle it because Defendant Dr. McKinney was his "big buddy." As was discussed *supra*, the real explanation as to why no call was made to KSP or the FCSO after the first call was because following the transfer of 911 services, KSP stopped responding to calls that were forwarded to them by Prestonsburg 911 dispatch center and there were no Sheriff's deputies on duty at the time the call was received. Dispatcher Johnson's testimony, however, indicates that given the information provided to him on the first received 911 call, a response should have been sent, directly contradicting his own conduct the day of the murder.

[96] *Id.* at 27-28, l. 14-4.
[97] *Id.* at p. 27, l. 19-21.

Dispatcher Johnson was one of two dispatchers working at the time the 911 calls were received from the Arkansas Creek residence. The other dispatcher on duty, Jonathan Spradlin, was also deposed and provided testimony on when a call for service warrants an emergency response. He stated:

> Q. And we've already talked about if you would have received that call from – that first call from the McKinney residence because you listened to it; right?
> A. Yes, sir.
> Q. If you'd received that call, would you have dispatched, if you could have, a vehicle out there; right?
> A. **Yes, sir**, if I was able to.
> Q. There would be no doubt in your mind; correct?
> A. Yes, sir.
> ...
> Q. I'm just saying in that first call from the McKinney residence, somebody talked about the fact that someone was bleeding profusely. Does that further support your contention, Jonathan, that, yeah, the right thing to do was to send a vehicle out there?
> ...
> A. Yes, sir.
> Q. Also, they **indicated someone was being belligerent**, you know, war-like. Does that indicate to you that someone is potentially being a threat to themselves or others?
> ...
> A. Yes, sir.
> ...
> Q. Now, if some – if in the call -- I'll tell you it was said that when it was asked **does someone need medical help and the answer was yes**, just based upon that alone **would you have dispatched somebody out there?**
>
> ...
>
> A. **Yes, sir**.[98]

Dispatcher Spradlin's clear testimony that a response should have been dispatched in response to the first 911 call received is in line with the contradictory testimony provided by Dispatcher Johnson. As such, each reported condition in the first 911 call: 1) bleeding

[98] Deposition of Jonathan Spradlin at pp. 50-52, l. 18-12, attached hereto as **Exhibit 28.**

profusely; 2) belligerently drunk; and 3) requires medical assistance, all individually and in conjunction with one another should have resulted in a resource being dispatched. We know, however, that dispatcher Johnson ultimately did not dispatch a response. During his testimony, and despite his previous testimony contradicting it, dispatcher Johnson testified that he still feels he made the right decision, stating: "No ma'am. And even after I've listened to it again, honestly in the context of that call, I would have done the same thing."[99] This confidence in his decision, however, is directly contradicted by his lack of confidence when he called his supervisor Captain Jonathan Pack after the first 911 call was received wherein he stated: "I don't know what to do with this to be honest with you."[100]

This acknowledgement by dispatcher Johnson in the call to Captain Pack is important because the Prestonsburg 911 dispatch center and 911 dispatchers more generally have an unwritten policy of "when in doubt, send them out." This means that if "didn't know what to do" like as stated by dispatcher Johnson, then a response should be sent so as to always err on the side of caution. Dispatcher Johnson, dispatcher Spradlin, Sheriff John Hunt, former PPD officer and former dispatcher Josh Hinkle, and Floyd County Emergency Management Director Brian White were all asked about that phrase during their depositions. Dispatcher Johnson when asked about the phrase stated:

Q. Have you ever heard the phrase "When in doubt, send them out?"
A. **Yes.**
Q. When did you hear that?
A. **I've heard that all through training, and we say it probably every day in the radio room to be honest with you.**
Q. Do you agree with that?
A. **Absolutely.**
Q. Do you do that?

[99] Deposition of Johnny Johnson at pp. 77-78, l. 25-2, attached hereto as **Exhibit 29.**
[100] 06/18/2023 Dispatch call to Captain Jonathan Pack recording at 00:52 (**Ex. 16**).

