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STATE OF MICHIGAN
IN THE SUPREME COURT

LINDA MOLITORIS, Plaintiff-Appellant, -v- SAINT MARY MAGDALEN CATHOLIC CHURCH, Defendant-Appellee.	Supreme Court No. 166699 Court of Appeals No. 364820 Livingston County Circuit Court Case No. 22-31366-NO

Brief of *Amici Curiae* Insurance Alliance of Michigan and American Property Casualty Insurance Association

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Statement of Interest[1]

Insurance Alliance of Michigan is the principal state government-affairs and public-information association consisting of insurers, groups, and related organizations operating in Michigan. Its members include property/casualty insurers representing approximately 94% of the Michigan auto-insurance market, 90% of the Michigan home-insurance market, and 60% of the Michigan commercial-insurance market. Its purpose is to serve the industry and consumers by providing educational, media, legislative, and public information on significant issues affecting the insurance business in this state.

American Property Casualty Insurance Association is a leading national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent approximately 65% of the U.S. property-casualty insurance market and approximately 64% of Michigan's market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits amicus curiae briefs in significant cases before federal and state courts.

This appeal involves the potential radical expansion of liability for homeowners and other non-commercial property owners in Michigan.

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[1] None of the parties or their counsel contributed monetarily or to the authorship of this brief. Insurance Alliance of Michigan and American Property Casualty Insurance Association made the only monetary contribution to preparing this brief.

IAM and APCIA's members issue the vast majority of the property insurance policies sold in Michigan. They have considerable expertise and knowledge about the implications that expanded liability would have for Michigan insureds.

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Statement of Question Presented

> Whether this Court should adopt the Third Restatement of Torts' reasonable-care standard in lieu of traditional status-based categories to determine a possessor's duty to persons who suffer physical harm caused by a condition on the land?

The trial court did not address this issue.

The Court of Appeals did not address this issue, though one judge raised it in a partial concurrence and partial dissent.

Plaintiff-appellant answers, yes.

Defendant-appellant answers, no.

Amici curiae Insurance Alliance of Michigan and American Property Casualty Insurance Association answer, no.

This Court should answer, no.

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Introduction

Plaintiff Linda Molitoris and *amicus curiae* Michigan Association for Justice advocate expanding liability for Michigan homeowners. They ask this Court to discard more than a century of precedent categorizing property visitors—invitee, licensee, trespasser—in favor of a one-size-fits-all standard from the Third Restatement of Torts. This Court can't adopt the Third Restatement without violating separation-of-powers principles. Nor should it try.

This Court shouldn't adopt the Third Restatement's approach because the Legislature has already acted. The Third Restatement purportedly promises simplicity for courts—the same reasonable-care standard owed to anyone on another's property, including trespassers. But the Legislature already acted in this field. It codified the duty owed to trespassers. This Court can't nullify that legislation, so Michigan courts will continue to classify property visitors.

The Third Restatement section at issue also adopts the entirety of chapter 7 of the Third Restatement. Molitoris and the MAJ don't address the implications of either adopting chapter 7 or adopting a uniform reasonable-care standard without adopting chapter 7. They ask this Court to leap into the unknown, which leads to the next point.

Molitoris and the MAJ advocate an expansion of liability, which is a public-policy issue. Indeed, each party offers policy rationales in support of their argument. The salient point, though, is that the Legislature is the policymaking branch of government and better suited to evaluate such dramatic, sweeping policy changes.

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While this Court has the raw power to effect policy by changing the common law, it has repeatedly counseled its own restraint. It has recognized that the Legislature can form committees, commission studies, and hear testimony from experts and stakeholders to fully evaluate the benefits and consequences of a change in policy. This Court can do none of that.

As sophisticated and enlightened as this Court is, it hasn't been and cannot be fully informed of the benefits and consequences of the dramatic change in Michigan law that Molitoris and the MAJ seek. For example, will expanding liability increase the cost of insurance? And will any increase cause financial hardship or result in fewer property owners carrying insurance to compensate personal-injury plaintiffs, including in non-premises-liability cases? Because this Court could only speculate on those potential consequences, it should pass on this issue and deny leave to appeal.

