

**SUPREME COURT OF THE UNITED STATES**

**No. 20-385**

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*Judy Doe, Petitioner*

**v.**

*Michael L. Parson, Respondent*

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**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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**Motion by Petitioner for the Disqualification of  
The Hon. Amy Coney Barrett Pursuant to 28 U.S.C. §455(a)**

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## **Table of Contents**

I. Introduction.....	1
II. Justice Barrett Publicly Opposes Petitioner’s Constitutional Right to Choose an Abortion. ....	1
III. Disqualification is Required When Judicial Impartiality Might Reasonably Be Questioned.....	2
IV. An Objective Observer Would Reasonably Believe Justice Barrett Has Such a Strong Bias Against Legal Abortion That She Cannot Impartially Rule on the Petition. ....	3
V. Conclusion.....	6

## TABLE OF AUTHORITIES

### Cases

<i>Cheney v. U.S. Dist. Ct.</i> , 541 U.S. 913 (2004).....	3
<i>Doe v. Greitens</i> , 960 F.3d 1115 (8 <sup>th</sup> Cir. 2020).....	1, 7
<i>Liljeberg v. Health Services Acquisition Corp.</i> , 486 U.S. 847 (1988). ....	2
<i>Liteky v. United States</i> , 510 U.S. 540 (1994) .....	2, 3, 5
<i>Planned Parenthood of Se. Pa. v. Casey</i> , 505 U.S. 833 (1992). ....	1, 2, 5
<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	passim
<i>United States v. Cooley</i> , 1 F.3d 985 (10th Cir. 1993).....	2

### Statutes

28 U.S.C. §455(a) .....	1, 2, 5
-------------------------	---------

### Constitution

Establishment Clause .....	1, 2
Free Exercise Clause.....	1, 2

### Law Review Articles

Amy C. Barrett & John H. Garvey, <i>Catholic Judges in Capital Cases</i> , 81 Marq. L. Rev. 303 (1997-1998) .....	3, 4, 5, 6
---	------------

### Ecclesiastical Authority

Catechism of the Catholic Church.....	4, 5
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## **I. Introduction.**

Petitioner Judy Doe (“Petitioner”) moves, pursuant to 28 U.S.C. §455(a), for the disqualification of the Hon. Amy Coney Barrett from consideration of the Petition for Certiorari, Case No. 20-385 (the “Petition”) due to her publicly expressed religious beliefs that a human being comes into existence at conception, abortion is murder and *Roe v. Wade*, 410 U.S. 113 (1973) (“*Roe*”) was a “barbaric” decision that should “be put to an end.”

## **II. Justice Barrett Publicly Opposes Petitioner’s Constitutional Right to Choose an Abortion.**

The Petition seeks to protect the Petitioner’s constitutional right to choose an abortion in Missouri. Petitioner is a member of the Satanic Temple and holds the religious belief her non-viable fetus is not a human being but rather part of her body that can, in good conscience, be removed on demand and without regard to its current or future condition (the “Satanic Tenet”). Petitioner challenges the constitutionality, under the Establishment Clause, of a statement in the Missouri abortion statute that “[t]he life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being” (the “Missouri Tenet”). The Missouri Tenet is Catholic dogma, a cornerstone of Justice Barrett’s religious beliefs on abortion. It is not a statement of fact.

Petitioner also challenges Missouri’s requirement she acknowledge receipt of the Missouri Tenet (the “Acknowledgement”) then wait three days before getting an abortion (the “Waiting Period”). Petitioner contends those conditions to an abortion are unconstitutional under the Free Exercise Clause and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992) (“*Casey*”). The Petition asks this Court to review *Doe v. Greitens*, 960 F.3d 1115 (8<sup>th</sup> Cir. 2020) (“*Doe*”) in which the Eight Circuit upheld the constitutionality of the Missouri Tenet

under the Establishment Clause and refused to apply *Casey* to the Acknowledgement and Waiting Period.

Petitioner contends the Missouri Tenet violates the Establishment Clause because it explicitly incorporates Catholic dogma on abortion. Petitioner contends the Acknowledgement and Waiting Period violate her right protected by the Free Exercise Clause to choose an abortion in reliance on her belief in the the Satanic Tenet and without having to acknowledge or spend any time considering Catholic dogma. Petitioner contends her right to get an abortion in reliance on her belief in the Satanic Tenant lies at the heart of her protected “zone of conscience,” as defined in *Casey*. Petitioner considers Acknowledgement of the Missouri Tenet and Waiting Period to be psychological warfare by the State of Missouri to discourage her from getting an abortion.