A. Yes, sir. [101]

Despite dispatcher Johnson's testimony that he completely agrees with and abides by the "when in doubt, send them out" policy, his contention is entirely contradicted by his statement to Captain Pack that he did not know what to do with respect to the first 911 call received. If Johnson did not know what to do, based on his own testimony, he was required to dispatch a response to the Arkansas Creek residence – though he ultimately did not. Dispatcher Spradlin was likewise familiar with the phrase stating:

Q. Have you ever heard the term "when in doubt send them out"?
A. **Yes, sir.**
Q. Where did you first hear that?
A. **Whenever I first started dispatching.**
Q. Who did you hear it from?
A. **My supervisor.**
Q. Who was your supervisor?
A. Ida Lafferty.
Q. Where is that person now?
A. **She is now the director of the 911 center.**[102]

It is therefore clear that the Prestonsburg 911 center had an explicit policy of "when in doubt send them out." Dispatcher Johnson testified that he hears the phrase "every day in the radio room" and he heard it "all through training." Dispatcher Spradlin confirmed that the "when in doubt send them out" policy is a part of the training process for a new dispatcher, and the supervisor who first trained dispatcher Spradlin on that phrase is now the supervisor for the 911 center at issue in the present dispute. The belief that it is always best for dispatchers and law enforcement to err on the side of caution when determining that a response is needed was further confirmed in the testimony of Sheriff John Hunt[103], and former Prestonsburg Police Captain Jonathan pack.[104]

[101] Deposition of Johnny Johnson at p. 20, l. 2-12, attached hereto as **Exhibit 30.**
[102] Deposition of Jonathan Spradlin at p. 33, l. 10-21, attached hereto as **Exhibit 31.**
[103] Deposition of John Hunt at pp. 51-52, l. 19-2, attached hereto as **Exhibit 32.**
[104] Deposition of Jonathan Pack at p. 21, l. 8-24, attached hereto as **Exhibit 33.**

In sum, the testimony of Dispatcher Johnson, Dispatcher Spradlin, Jonathan Pack and John Hunt all operate to clearly show that an emergency response should have been dispatched in response to the first 911 call received from the Arkansas Creek residence. Even if the individual conditions described in the call itself do not warrant a response, though both dispatchers Johnson and Spradlin testified that they would, it is ultimately superseded by the "when in doubt, send them out policy" that was used by the supervisor of the call center. Doubt allegedly existed in the mind of dispatcher Johnson following the first 911 call as he himself stated to Captain Pack that he did not know what to do, despite this doubt, and despite the "when in doubt send them out" phrase, dispatcher Johnson did not send out a response. As such, both on the substantive information provided on the call itself, and the policy of "when in doubt send them out," a response to the first 911 call should have been sent. It is unclear to this point whether the decision to not dispatch a response was made to protect the reputation of Defendant Dr. McKinney, who was a "big buddy" of Defendant Woods, or because dispatcher Johnson knew that there were not any law enforcement agencies available to respond. During the deposition of dispatcher Johnson, he was directly confronted with the possibility that his decision not to dispatch was related to the familial relationship between Defendant Dr. McKinney and Defendant Woods:

> Q. All right. Would you ever – Johnny, **would you have ever agreed that if Mike McKinney or someone from his home made a second 911 call that night – would you ever agree to divert that call to Randy Woods**?
> A. No, Sir.
> Q. Why not?
> A. **You are questioning my integrity there. Absolutely, I would not have**.
> Q. Why not?
> A. That's – first off, that's not procedure. That's not any kind of procedure that would have been okay, let's just send this call

> to the chief. That's – that's not the way things are done. If we get a call and there's somebody that needs service, I'll send the person that needs to go help them and assist them.[105]

Despite dispatcher Johnson's indignation at the suggestion, in the recording of the call between Jonathan Pack and Dispatcher Johnson, Jonathan Pack can clearly be heard saying that because Defendant Dr. McKinney was Defendant Woods' "big buddy" that if another call was received, they would "let Randy take care of it." Dispatcher Johnson, without any hint of the indignation displayed during his deposition, simply agrees.[106]

Whatever the reason, it is clear that a response should have been sent, and the failure to send a response represents a breach of the city of Prestonsburg's ministerial duties created by the decision to assume 911 dispatch responsibilities for the county, and the ministerial duties created under both the policies and procedures of the dispatch center, and the ministerial duties created by the adoption of the Interlocal Agreement. Ultimately, however, the various breaches by both the City and County Defendants ensured that there were no law enforcement resources that could have responded if dispatcher Johnson had attempted to dispatch.