Statement of Facts

IAM and APCIA accept the facts stated in the Court of Appeals' opinion and defendant-appellee Saint Mary Magdalen Catholic Church's supplemental brief, which plaintiff-appellant Linda Molitoris doesn't appear to dispute in any way material to the issue addressed in this brief.

Discussion

Molitoris and the MAJ ask this Court to abandon the century-old classifications for premises liability (invitee, licensee, trespasser) and adopt a uniform standard for all who enter another's property (reasonable care). Call it what it is, an expansion of liability. In particular, it expands liability for homeowners.

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Whether expanding liability for homeowners is a good idea is, at bottom, a policy judgment. It's an issue best left to the Legislature, which has already acted in this area—rejecting some of what Molitoris and the MAJ aim to sell.

A. The barrier to and unknown of adopting the Third Restatement.

For well over a century, Michigan premises-liability law has categorized people who enter another's property. *Janini v London Townhouses Condominium Assoc*, 514 Mich 86, 97; 22 NW3d 24 (2024); *Peklenk v Isle Royale Copper Co*, 170 Mich 299, 302-303; 136 NW 352 (1912). They're invitees, licensees, or trespassers. An invitee is invited onto the property for a commercial purpose. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604; 614 NW2d 88 (2000). A licensee is anyone else on the property with the owner's consent, typically a social guest. *Id.* at 596. Trespassers enter the property without the owner's consent. *Id.*

Property owners owe each category a different standard of care:

- Trespassers: no duty except to not injure them through (1) willful and wanton misconduct, (2) active negligence, (3) failure to use reasonable care in an area that trespassers constantly intrude, and (4) if the trespasser is a child, failure to use reasonable care to protect from a condition that was where children were likely to trespass, the children were unlikely to realize it posed a risk of death or serious bodily harm, and risk of the condition outweighed its benefit. MCL 554.583.

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- Licensees: duty to warn of hidden dangers the possessor knows or should know of, if the licensee does not know or have reason to know of the danger. *Stitt*, 462 Mich at 596.

- Invitees: duty to use reasonable care to inspect and repair or warn invitees of hazards the possessor knew or should know of. *Id.* at 597.

The Third Restatement has a "radical new approach to premises liability." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 129; 1 NW3d 44 (2023). Under the Third Restatement, the different standards are, generally, replaced with one "reasonable care" standard:

> Subject to § 52, a land possessor owes a duty of reasonable care to entrants on the land with regard to:
>
> (a) conduct by the land possessor that creates risks to entrants on the land;
>
> (b) artificial conditions on the land that pose risks to entrants on the land;
>
> (c) natural conditions on the land that pose risks to entrants on the land; and
>
> (d) other risks to entrants on the land when any of the affirmative duties provided in Chapter 7 is applicable. [2 Restatement of Torts, 3d, § 51 (2012).]

The reasonable-care standard applies to trespassers, *Id.*, §51 cmt j, but not a "flagrant trespasser"—a term the Third Restatement made up and leaves to each jurisdiction to define. *Id.*, § 52 cmt a. Land possessors have a duty to not intentionally harm "flagrant trespassers" and to rescue them if they are imperiled and helpless or unable to protect themselves. *Id.*, § 52.

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The Michigan Legislature has already rejected the Third Restatement's approach. In 2014, the Legislature adopted the trespass liability act. MCL 554.582, et seq.; 2014 PA 226. The act provides that property possessors generally owe "no duty of care to a trespasser." MCL 554.583(1). It allows property possessors to not "exercise reasonable care to put the land in a condition reasonably safe for the trespasser." *Id.* The act also provides exceptions for the possessor's "willful and wonton misconduct," situations in which the possessor knew or should have known of the trespasser's presence or constant intrusion, and specifically defined dangers to child trespassers. MCL 554.583(2).

Like this Court, the Legislature can modify or abrogate the common law. *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 389; 738 NW2d 664 (2007); Const 1963, art 3, § 7. It can also codify the common law. *Sington v Chrysler Corp*, 467 Mich 144, 164; 648 NW2d 624 (2002). When it does, the common law—and whatever change this Court might entertain making to it—yields to the statute. *Sington*, 467 Mich at 164; *Trentadue*, 479 Mich at 389-390, citing *Pulver v Dundee Cement Co*, 445 Mich 68, 75 n. 8; 515 NW2d 728 (1994).

