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February 26, 2021

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 143 OF THE 2016 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its annual report to the legislature relative to same-sex marriage.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

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

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

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

Relative to state law post-Obergefell v. Hodges

Prepared for the
Louisiana Legislature on

February 26, 2021

Baton Rouge, Louisiana

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

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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

February 26, 2021

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**ANNUAL 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.

The Marriage-Persons Committee met and conducted research with respect to the approaches of other states. Council recommendations were submitted to the legislature in 2017 but no legislation was introduced. Senate Bill No. 98 was, however, filed during the 2018 Regular Session but failed to pass the Senate Committee on Judiciary A. Please see the 2019 and 2020 reports for the comprehensive recommendations necessary to change the law to recognize that same-sex couples are permitted to marry and benefit from the civil effects of marriage and to provide that same-sex marriages validly contracted elsewhere should be given full faith and credit in Louisiana. The recommended proposals also modernize the law by making simple changes in terminology, such as replacing “husband” and “wife” with “spouse” and “mother” and “father” with “parent.”