C. THE COUNTY DEFENDANTS ARE NOT ENTITLED TO LEGISLATIVE IMMUNITY.

The County Defendants, as members of a county fiscal court, are not entitled to legislative immunity. This is clear both under the plain text of the Kentucky Constitution, and as it has been interpreted by Kentucky Courts. There has never been, nor have Defendants cited to, a Kentucky court case where members of a county fiscal court have been granted legislative immunity. Section 43 of the Kentucky constitution states:

> **The members of the General Assembly** shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest

[105] Deposition of Johnny Johnson at pp. 43-44, l. 13-5, attached hereto as **Exhibit 34.**
[106] 06/18/2023 Dispatch call to Captain Jonathan Pack recording at 01:15-01:20 (**Ex. 16**).

> during their attendance on the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

Ky. Const. § 43. (emphasis added). For the purpose of determining the County Defendants' eligibility for legislative immunity in this matter, this Court need not look further than the first six words of the section: "The members of the General Assembly[.]" It is uncontroverted that the County Defendants in this matter are not members of the General Assembly, which is a distinct and definable entity encompassing both houses of the Kentucky state legislature.

The Kentucky Supreme Court opined in *Stivers v. Beshear* that: "We begin our analysis, as we must, with the constitutional text. "[W]ords used in the Constitution must be given their **plain and ordinary meaning**." Similarly, "where the language of the Constitution leaves no doubt of the intended meaning of the section under consideration, **courts may not employ rules of construction**." ." 659 S.W.3d 313, 318 (Ky. 2022) (internal citations omitted) (emphasis added). Section 43 of the Kentucky Constitution was unambiguously drafted to apply exclusively to members of the Kentucky state legislature; The only plain and ordinary meaning of "General Assembly" is the Kentucky state legislature. The County Defendants, as proof that the legislature has extended that immunity to Fiscal Court members, cite to KRS 67.180 titled "Motor vehicle compensation insurance; Purchase by county except county containing city of first class." This statute states:

> (1) The fiscal court of each county, except a county containing a city of the first class may, in its discretion, for the protection of the public and its employees, appropriate county funds to purchase policies of insurance of all kinds deemed advisable, covering vehicles operated by the county, and compensation insurance covering employees of the county receiving injuries arising out of and in the course of employment.

> (2) Suits instituted on such policies may be maintained against the county only for the purpose of obtaining a judgment which when final shall measure the liability of the insurance carrier to the injured party for whose benefit the insurance policy was issued, but not to be enforced or collectible against the county or fiscal court or the members thereof.

It is unclear how this statute, as written, covers a fiscal court's ability to purchase motor vehicle insurance and their protection from judgments in suits instituted against the County for matters covered by those policies for insurance, can be construed as the Kentucky legislature extending legislative immunity. It does not involve a legislative matter, nor does it make any reference to the General Assembly or its protection under legislative immunity.

As such, under the Kentucky Supreme Court's opinion in *Stivers*, this Court cannot now extend legislative immunity under Section 43 of the Kentucky Constitution to apply to the County Defendants. Therefore, the County Defendants are not entitled to legislative immunity and should not be granted summary judgment on the basis of legislative immunity.

1. The County Defendants had a statutory duty to provide a law enforcement response to all of the citizens of Floyd County.