The trespass liability act precludes this Court from adopting section 51 of the Third Restatement. This Court cannot nullify the statute. So it cannot adopt the reasonable-care standard for all classifications; Michigan courts must apply the standards in the act for trespassers. This defeats the premise behind adopting a unified reasonable-care standard. Advocates maintain that it is simpler and efficient to do away with classifying premises-liability plaintiffs. But Michigan courts will continue to classify. Because the Legislature embraced the classification system in the trespass liability act, Michigan courts will have to analyze whether a person

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entering property was a trespasser to start or overstayed or exceeded the scope of an invitation.

Also, no one advocating the Third Restatement's approach has addressed its full scope. Section 51 of the Third Restatement incorporates "the affirmative duties provided in Chapter 7." 2 Restatement of Torts, 3d, § 51. There are eight sections in chapter 7 of the Third Restatement. *Id.*, §§ 37-44. They address risks not created by the actor, statutes imposing obligations, special relationships, duties owed to third-parties, and other situations. *Id.* Molitoris and the MAJ haven't explained why this Court should adopt those sections, nor whether they're consistent with Michigan law or would wreak havoc on other areas of Michigan law.[2] They also haven't explained whether this Court can carve out the adoption of chapter 7 and what inconsistencies that would yield.

It's unclear how many common-law doctrines Molitoris and the MAJ are actually asking this Court to change. It is clear, though, that they're asking this Court to engage in policymaking with less than complete information and study, which leads to the next point: this Court should leave the matter to Michigan's policymaking branch.

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[2] The Legislature has rejected wholesale adoption of Restatements, particularly the American Law Institute's more recent publications. See MCL 500.3032 (generally prohibiting application of the ALI's Restatement of the Law, Liability Insurance); Appel, *The American Law Institute's Unsound Bid to Reinvent Contract Law in the Proposed Restatement of the Law, Consumer Contracts*, 31 Loy Consumer L Rev 334, 345 (2020); (observing that the Restatement of the Law, Liability Insurance included "novel recommended liability insurance rules"); see also *Kandil-Elsayed*, 512 Mich at 159 (Zahra, J., dissenting) (explaining that "the Third Restatement at times resembles an essay on where its authors think the law should be heading").

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B. Substantial policy changes should be left to the Legislature.

This Court has authority to change the common law. *Price v High Pointe Oil Co*, 493 Mich 238, 258; 828 NW2d 660 (2013). So does the Legislature. *Id.* at 259; *Trentadue*, 479 Mich at 389; 1963 Const, art 3, § 7. This Court has recognized that it's not on equal footing with the Legislature when it comes to evaluating policy changes, particularly tectonic shifts in bedrock legal rules. *Henry v Dow Chem Co*, 473 Mich 63, 83; 701 NW2d 684 (2005).

The Legislature is the "policy-making branch" vested with "the legislative power of the State of Michigan." *People v McIntire*, 461 Mich 147, 153; 599 NW2d 102 (1999); 1963 Const, art 4, § 1. It has "plenary authority." *Taxpayers of Mich Against Casinos v State*, 471 Mich 306, 332-333; 685 NW2d 221 (2004). And it has the means to " 'gather facts from a wide range of sources to help lawmakers decide whether the law should be changed ….' " *Henry*, 473 Mich at 92 n. 24, quoting Schwartz & Lorber, *State Farm v Avery: State court regulation through litigation has gone too far,* 33 Conn L Rev 1215, 1219–1220 (2001). The Legislature can form committees, procure studies, and take testimony from experts and stakeholders. *Woodman*, 486 Mich at 246.

This Court's role and reach is more limited. Courts adjudicate disputes between litigants. The adversarial system can sharply frame a point of dispute. *In re Knight*, 333 Mich App 681, 690-691; 963 NW2d 676 (2020). But it necessarily limits the court to " ' "one set of facts in each lawsuit, which is shaped and limited by arguments from opposing counsel who seek to advance purely private interests." ' " *Woodman*, 486 Mich at 247, quoting *Henry*, 473 Mich at 93 n. 24, quoting *Schwartz & Lorber*, 33 Conn L Rev at 1220. Unlike the Legislature, this Court is limited

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to the record developed by the parties; it cannot gather facts from experts and stakeholders. *Woodman*, 486 Mich at 247.

