HERE’S a two-question quiz:

• If Pat and Chris want to form a business partnership in your home state, should their sexes play any role in determining whether that partnership is legal?

• Should the government play any role in deciding the rules regarding religious ceremonies like christenings and bar mitzvahs?

If you answered “no” to both questions, you are on your way to solving the same-sex marriage debate in the United States.

Early this month, a federal appeals court panel declared unconstitutional a California ballot measure making same-sex marriage illegal. Although the decision produced headlines and strong emotional reactions on both sides, the case boiled down to a single question: Are same-sex couples entitled to call themselves “married”?
Nothing else was at stake, because same-sex couples in California are eligible to form domestic partnerships that grant, in the court’s words, “virtually all the benefits and responsibilities afforded by California law to married opposite-sex couples.” Same-sex couples already had the right to live together, have sex, adopt children and so forth. They just could not call themselves married. Clearly that word is important to people on both sides of this issue.

At the federal level, however, the fight is not just about words; it is also about money. Federal law bestows a long list of rights — more than 1,000 — on legally married couples. Spouses may give each other unlimited bequests tax free, and they are permitted to file joint tax returns. If one spouse is a citizen, the other can become a citizen, too, and spouses get special treatment from Social Security. For some couples, a lot of money is on the line. That’s why you are reading this column in the business section.

People in domestic partnerships, as well as gay couples who were legally married in a state, cannot get these federal benefits. That’s because of the 1996 Defense of Marriage Act, which says, “The word ‘marriage’ means only a legal union between one man and one woman as husband and wife.” So, although the headlines are being made by legislation and court decisions at the state level, the financial aspects of same-sex marriage are, for the most part, controlled at the federal level.

The Defense of Marriage Act renders the positions of some politicians logically untenable. For example, in a Dec. 15 debate among Republican presidential hopefuls, Mitt Romney said: “I’m firmly in support of people not being discriminated against based upon their sexual orientation. At the same time, I oppose same-sex marriage.” Under current law, that is like saying 2+2=5.

President Obama’s view is not explicitly contradictory, but he still has a quandary. He says marriage is between a man and a woman — though he says his view is “evolving.” But unlike Mr. Romney, President Obama does not support the Defense of Marriage Act and has instructed his legal team not to defend the law in court. Still, he has not spelled out what he thinks should happen if the law is ruled unconstitutional.

Fortunately, there is a simple solution to this problem, one that, based on their stated views, both Mr. Obama and Mr. Romney might support, along with anyone else who answered “no” to my two opening questions.
Congress should amend the Defense of Marriage Act to replace the sentence I quoted earlier with the following: “Wherever the word ‘marriage’ appears in any federal statute, replace that word with the phrase ‘domestic partnership between two people valid under the laws of the state where it was obtained.’ ”

I am not a lawyer, so I will not try to spell out all the details of how this would work. But here is a rough outline of a plan: In my ideal world, all states would follow the federal lead. The legal unions that are now called marriages would be called domestic partnerships, which would be offered to same-sex as well as heterosexual couples. But if some states are unwilling to enact such statutes, same-sex couples who live in those states could simply go to a state that does offer same-sex domestic partnerships, and would then be treated as such by the federal government, with all the attendant financial benefits and responsibilities. Companies can choose the state in which they incorporate, so couples should have that privilege, too.

Marriage, of course, would continue, but would no longer be regulated by the government. Instead, weddings would become like many other important ceremonies from graduations to funerals: private matters. (Conservatives may applaud now.)

And anyone who believes in freedom of religion should support this proposal, because religions would have complete freedom to decide their criteria for marriages. One church could decide to marry only heterosexual members, while another might choose to marry only same-sex couples who are Cubs fans. Our founding fathers would be proud.

IT is worth remembering that interracial marriage was still against the law in some states until a unanimous 1967 Supreme Court decision declared such laws unconstitutional. The case, Loving v. Virginia, was brought when the police entered the bedroom of the wonderfully named Mr. and Mrs. Loving, hoping to find them engaged in sex, also against the law for mixed-race couples at that time.

That such laws — and police actions — were still in place less than 50 years ago seems mind-boggling today. Even more astonishing is that similar laws and police actions were applied to gay people until a 2003 Supreme Court ruling, Lawrence v. Texas. In the not-too-distant future, people will be saying the same about our current marriage law. Americans between the ages of 18 and 34 overwhelmingly support same-sex marriage. The times they are a changin’.
Although I think this proposal is reasonable, I don’t expect the current Congress to pass it anytime soon. That’s too bad, because, by failing to act, Congress will force this matter to be handled by the courts, which will be addressing these issues in coming cases. Those who are opposed to “activist courts” should take note that the inherent inequality of the current system, and its likely unconstitutionality, combined with Congressional inaction, is what will require action by judges.

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