The Kentucky legislature, through the enactment of KRS 67.083, granted fiscal courts the power to carry out governmental functions necessary for the operation of their county, the ability to adopt measures to provide and finance those public functions, and provided a list of the public functions which the legislature has determined are "necessary for the operation of the county" including "the provision of police and fire protection." KRS 67.083(3)(u). The Kentucky legislature also permits a fiscal court to exercise that power with: "two or more counties, or by a county and a city, or by a county and special district, or by a county and the state." KRS 67.083(8)(a).

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However, **how** the County Defendants exercised their power under KRS 67.083 in the present matter was ministerial. *Madden v. City of Louisville*, No. 2003-CA-001162-MR, 2004 WL 1588279 (Ky. App. July 16, 2004). In *Madden*, the Court of Appeals opined that: "while the decision whether to establish Iroquois Park and Golf Course would be discretionary, their actual construction, grading, and maintenance involve purely ministerial duties." *Id.* at *4. Just as in *Madden*, the County Defendants' decision to exercise the power granted to it through KRS 67.083(3)(u) was one of discretion, but the manner in which that power is used is ministerial. As has been discussed throughout the present response, the decision to exercise an available power is discretionary, but the manner in which that power is executed is ministerial. Just like the previously presented analogy, a governmental entities decision to build a building is discretionary and one within the power of a governmental entity. The drafting of plans for that building in accordance with the building code is ministerial.

Furthermore, KRS 67.083 is unambiguous that the public functions enumerated therein are "necessary for the operation of the county." It stands to reason then, that once the decision was made to exercise their statutory authority for the provision of police protection to the residents of Floyd County, the County Defendants assumed a ministerial duty. As such, the County Defendants owed a ministerial duty, created through their exercise of statutory power, to provide Amber Spradlin and all other residents of Floyd County with police protection. Whether the County Defendants complied with that ministerial duty is one of fact, and therefore summary judgment on the basis of qualified immunity is inappropriate, and the County Defendants motion should be denied.

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2. The County Defendants had a ministerial duty to ensure adequate staffing provided 24/7 law enforcement availability in the County.

The County Defendants assumed the responsibility of providing 24/7 law enforcement in the county but did not ensure there was adequate staff to fulfill that responsibility. The County Defendants did not even confer with the Floyd County Sheriff prior to entering into the interlocal agreement.[107] If they had, it would have reinforced the knowledge they already had, that the actual costs of the transfer, and ensuring there would not be a disruption in law enforcement services for the residents of the county, would ultimately cost the county far more than simply accepting the rate increase for dispatch services through the KSP. Despite their knowledge that the FCSO was not adequately staffed, and that the KSP would no longer respond to calls in the county, the County Defendants nevertheless assumed duties knowing that as a result the people living in the county would be left to fend for themselves.

Rather than taking the steps to ensure that police protection would be provided without interruption prior to the transfer occurring, the County Defendants instead chose to wait until after a Floyd County resident had been brutally murdered to adequately effectuate the provision of police protection to the residents they were elected to act in the best interest of. In their plea for immunity, the County Defendants insist they made a financial decision and that the lack of 24/7 law enforcement availability through the FCSO was a result of budgetary concerns. In reality, the County Defendants did not make any effort to ensure adequate staffing after the 911 dispatch center transfer. After heightened scrutiny following Amber's murder, one month after Amber's death the County

[107] Deposition of John Hunt at pp. 19-20, l. 22-8, attached hereto as **Exhibit 35.**

Defendants appropriated $400,000.00 to hire additional Sheriff's deputies so as to ensure 24/7 law enforcement coverage. The ministerial duty to have 24/7 law enforcement coverage did not spring to life after Amber's death. The responsibility was always there, but the County Defendants breached it. The County Defendants cannot now be rewarded for their carelessness and indifference for the safety of Floyd County residents by granting immunity due to erroneous claims of financial necessity. As such, this Court should reject the County Defendants' claims of immunity.