Recognizing its limitations, this Court has counseled its own incrementalism and avoidance of "tectonic shifts" or "sudden departure from longstanding legal rules." *Price*, 493 Mich at 259; *Henry*, 473 Mich at 83; *Woodman*, 486 Mich at 231. Changing the common law can have "undesirable effects that neither [this Court] nor the parties can satisfactorily predict." *Henry*, 473 Mich at 83. This Court often "lack[s] sufficient information to assess intelligently and fully the potential consequences of [a change in the common law.]" *Henry*, 473 Mich at 84. This is why "[t]he responsibility for drawing lines in a society as complex as ours—of identifying priorities, weighing the relevant considerations and choosing between competing alternatives—is the Legislature's, not the judiciary's." *Van v Zahorik*, 460 Mich 320, 327; 597 NW2d 15 (1999).

As in prior cases, here, "plaintiffs have sought a radical change in our negligence jurisprudence and have provided no guidance on how this proposed change might affect Michigan." *Henry*, 473 Mich at 89-90; see *Kandil-Elsayed*, 512 Mich at 129 (describing the Third Restatement as a "radical new approach to premises liability"). This Court won't find any discussion of the consequences of adopting the uniform reasonable-care standard in Molitoris or the MAJ's briefs. Despite that, they ask this Court to act (leap) first. They omit a few informative points.

1. Legislatures have shown themselves capable of studying and evaluating the standards for premises liability.

The genesis of a uniform reasonable-care standard in premises-liability cases wasn't court action; it was legislative. The Parliament of the United Kingdom passed the Occupiers' Liability Act in 1957, which

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adopted a uniform standard. As the MAJ acknowledges, the Parliament appointed a committee to study the issue before taking action. (MAJ Amicus Brief, p. 12, citing *Mallet v Pickens*, 206 W Va 145, 152 (1999), citing Law Reform Committee, Third Report, Cmd. 9305 at 31 (1954)). This Court, of course, cannot do the same for Michigan.

Legislatures in the United States have shown themselves capable of evaluating this issue and making a policy decision. The Connecticut Legislature, for example, decided to retain the classifications, but provided that the standard for a "social invitee" is the same as for a "business invitee." Conn Gen Stat § 52-557a; see also *Kurti v Becker*, 54 Conn App 335, 338 (1999) (explaining that Connecticut distinguishes social invitees from licensees). After the Colorado Supreme Court adopted a uniform standard, the Colorado Legislature reinstated the classification system. See Colo Rev Stat §13-21-115; *Bath Excavating & Const Co v Willis*, 847 P2d 1141, 1145 (1993). Legislatures have also enacted carve outs or immunities for emergency responders and undeveloped land. See, e.g., *Univ of Alaska v Shanti*, 835 P2d 1225, 1228 n. 5 (Alaska, 1992) (recognizing that the legislature partially abrogated a case adopting a uniform standard); *Wiley v Redd*, 110 Nev 1310 (1994) (same); *Tantimonico v Allendale Mut Ins Co*, 637 A2d 1056, 1057 (RI, 1994) (same). The Michigan Legislature has shown itself similarly capable. See MCL 554.583 (trespass liability act); MCL 324.73301 (recreational land use act).

2. Neither the U.S. Supreme Court nor the California Supreme Court unilaterally changed the common law to adopt a uniform standard.

The first data point that advocates of the uniform standard often cite is the U.S. Supreme Court's decision in *Kermarec v Compagnie Generale*

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Transatlantique, 358 US 625; 79 S Ct 406 (1959). But *Kermarec* didn't endorse a judicial change of the law.

The plaintiff in *Kermarec* visited a friend on a ship and fell while leaving it. *Kermarec* didn't overrule, abrogate, or otherwise nullify the classification system. It held that the lower court erred in failing to apply maritime law. *Id.* at 628. The "settled principle of maritime law" was that shipowners owed "the duty of exercising reasonable care towards" non-crew members who were "lawfully aboard the vessel." *Id.* at 630. The Court simply applied existing maritime law, which had never adopted the classification system.[3] So, while the Court was critical of a classification system that was "alien to the law of the sea," *id.* at 632, it isn't the example of judicial policymaking that it's often portrayed to be.