### **III. Disqualification is Required When Judicial Impartiality Might Reasonably Be Questioned.**

28 U.S.C. §455(a) states, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. §455(a) was designed to promote public confidence in the integrity of the judicial process by replacing the subjective standard with an objective test. See *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 858 n.7 (1988). “[W]hat matters is not the reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U.S. 540, 548 (1994) (“*Liteky*”). Thus, the question for the Court to determine whether disqualification is warranted is, “whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality.” *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993). “It is well established that the recusal inquiry must be made from the perspective of a reasonable observer

who is informed of all surrounding facts and circumstances.” *Cheney v. U.S. Dist. Ct.*, 541 U.S. 913, 924 (2004). As Justice Kennedy said in *Liteky*, 510 U.S. at 564:

[D]isqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.

#### **IV. An Objective Observer Would Reasonably Believe Justice Barrett Has Such a Strong Bias Against Legal Abortion That She Cannot Impartially Rule on the Petition.**

Justice Barrett, an avowed Catholic, has been quite candid in the public expression of her religious beliefs that human life begins at conception, abortion is a sin and *Roe* has sanctioned murder on an epic scale. In 2006, she signed a statement published by St. Joseph County Right to Life in the South Bend Tribune that “oppose[s] abortion on demand and defend[s] the right to life from fertilization to natural death.” See annexed Exhibit A.<sup>1</sup> She implored the general public to “[p]lease continue to pray to end abortion.” She endorsed the statement “[i]t’s time to put an end to the barbaric legacy of *Roe v. Wade* and restore laws that protect the lives of unborn children. *Roe v. Wade*: More than thirty-two years... More than 47 million children dead and counting...”

Similar sentiments appear in Justice Barrett’s academic writings. See Amy C. Barrett & John H. Garvey, *Catholic Judges in Capital Cases*, 81 Marq. L. Rev. 303 (1997-1998) (“*Catholic Judges*”):

- In modern Catholic teaching, capital punishment is often condemned along with other practices whose point is the taking of life abortion, euthanasia, nuclear war, and murder itself. It is sometimes said that consistency requires no less-that respect for life in all these cases is a seamless garment. Human beings are created in the image and likeness of

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<sup>1</sup> [https://www.southbendtribune.com/news/local/supreme-court-nominee-amy-coney-barrett-signed-2006-anti-abortion-ad-in-tribune/article\\_bbecc3e4-042c-11eb-b1a2-132bb4b716bb.html](https://www.southbendtribune.com/news/local/supreme-court-nominee-amy-coney-barrett-signed-2006-anti-abortion-ad-in-tribune/article_bbecc3e4-042c-11eb-b1a2-132bb4b716bb.html) last visited October 19, 2020.

God, and “[h]uman life is thus given a sacred and inviolable character, which reflects the inviolability of the Creator himself.” That seems to make things pretty simple. It is a good rule of thumb to say, “No killing. Period.” But a more precise statement of the church's teaching requires a few qualifications. The prohibitions against abortion and euthanasia (properly defined) are absolute; those against war and capital punishment are not. *Catholic Judges* at pp. 306-307.

- [A]bortion and euthanasia take away innocent life. *Catholic Judges* at p. 307
- We might distinguish between executing criminals and killing the aged and the unborn in this way: criminals deserve punishment for their crimes; aged and unborn victims are innocent. *Catholic Judges* at p. 307
- It makes a more convincing case against abortion and euthanasia if we can say in an unqualified way that God alone is the Lord of life. *Catholic Judges* at pp. 308-309.
- The abortion case is a bit easier, we think. Both the state and the unborn child's mother are (at least typically) acting with gross unfairness to the unborn child. *Catholic Judges* at Ftnt. 159

Justice Barrett has said and done nothing since making these public statements to indicate she has changed her mind or tempered her publicly stated beliefs abortion is a sin and abortion in the U.S. is the barbaric legacy of *Roe*. Based on her public statements, an objective observer would have to conclude Justice Barrett’s personal moral compass is inextricably wedded to the polestar of Catholic dogma on abortion. See *Catholic Judges* at p. 323 (“The Catholic Church teaches its members that they are bound to obey the certain judgment of their consciences.”).<sup>2</sup>

The pertinent elements of Catholic dogma on abortion are:

- Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person - among which is the inviolable right of every innocent being to life. Catechism of the Catholic Church at 2270.