D. THE AFFIDAVITS PROVIDED IN SUPPORT OF DEFENDANTS' MOTIONS ARE NOT CREDIBLE AND SHOULD NOT BE CONSIDERED BY THE COURT.

The City and County Defendants have attached in support of their Motions for summary judgment sixteen (16) affidavits pursuant to CR 56.05 which permits:

> Supporting and opposing **affidavits shall be made on personal knowledge**, shall set forth such facts as would be admissible in evidence, and shall **show affirmatively that the affiant is competent to testify to the matters stated therein**. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith

KRS 56.05. Of the sixteen (16) affidavits provided to this Court, thirteen (13) are attributable to various fire chiefs across Floyd County.[108] The remaining three (3) affidavits are attributable to: (1) Ross Shurtleff, the current Prestonsburg Chief of Police, Prestonsburg Floyd County 911 administrator, and the designated corporate representative of the city of Prestonsburg;[109] (2) Brian White, the Floyd County

[108] Affidavits of Benjamin Meade, Betty Cook, Brandon Salisbury, Daniel Gullet, Eddie Clark, Frank Rudder, Greg Davis, Jacob Bentley, James Billiter, Keith Gearheart, Kevin Shepherd, Myrl Baker, and Ronald Kidd were attached to both Motions for Summary Judgment filed by the City and County Defendants, collectively attached hereto as **Exhibit 36.**

[109] Affidavit of Ross Shurtleff was attached to both Motions for Summary Judgment filed by the City and County Defendants, attached hereto as **Exhibit 37.**

emergency management director;[110] and (3) Mike Sunseri, former Deputy Executive Director of the KY Office of Homeland Security and former Administrator of the KY 911 services Board.[111] These affidavits, upon closer examination, are clearly attorney manufactured for the purposes of plugging the glaring holes in their claims for immunity.

Of the 16 affidavits that have been provided, only one can be viewed as being completely credible and in conformity with CR 56.05 – the affidavit of Mike Sunseri. Mr. Sunseri's affidavit, while credible, does not provide any basis for this Court to grant Summary Judgment.

1. The Fire Chief Affidavits are not based on, and do not contain, the personal knowledge of the Fire Chiefs

The 13 affidavits of the Floyd County fire chiefs are **exactly the same** with respect to the words on the page, with some slight variation in organization. Of those 13 fire chiefs, five (5) have thus far been deposed via subpoena by the Plaintiff. The testimony of those affiants calls into question the manner in which those affidavits were procured, their compliance with notarization standards, and whether the contents reflect the actual personal knowledge of the individual affiants in accordance with CR 56.05.

a. Origins of the Fire Chief Affidavits

The manner in which those affidavits were procured was called into question during the deposition of Brian White, the Floyd County Emergency Management Director. Brian White testified that he was the individual who procured the of affidavits from the 13 fire chiefs.[112] When he was questioned regarding his role in procuring those

[110] Affidavit of Brian White was attached to both Motions for Summary Judgment filed by the City and County Defendants and is attached hereto as **Exhibit 38.**
[111] Affidavit of Mike Sunseri was attached to both Motions for Summary Judgment filed by the City and County Defendants and is attached hereto as **Exhibit 39.**
[112] Deposition of Brian White at p. 47, l. 1-19, attached hereto as **Exhibit 40.**

affidavits, his responses were repeatedly evasive as he claimed to have only ever provided attorney Shaw with a list of the fire chiefs and their names and nothing else, until counsel for the County Defendants Jonathan Shaw interjected and stated that Brian White assisted with procuring affidavits at his request, and assisted Mr. Shaw's office with the investigation when the suit was first filed.[113] When asked why he was asked to assist in the investigation, Mr. White testified that:

> A. Again, I was asked, like I said, by Attorney Shaw. I was given – just like he explained, I was given the information. I presented it, what was typed up on the face on the affidavit, got them signed, notarized. I mean, I don't know what else you're wanting. I don't know what else to tell you.[114]