Like many uniform standard advocates, Molitoris and the MAJ next trumpet the California Supreme Court being the first to adopt the reasonable-care standard. See *Rowland v Christian*, 69 Cal 2d 108 (1968), superseded in part by statute, *Calvillo-Silva v Home Grocery*, 19 Cal 4th 714 (1998). But they gloss over the fact that *Rowland* was based on a statute.

Rowland's analysis started with a statute—"Section 1714 of the Civil Code provides: 'Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned by his want of ordinary care or skill in the management of his property or person …" *Rowland*, 69 Cal 2d at 111-112, quoting Cal Civ Code § 1714. The Court explained that the

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[3] The MAJ's characterization that *Kermarec* "jettisoned" the classification system is incorrect. (MAJ Amicus Brief, p. 12). The classification system never applied in admiralty law. *Kermarec*, 358 US at 630. Likewise, the Third Restatement, showing itself fallible, indicated that *Kermarec* decided to "not continue" the classification system in admiralty cases. 2 Restatement Torts, 3d, Reporter's Note. That, too, is wrong.

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statute set "the basic policy of this state." *Rowland*, 69 Cal 2d at 118-119. So it held that "[t]he proper test to be applied to the liability of the possessor of land in accordance with section 1714 of the Civil Code is whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others, and, although the plaintiff's status as a trespasser, licensee, or invitee may in the light of the facts giving rise to such status have some bearing on the question of liability, the status is not determinative." *Id.* at 119.

The fact that *Rowland* was based on a statute is lost on many, but not all. See *Huyck v Hecla Min Co*, 612 P2d 142, 144 (Idaho, 1980) (declining to adopt uniform reasonable-care standard because "the basis for *Rowland* … was a particular California statute" and "[w]e are cited no parallel statute in Idaho"). Michigan doesn't have a statute like the one *Rowland* applied.

Rowland wasn't the judicial-power flex that it's often portrayed to be. Neither was *Kermarec*. Yet some courts—too many—have been misled to invoke *Rowland* and *Kermarec* in support of judicial policymaking and deviating from black-letter, hornbook, century-old law.

3. There is no modern trend to follow.

The notion that there's a "modern trend" is also fiction. (MAJ Amicus Brief, p. 11). A handful of state supreme courts adopted the unified reasonable-care standard through the 1970s, '80s, and '90s. And a handful rejected it, too. In the 21st century, four state supreme courts have considered the issue. *Smith v Smith*, 563 SW3d 14 (Ky, 2018); *Machado v Yacht Haven USVI, LLC*, 61 Vt 373 (2014); *Handy v Nejam*, 111 So3d 610 (Miss, 2013); *Koenig v Koenig*, 766 NW2d 635 (Iowa, 2009). Two adopted the reasonable-care standard. *Machado*, 61 VI at 186. Two rejected it. *Smith*,

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563 SW3d at 18; *Handy*, 111 So3d at 612. The most recent court to consider the uniform standard rejected it. *Smith*, 563 SW3d at 18.

There is no trend; there is no wave to ride. The jurisdictions are simply split.[4]

4. Conclusion: this Court should defer this policy-laden issue to the Legislature.

Again, Molitoris and the MAJ don't discuss the consequences of adopting a uniform reasonable-care standard for premises-liability claims. In the Court of Appeals, Judge Gleicher suggested that insurance is the answer. *Molitoris v St Mary Magdalen Catholic Church*, unpublished per curiam opinion of the Court of Appeals, issued Jan. 4, 2024 (Docket No. 364820) (Gleicher, J., concurring in part, dissenting in part), p. 5 ("Churches and homeowners may purchase insurance … covering even gratuitous visitors."). The MAJ echoes that point. (MAJ Amicus Brief, p. 21 ("[W]e have trended toward favoring the distribution of losses over a larger segment of society through insurance.")). Buying insurance is certainly prudent. But expanding liability while telling homeowners to buy insurance (in addition to dealing with inflation, skyrocketing healthcare costs, etc.) can sound like, "Let them eat cake."