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<sup>2</sup> Her conclusion is supported by references to New Testament scripture. See *Catholic Judges* at ftnt. 72.

- Life must be protected with the utmost care from the moment of conception: abortion and infanticide are abominable crimes. You shall not kill the embryo by abortion and shall not cause the newborn to perish. Catechism of the Catholic Church at 2271.
- As a consequence of the respect and protection which must be ensured for the unborn child from the moment of conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights. Catechism of the Catholic Church at 2273.

To be clear, Petitioner is not asking for the disqualification of Justice Barrett on the grounds she is Catholic. Petitioner agrees with Justice Barrett that simply being the member of a religious denomination is not, in and of itself, grounds for disqualification pursuant to 28 U.S.C. §455(a). See *Catholic Judges* at p. 344 (“[M]ere membership in any church to disqualify a federal judge would violate the Religious Test Clause.”). Rather, Justice Barrett has made a point of openly and publicly embracing, as her personal article of faith, the specific Catholic dogma on abortion that is a central element in this case – a human being comes into existence at conception.<sup>3</sup> She sincerely believes abortion is an absolute sin. She has condemned *Roe* for its barbaric legacy of 47 million dead children “and counting.” It is undeniable Justice Barrett holds a deep personal religious belief these matters are true – just as Petitioner holds a deep personal religious belief they are not.

The Petition asks the Court to address the constitutionality of Missouri’s abortion laws which necessarily requires consideration of the Missouri Tenet, the Satanic Tenet, *Roe* and its legacy, including *Casey*. Any objective observer would reasonably believe it is unlikely Justice Barrett could set aside her deeply held religious beliefs on the illegitimacy of abortion and barbarity of *Roe* to render an impartial decision on the Petition.

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<sup>3</sup> Her endorsements were made outside any judicial venue. Compare, *Liteky*, 510 U.S. at 555 (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.”).



The issue here is not whether Justice Barrett could in fact set aside her religious beliefs to impartially rule on the Petition. Petitioner assumes Justice Barrett would readily recuse herself if there was any question in her mind about her ability to put her oath as a Justice of this Court to preserve, protect and defend the Constitution above her personal religious beliefs on abortion and *Roe*.<sup>4</sup>

Rather, the issue here is whether an objective observer might reasonably doubt her impartiality. See *Catholic Judges* at pp. 343-344 (“It is not a question about the judge’s state of mind at all. The issue is whether a reasonable person might doubt his impartiality.”). Petitioner submits that given the profound Constitutional and theological questions posed by the Petition, the political consequences of the answers and the strength of her beliefs, Justice Barrett cannot credibly determine what an objective observer would believe about her ability to impartially rule on the Petition. The full Court should therefore decide this motion.<sup>5</sup>

## **V. Conclusion.**

The inclusion of religious beliefs in our laws has historically presented the most challenging social and Constitutional issues. The regulation of abortion also presents some of the most contentious social and Constitutional issues of our times. This case presents the confluence of both.

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<sup>4</sup> Justice Barrett acknowledges this. See *Catholic Judges* at fnnt. 159 (“[W]here there is no honest, legitimate alternative for deciding the case but to follow positive law supporting the right to commit an abortion,’ the judge should recuse himself.”)

<sup>5</sup> Justice Barrett’s disqualification if she sat on the District or Circuit Court bench could be reviewed by the full panel of this Court. There is no reason why a different standard should apply just because Justice Barrett sits on this Court.

To some, the incorporation of Catholic dogma by legislative fiat into a state's abortion law will protect millions of unborn children. To others, it is an unnecessary step onto the extremely dangerous and slippery slope of theocracy.

The Court will need all of its wisdom and courage to navigate a course for the Religion Clauses between the Scylla of the Missouri Tenet and the Charybdis of the Satanic Tenet. The option of turning a blind eye to that challenge – as the Eighth Circuit did in *Doe* – postpones an inevitable reckoning. The success or failure of the journey depends on whether and to what extent the Court can retain its credibility for whatever decisions it makes. This Court's credibility is undermined by any material questions about the impartiality of the Justices who express its opinions.