Mr. White's recollection of the affidavit procurement process remained inconsistent throughout his testimony, claiming at a point that he did not see any of the fire chief affidavits before they were signed[115], then that Attorney Shaw had provided him with 12 rough drafts of the fire chief's affidavits[116], then he recalled that he did assist in getting the signature of fire chief Eddie Clark but that was only due to a familial connection[117], then he ultimately stated that he "may have" handed out all of the affidavits[118]. When asked "Isn't it true that the people who signed affidavits, none of them provided information to you or Mr. Shaw of what they felt needed to be included in the affidavit?" Mr. White testified that while he could not speak about what information was provided to Mr. Shaw, no information had been provided to him by the affiant fire chiefs for the purposes of including it in the fire chief's affidavit.[119] In addition, not only was no actual

[113] *Id.* at pp. 35-36, l. 17-19.
[114] *Id.* at p. 38, l. 13-18.
[115] *Id.* at p. 31, l. 11-12.
[116] *Id.* at p. 31, l. 21-23.
[117] *Id.* at p. 44, l. 10-14.
[118] *Id.* at p. 45, l. 14-24.
[119] *Id.* at p. 47, l. 1-7.

information received from the fire chief's included in the affidavits, Mr. White testified that he was not aware of any changes to the affidavits ever being requested by any of the affiant fire chiefs.[120]

Based solely on the testimony of Mr. White, we know that the fire chiefs did not actually author their affidavits, provided no information for the preparation of those affidavits, and had no changes to their content after receiving them. Despite this, all 13 of the affidavits contain the exact same wording, in the exact same manner. The City and County Defendants now present these affidavits to the Court pursuant to CR 56.05 and ask this Court to believe that all 13 of the fire chief's affiants possessed the exact same personal knowledge carefully crafted in the exact same way to support both the County and the City's Motions for Summary Judgment. This contention is undermined by the testimony of the five affiants who have been deposed thus far. Their testimony clearly demonstrates that the affidavits of the 13 fire chiefs were not made on the fire chief's personal knowledge.

b. The Fire Chief Affidavits do not convey the personal knowledge of the Fire Chiefs

The second paragraph of **every single one** of the fire chiefs' affidavits states:

> On January 28, 2023, **following months of planning and infrastructure analyses**, 911 calls originating in Floyd County were transferred assignment from answering at KSP Post 9 in Pikeville, to the already functioning Next Generation 911 Center in Prestonsburg that had been operating with full certification since 1994. This transfer had been discussed in public meeting since at least 2020.[121]

[120] *Id*. at p. 47, l. 12-16.

[121] Paragraph two of the Affidavits of Benjamin Meade, Betty Cook, Brandon Salisbury, Daniel Gullet, Eddie Clark, Frank Rudder, Greg Davis, Jacob Bentley, James Billiter, Keith Gearheart, Kevin Shepherd, Myrl Baker, and Ronald Kidd (**Ex. 36**).

Affiant Brandon Salisbury, when asked if he was aware of any planning and infrastructure analysis stated:

> Q. Are you aware of any infrastructure analysis that was ever performed prior to the 911 being moved from Pikeville to Prestonsburg?
> A. No. I don't know what that would entail.
> Q. Are you aware of any planning that was performed prior to 911 being moved from Pikeville to Prestonsburg?
> A. I'm aware that they were planning on the transfer when we voted for it.
> Q. Are you aware of the actual planning, though?
> A. No. I don't – I don't know the actual planning of it, no. I just know Mr. Shurtleff was kind of dealing with all of the transfer planning.[122]

When asked about any analysis that Affiant Dan Gullet was aware of, he stated:

> A. No. not – you know, other than just discussions that we had and the problems that we were having, I don't know that there was anything that I saw personally that was in writing.[123]

When asked if he was aware of any analysis that was performed prior to the transfer, Affiant Eddie Clark stated:

> A. No. [124]

When asked if he was aware of any analysis that was performed prior to the transfer, Affiant Frank Rudder stated:

> A. No, sir. [125]

And lastly, affiant Jacob Bentley when asked if he was aware of any analysis that was performed prior to the transfer, he stated:

> A. No.[126]