[4] The Restatement indicates that Oregon is a "unitary" standard jurisdiction, citing *Ragnone v Portland Sch Dist No 1J*, 291 Or 617 (1981). 2 Restatement Torts, 3d, Reporter's Note. The MAJ says Oregon law is "unclear." (MAJ Amicus Brief, Exhibit A, p. 5). They're both wrong. The Oregon Supreme Court upheld and applied the invitee/licensee categories about two weeks after *Ragnone*, explaining that the *Ragnone* "parties made no issue of the relevance of this distinction." *Blair v Mt Hood Meadows Dev Corp*, 291 Or 703, 706 n. 2 (1981).

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Will the price of property insurance increase under the Third-Restatement's uniform standard? Expanding liability will increase the number of premises-liability lawsuits, the amount insurers pay to defend premises-liability lawsuits, and the amount insurers pay to settle premises-liability lawsuits. So, yes, property insurance would likely cost more. The consequences, though, are unknown.

How much could the price of property insurance increase? Will people stop buying property insurance because of the increase? If so, how many people will default on their mortgages or suffer other financial hardship as a result? Property insurance covers more than just premises-liability claims. How many people will go without any potential source of compensation in premises-liability cases and other personal-injury cases because of the decrease in people having property insurance? Those are topics the Legislature could study, weigh, and evaluate. This Court would have to guess.

The advocates of the Third Restatement's view urge this Court to abandon the "agrarian concerns" that led to the classifications. (MAJ Amicus Brief, p. 10). Embrace the "modern world," they say. *Molitoris*, slip op, p. 5 (Gleicher, J., concurring in party and dissenting in part). The significant changes from agrarian to modern include the evolution of a robust Legislature with fact-gathering capabilities far beyond the judiciary. See *Woodman*, 486 Mich at 246 ("During the nineteenth century, courts exercising their authority to alter the common law did so within the context of a simpler, agrarian economy. The legislatures of that era exercised a more limited regulatory role. In contrast, today's modern legislatures exercise robust regulation of all facets of our modern, internationalized economy and the rights and responsibilities of citizens."). If the shift from agrarian to modern is significant here, it

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counsels this Court's restraint. This is a policy matter. The Legislature is the policymaking branch. *McIntire*, 461 Mich at 153.

Conclusion

Molitoris and the MAJ try to justify departure from more than a century of precedent with outlier, law-school-hypothetical-style scenarios. They aim to convince this Court that the classifications are difficult to navigate. Even if that were true (it's not), the Legislature codified the rules for trespassers. So Michigan courts will continue to classify. They'll continue to analyze whether a trespasser's status changed or whether a social guest overstayed their welcome or exceeded the scope of the invitation. (See MAJ Amicus Brief, pp. 16-18). The law-school hypos will persist.

And, if clarity and consistency are the aim, the reasonable-care standard offers none. Its inherent flaw is lack of transparency, which means there's no consistency. One jury finds it reasonable to go to work without shoveling snow on a driveway, another doesn't. We'd never know why. Molitoris illustrates this point, explaining that, regardless what the property owner did, verdicts will hinge on the value that each particular jury places on volunteering. (Appellant Supplemental Brief, pp. 25-26 ("[A jury] might think that plaintiff merited a high level of care because she was giving her time and effort as a means of doing good. Or they might think she was taking her own chances by volunteering. Or something else."). There will be no consistency; no guidance for conduct. So, while Molitoris and the MAJ condemn divergent results based on invitee, licensee, or trespasser classification, they advocate a standard inherently prone to inconsistency for identical plaintiffs. See *Mellon Mortg Co v Holder*, 5 SW3d 654, 670 (Tex, 1999) (declining to abandon

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classification for " 'a standard with no contours' "), quoting *Younce v Ferguson*, 106 Wash 2d 658, 667 (Wash, 1986); see also Driscoll, *The Law of Premises Liability in America: Its Past, Present, and Some Considerations for Its Future*, 82 Notre Dame L Rev 881, 907 (2006).

This Court should focus on the common scenario—a social guest visiting in the winter. It should recognize that expanding liability for the common scenario will have consequences. This Court should also recognize that it doesn't and it has no way to know the scope of those consequences. The Legislature, in contrast, can study and evaluate the consequences of proposed reform. It is the far superior branch to make the change, if warranted, that this Court is considering.

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