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January 31, 2017

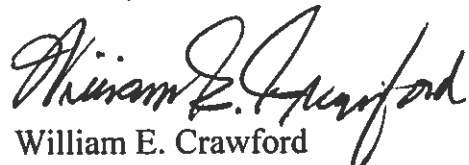
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SR 143 OF 2016

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature relative to state law post-*Obergefell v. Hodges*.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Jean-Paul J. Morrell

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SR 143 OF THE 2016 REGULAR SESSION**

Relative to state law post-Obergefell v. Hodges

Prepared for the
Louisiana Legislature on

January 31, 2017

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

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Katherine S. Spaht, Chairman

Andrea B. Carroll, Reporter

Jessica G. Braun, Staff Attorney

SENATE RESOLUTION NO. 143

BY SENATOR MORRELL

A RESOLUTION

To urge and request the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the Legislature regarding state law post *Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing families, persons, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions.

WHEREAS, in *Obergefell v. Hodges*, the United States Supreme Court in 2015 held that state bans on same-sex marriage violate both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and further recognized that there was no lawful basis to uphold so-called "recognition bans" purporting to ban the recognition of same-sex marriages performed under the laws of other states; and

WHEREAS, in state cases such as *Costanza v. Caldwell* the Louisiana Supreme Court discussed the effects of *Obergefell* and pointed out that the United States Supreme Court's interpretation of the federal constitution is final and binding upon all of the courts of Louisiana, and further that *Obergefell* compels the conclusion that the state of Louisiana may not bar same-sex couples from the civil effects of marriage on the same terms accorded to opposite-sex couples; and

WHEREAS, in a preliminary report to the Legislature concerning same-sex marriage dated March 16, 2016, the Marriage-Persons Committee of the Louisiana State Law Institute pointed out that these rulings have immediately and significantly impacted many areas of Louisiana law and have further immediately made invalid and inaccurate and outdated the present language of numerous existing statutory provisions, including constitutional provisions and laws governing the rights of individuals, family law, maternity, paternity, community property, debt and other obligations of spouses, transactions involving immovable property, successions, procedure, and the rights and settled expectations of third parties under existing law; and

WHEREAS, an additional significant concern noted by the report was the potential retroactive application of the effects of *Obergefell* and the impact of such retroactive application upon marital relationships, community property, successions, and the rights of third parties, including buyers of immovable property and creditors alike; and

WHEREAS, in light of these rulings and issues, the study and development of comprehensive and ongoing revisions to numerous existing provisions of Louisiana law is necessary in order to enact statutory language that reduces legal uncertainty, promotes the orderly administration of justice, provides protections to persons and stability to family relationships and property regimes, and prevents problematic judicial action and interpretation of law adversely impacting families and innocent third parties; and

WHEREAS, the Marriage-Persons Committee of the Louisiana State Law Institute should conduct such a study and the Louisiana State Law Institute should prepare, on an annual basis, comprehensive and ongoing recommendations in the form and content of substantive legislation to revise existing provisions, or enact new provisions, of Louisiana law in order to address these issues.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the Legislature regarding state law post *Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing family relations, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions.

BE IT FURTHER RESOLVED that, at least forty-five days prior to the convening of each regular legislative session, the Louisiana State Law Institute shall report its findings and recommendations in the form of proposed legislation to the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

January 31, 2017

To: Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 143 OF THE 2016 REGULAR SESSION**

Senate Resolution No. 143 of the 2016 Regular Session requested the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the Legislature regarding state law post-*Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing families, persons, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions. To that end, the Marriage-Persons Committee, comprised of judges, lawyers and law professors with expertise in this area, undertook this project.

The Committee met and conducted research with regard to the approaches of other states and offered proposals to the Law Institute Council on January 20, 2017. The Council approved the project, and recommendations in the form of proposed legislation will be submitted to the Legislature for the 2017 Regular Session.

Respectfully submitted,

Professor Andrea B. Carroll, Reporter
Marriage-Persons Committee
Louisiana State Law Institute