[122] Deposition of Brandon Salisbury at pp. 24-25, l. 22-10, attached hereto as **Exhibit 41.**
[123] Deposition of Dan Gullet at p. 20, l. 20-23, attached hereto as **Exhibit 42.**
[124] Deposition of Eddie Clark at p. 22, l. 22-25, attached hereto as **Exhibit 43.**
[125] Deposition of Frank Rudder at p. 31, l. 15-18, attached hereto as **Exhibit 44.**
[126] Deposition of Jacob Bentley at p. 21, l. 7-10, attached hereto as **Exhibit 45.**

Ultimately, this is just one of the many assertions which were included in the affidavits of the 13 fire chiefs which those fire chiefs had zero personal knowledge of when questioned during a deposition. As such, the 13 fire chief affidavits provided to the Court by the City and County Defendants do not comply with CR 56.05 as they cannot have been made "on personal knowledge" of the individual affiants. Instead, the most likely explanation is that those affiants did not know what they were signing beyond it being presented as "support for the 911 center transfer" and the affidavits themselves were drafted by legal counsel for the self-serving purpose of seeking an early dismissal of Plaintiff's claims. Additionally, of the five affiants that have been deposed, three testified that their affidavits were not notarized in their presence; calling even more into doubt their veracity.[127] As such, the 13 fire chief affidavits lack credibility, do not comply with CR 56.05, and should not be considered by the Court.

2. The affidavits of Shurtleff and White are similarly flawed

Just as with the affidavits of the fire chiefs, the affidavits of both Ross Shurtleff and Brian White also seem to have been curated not out of their own personal knowledge. For example, both affidavits contain the same paragraph:

> Generally, an emergency response is occasioned by (1) Occurrence or Threat of Serious Criminal Activity Endangering the immediate Health, Safety, and Welfare of Citizens or Damage to Property; (2) Fire or Similar Catastrophic Event; or (3) Conditions Requiring Emergency Medical Response and Assistance.[128]

The three criteria contained in this averment are particularly specific, and both Ross Shurtleff and Brian White were asked about that averment in their deposition. Ross Shurtleff stated:

[127] Depositions of Salisbury at p. 16, l. 19-23.; Rudder at p. 19, l. 14-16; and Bentley at p. 14, l. 1-6, collectively attached hereto as **Exhibit 46.**
[128] Affidavit of Ross Shurtleff at ¶ 21 (**Ex. 37**) and Affidavit of Brian White at ¶ 23 (**Ex. 38**).

A. So as formulating this specific sentence, as it is formatted in this affidavit, I did not key stroke that. I did not key stroke that. I did not formulate that sentence.

...

Q. But I want to know where one, two – where one, two, and three came from.

A. General operating knowledge. Generally speaking, one of those criteria has to be met or multiple criteria have to be met, There's no way that you can put a one size fits all on every call for service.

Q. And I guess what I want a little bit deeper answer to that. Like if there's a policy manual or if there's a standard operating procedures that contains one, two, three as set forth in paragraph 21 of your affidavit, I mean, I would like to know where that is so I can see the rest of the policies and standard operating procedures. Is it contained in anything like that?

A. No. And that wasn't pulled from any such document.[129]

As such, the three criteria for sending an emergency response that are listed in Shurtleff's affidavit were not criteria that came from his personal knowledge, and they were not pulled from any outside document. Brian White, when questioned on those three criteria could not recall a single criterion despite being repeatedly presented the opportunity, furthermore, when asked where those three criteria he testified that maybe it came from research he had done and sent to Attorney Shaw.[130] This is, however, contradictory to the testimony of Shurtleff whose affidavit contains the exact same paragraph with the exact same criteria.

