

Permission from the state to get married? Why?

You should ask yourself why you need to get the permission of the State to get married. Marriage is a deeply personal decision, a private matter that is none of the government's business. Why should you grovel before public officials to be allowed to join with another living human soul in a life partnership? You should understand that the authority to license implies the power to deny it. Keep in mind the old adage, "give them an inch and they will take a mile". A license by definition "confers" a privilege to do something that is actually one of your unenumerated unalienable rights the Declaration of Independence speaks of. The United States Supreme Court in *Zablocki v. Redbail* (1978) affirmed your fundamental right to marry. You don't need a license to exercise a fundamental right. The First Amendment ensures your right to freedom of religion, which means the freedom to marry religiously without permission from the state. By obtaining a license, you converted the fundamental *right* into a *privilege*.

When you marry with a State license, you grant the State jurisdiction over your marriage. With a State license, your marriage is a creature of the State. It not only gives it power over your marriage, but also over the fruit of your marriage. What is the fruit of your marriage? Your children and every piece of property you jointly own. There are plenty of court rulings which declare this to be true. By obtaining a marriage license, you place yourself under the power of strangers, such as, for example, Family Court, powerful temporary officeholders, strangers who do not know you, who use the power of license to legally decide "what is best" for you and your partner, and even your children. You have conferred on them the power to invade the most personal details of your life. Your own conscience will be measured by these temporary officeholders.

Further, if you marry by a religious ceremony with a State license, the pastor becomes an agent of the State. It places him under the jurisdiction of public officials who are then empowered with authority over his conscience.

A marriage license trespasses on parental authority. It is an ancient religious custom that women marry with the permission of their father. This has often carried over into "civil" marriages. The father, or someone acting in his place, takes the bride before the pastor and the pastor asks, "who gives this woman to be married to this man?" In many civil ceremonies a friend acts as surrogate father, accompanying the woman to the marriage performance. However, the pastor, or his civil surrogate, has to be a licensed agent of the State for no moral purpose, only the show of state power.

A marriage license has nothing to do with public safety. It has no religious, moral, or ethical standing to justify it. It is State coercion pure and simple, demanding submission and lucre, and people go along with it, never questioning its absence of principled purpose, very similar in fact to a "driver's license".

Historically, although some southern states required a marriage license to prevent intermarriage, there was no necessity to get a government marriage license. The American colonies, and later the states, required simply that the woman needed permission from a parent, or a surrogate parent, and that a public notice of the upcoming marriage be posted in a public place, usually at the town or county clerk's office, some weeks before the ceremony. The State recognized the superior authority of the parent or one acting in his or her stead. Today, the all-powerful State demands its permission to marry. And gay people are angry when they are not allowed to grovel for a marriage license.

George Washington did not have a marriage license. Abraham Lincoln did not have a marriage license. Theodore Roosevelt did not have a marriage license. ~~Harry Truman did not have a marriage license.~~

So where did we come to this requirement to obtain a marriage license? It comes from the late 19th century, when a license controlled, i.e., prohibited, the intermarrying of blacks and whites. The license was invented in order to prohibit miscegenation. Through the years states began to require every one to have a marriage license. By 1929, all states required a marriage license.

When you marry with a State license, you are engaging in a form of polygamy. From the State's point of view, you are not just marrying your partner, but you are also marrying the State. When you marry, you enter into a contract with three parties, you, your spouse, and the State. And the State then has an equal right under the contract. For what reason would you want to contract with the State? It invades your sacred privacy, with your consent.

There is a way to deal with this legal coercion. In lieu of a license, you can simply show proof of your marriage by using witnesses. You have a parent or one who acts as parent. You have a best man and a maid of honor. You have friends and family. They can sign a marriage certificate personally designed by you or anyone, or sign into a family bible, as was, and still is for many, the Christian custom, and many other faiths as well, for centuries. Your church can give you a certificate of marriage.

Instead of obtaining a State license, two people can enter into a private contract, witnessed, even drawn up, if one wishes, by a judicial official, that is, a lawyer. The contract sets forth their mutual obligations and duties. The contract can be called a "marriage contract". The word "marriage" is not owned by the State, it has no right to claim the word for itself. Your contract could provide for inheritance, visitation rights in the hospital, and all other "privileges" that now come only with the State license. You are free to have a religious or non-religious ceremony. The State cannot interfere with a private contract, it must legally honor it and defend it in its courts. It is in the federal Constitution Article I Section 10, which prohibits the impairment of the obligation of contracts by the State.

It does not mean the State has no control at all over such a contract. One who is not of legal age cannot be in private contract. Criminal acts within a contract are prosecutable. Certain requirements, say, regarding children, and mental impairment, are rightfully under State purview. And it must prohibit polygamy in order to deny itself, as we pointed out, from being a party to a marriage.

The only disadvantage to not having a State marriage license is in the tax code, which gives certain privileges to those who are State licensed to be married. Leaving aside this legalized discrimination, your private contract has to be legally recognized. If the contractors want to dissolve the contract, they can do so by legal procedure without State approval. A party to the contract can bring into court, under contract law, any dispute regarding the breaching of contractual requirements of the other party to the contract. The court is obligated to see that the parties honor their agreement. And the State could bring charges if a party acted contrary to law, such as abuse.

The civil union law supports the basic idea of the contract, but it still includes submission to a license as a creature of the State with its third party status.

Practically speaking, many in the gay community very likely believe in the idea of the State license, to publicly display their "right" to marry. But if it is a right, why does anyone need permission from the State, whose only duty is to protect rights, not give

them out by license. Many gay people believe it helps their cause to be government-recognized as “equal” to everyone else. But again, why do you need State permission to prove you are equal? For many gay people, though, a license appears to be a legal, social and cultural victory. Even at the expense of having an intrusive, powerful third partner in the union, the State.

This essay is substantially revised and extended from an original essay written by Pastor Matt Trewhella entitled “Five Reasons Why Christians Should Not Obtain a State Marriage License”, originally published in *The Emerson Review* (P.O. Box 276, Frederic, Mich. 49733), Volume 4 Issue 45. An audio version of Pastor Trewhella’s unrevised essay is available for \$5.00 from Mercy Seat Christian Church, 10240 West National Avenue, PMB#129, Milwaukee, Wisc. 53227