For the reasons set forth above, an objective observer would reasonably believe Justice Barrett cannot impartially decide the issues presented by the Petition. Likewise, an objective observer would reasonably believe Justice Barrett cannot judge her own impartiality. Petitioner therefore respectfully request the Court enter an order disqualifying Justice Barrett from deciding the Petition. Petitioner has no objection to Justice Barrett participating in a decision by the entire panel.

October 27, 2020

Respectfully submitted

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### **Certification of Service**

I hereby certify that I am this day serving the foregoing document (3) copies upon the person(s) and in the manner indicated below. Service by first-class mail addressed as follows:

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*W. James Mac Naughton*

## **Appendix Table of Contents**

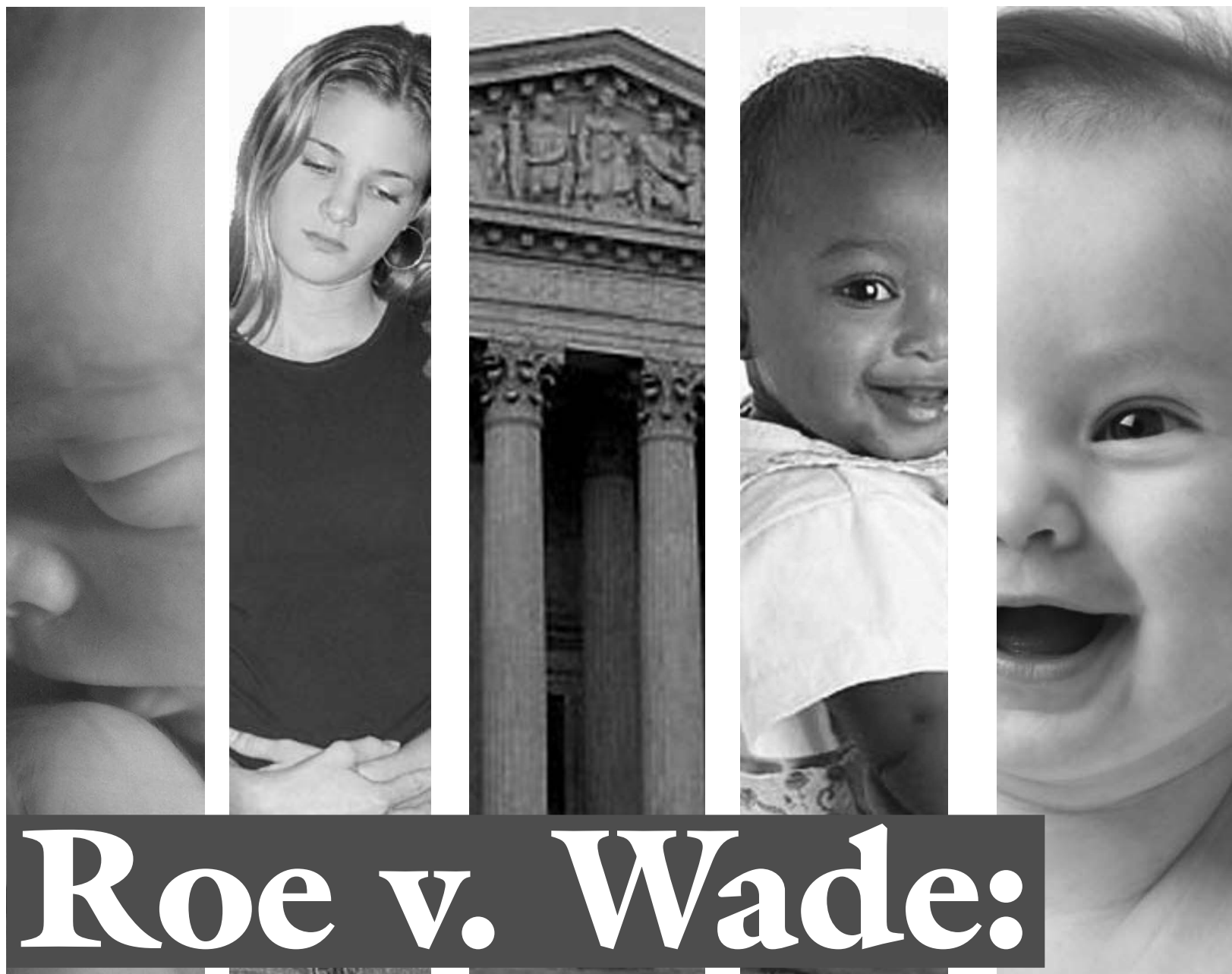
### **Exhibit A – Advertisement from South Bend Tribune**