Ultimately, the only logical explanation then for the source of this material is not from the personal knowledge of Ross Shurtleff and Brian White but that they were crafted by counsel for Defendants. Defendants understand that the absence of policies and procedures is detrimental to their claims of immunity and therefore inserted this language in the affidavit to paint the decision of dispatcher Johnson to not dispatch a

[129] Deposition of Ross Shurtleff at pp. 152-153, l. 12-16 (**Ex. 3**).
[130] Deposition of Brian White at p. 72, l. 10-14, attached hereto as **Exhibit 47.**

response to the first 911 call as one made in conformance with at least some standard. Because as has been explored *supra*, the Prestonsburg 911 dispatch center does not have any written policies to assist a dispatcher in determining whether an emergency response should be dispatched. As such, the affidavits of Ross Shurtleff and Brian White, and the averments contained therein, cannot be viewed as anything other than an attempt by counsel for Defendants to justify the early dismissal of the Plaintiff's claims. These affidavits operate as admissions by counsel for both the City and the County Defendants that their claimed immunity does not exist, because the averments in those Affidavits was refuted by those Affiants testimony.[131]

3. The affidavit of Sunseri is not relevant to this Court's analysis

The last of the 16 affidavits provided to this Court by the City and County Defendants is the affidavit of Mike Sunseri. This affidavit, while without question the product of Mr. Sunseri's personal knowledge, has absolutely zero bearing on the claims asserted against the City and County Defendants. During his deposition, Mr. Sunseri had the following exchange with undersigned counsel:

> Q. So **what was it about your job,** Mike, that would put you in a position to have knowledge **that might be useful in this litigation or your affidavit**?
> A. **I think a lack of understanding of what the 911 services board does or doesn't do led to my involvement** – well, that's my answer.
> Q. Okay. And can you provide context for that response? What do you mean by lack of understanding, or what do you believe?
> A. The 911 Services Board was **created statutorily to collect and distribute wireless 911 fees** on behalf of the Commonwealth.[132]
> ...

[131] Depositions of: Salisbury at pp. 19-25, l. 24-10; Gullet at pp. 16-34, l. 34-25; Clark at pp. 16-23, l. 23-15; Rudder at pp. 25-31, l. 13-22; Bentley at pp. 16-21, l. 19-16; Shurtleff at pp. 152-153, l. 12-16; and White at p. 72, l. 10-14, collectively attached hereto as **Exhibit 48.**
[132] Deposition of Mike Sunseri at p. 11, l. 3-14, attached hereto as **Exhibit 49.**

> Q. And Mike, just because they've got the proper certification, I guess I can analogize it to somebody driving a car and having a driver's license the proper certification to drive the car. Of course, if you are in a car wreck, doesn't mean you are at fault.
> **Is there anything about your certifications or anything that you do, Mike, that would be dispositive of whether or not there was a flaw on a particular day in the 911 system for Prestonsburg?**
> A. **Nothing of the statutory regulatory obligations of the 911 services board would be relevant to that question.**[133]

As his testimony makes clear, Mr. Sunseri and the 911 Services Board's role with respect to 911 dispatch centers is the distribution of wireless 911 fees. They do not have any role in establishing operating procedures or monitoring that would in anyway be dispositive to the Plaintiff's claims.

These affidavits are just one more example, and a reminder, that the reason the City and County Defendants resisted participating in discovery early in the litigation, and why the County Defendants continue to resist, is because they understand that they are not protected by immunity with respect to the claims that have been brought against them. Because of this understanding, they have engaged in delay tactics, ignored orders of the Court, and as outlined above, carefully crafted affidavits not from the affiant's personal knowledge, but so as to best plug the holes in their arguments in supporting their claimed immunity. These affidavits do not comply with the standards of CR 56.05 as they are not made from the affiant's personal knowledge. For this reason, this Court should not consider the averments made within them as anything more than arguments from counsel.

[133] *Id.* at p. 14, l. 2-14.

IV. CONCLUSION

For the reasons stated herein, and in Plaintiff's initial response, due to the questions of material fact that exist as to whether the Defendants' breached their ministerial duties, the City Defendants' and County Defendants' motions must be denied.

Respectfully submitted,

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Filed 24-CI-00332 01/12/2026 Douglas R. Hall, Floyd Circuit Clerk

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2026, the foregoing document was electronically filed with the Clerk of this Court using the KY eCourts eFiling system. A true and accurate copy of the foregoing document was served via email upon:

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