# **EXHIBIT A**



# RIGHT TO LIFE

## SAINT JOSEPH COUNTY



# Roe v. Wade:

*“an exercise of raw judicial power”*

*-Supreme Court Justice Byron White*

The Supreme Court's 1973 *Roe v. Wade* decision legalized abortion for any reason. Now, after more than thirty-two years under *Roe* more than 47 million unborn children have been aborted. The majority of those abortions were performed for social reasons.<sup>1</sup> Yet poll after poll continues to show that an increasing majority of Americans are opposed to abortion as a method of birth control.<sup>2</sup> And in 2000, the Supreme Court ruled that *Roe v. Wade* allowed and protected the brutal partial-birth abortion procedure -- a practice opposed by over 70% of all Americans.<sup>3</sup> It's time to put an end to the barbaric legacy of *Roe v. Wade* and restore laws that protect the lives of unborn children.

## Roe v. Wade:

*More than thirty-two years...*

*More than 47 million children dead and counting...*

1. Aida Torres & J.D. Forrest, "Why Do Women have Abortions?" *Family Planning Perspectives* (Planned Parenthood), Vol. 20, No. 4 (July/August 1988), p.170, reported 93% of women who have had abortions did so for "social reasons."
2. An April 2005 poll by The Polling Company found that 62% were opposed to abortions except to save the life of the mother and in cases of rape or incest.
3. A November 2000 poll by Wirthlin Worldwide found that 73% favored the ban on partial-birth abortion.

**St. Joseph County Right to Life, 320 N. Lafayette Blvd., South Bend, IN 46601**  
**(574) 232-5433      Fax (574) 232-4793      [prolife@michiana.org](mailto:prolife@michiana.org)**

49102401



# We, the following citizens of Michiana, oppose abortion on demand and defend the right to life from fertilization to natural death.

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Cyril DeVliegher  
Irene DeVliegher  
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Robert A. Leader  
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Dan & Pam Miller  
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Lou Miller Family  
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Rob Moss, C.S.C.  
Brother Isaac Jogues Motz, C.S.C.  
Ron Mudwilder  
Theresa Mudwilder  
Marguerite Muempfer  
William Muempfer  
Carl Muia  
Pat Muia  
Mary & Norman Muller  
Jessica M. Murdoch  
Bonita Murphy  
Cheryl Murphy  
Eileen Murphy  
Emily Murphy  
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Maria Murphy  
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Mary Ann Murphy  
Meg Murphy  
Michael Murphy  
Michael J. Murphy, C.S.C.  
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Rosemary Nyerges  
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Lucy & Florian Ostrowski  
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Tim Ovaert  
Valerie Mora Ovaert  
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Ferdinand Rocconti  
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Timothy Nicolini  
Virginia Nicolini  
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Carolyn Niedbalski  
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Karma Nieset  
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Julie Petersen  
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Robert Peterson  
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Jude Phillips  
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In Memory of Charles & Gizella Rupchock  
Martha Rupchock  
Michael & Paula Russell & Family  
Andy & Elisabeth Rutten  
Erin Ryal  
John Ryal  
Rev. Cornelius Ryan, C.S.C.  
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Casimir B. Rzepnicki  
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Frances Sain  
Michael Sain  
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St. Bavo Catholic Church  
Krystal St. Germain  
Barb St. Pierre  
Jack St. Pierre  
Sarah St. Pierre  
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St. Pius X Religious Education Students  
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Doris Saucelo  
Bob Schaeper  
Elizabeth O'Connor  
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Jennifer I. Scheibelhut  
Linda D. Scheibelhut  
Mark C. Scheibelhut  
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Paige Smith  
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Eugene Vande Zande  
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Theresa Van Nevel  
Paulette VanOeteghem  
Sue Ann Van Poppel  
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Sarah Walorski  
Stacy Rep. Jackie Walorski  
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Velma F. Ward  
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Carmen Watkins  
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John Watkins  
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Julianne Watkins  
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