

DONALD DEVINE

President Clinton wins the 1998 chutzpah award, hands down. Recently, he issued an executive order creating a special privilege for a group of friends, and then challenged Congress to pass a law granting him the authority to do what he had just done! He is the perfect Boomer, who believes he can do literally anything he wants, whether or not he has authority to do so.

A few days ago, the president issued an Executive Order adding "sexual orientation" to the list of categories that are eligible to receive U.S. Government protection if a member of the class claims to have been discriminated against in federal employment.

At one quaint time, a law was passed by Congress and signed or vetoed by the president. Any careful search of federal law will find the protected categories to be: race, color, religion, sex, national origin, handicap and age.

Apparently, under the theory that everyone else seems covered anyway, Generous Bill simply added homosexuals to those given special protection in federal employment. Then, he piously upbraided Congress to pass a pending bill to authorize adding sexual orientation as a protected category for both private and public sector employment.

Several years ago, this space revealed that this policy was being implemented agency-by-agency within the federal government. After the public relations disaster of the gays-in-the-military policy, the Clinton administration retreated below the media radar screen and quietly went ahead with its policy for the civil service. Who should be bothered by a little thing like getting the law changed first? They took the measure of the Republican Congress and decided they could get away with it. And they did.

Once safely re-elected, Mr. Clinton now has extended the policy across the work force. As far as can be determined, no member of House or Senate has challenged this reach of power. There has scarcely been a peep.

Creating law by executive order

The Bush administration was directly faced with a similar situation. In 1996, the Western region of the Park Service extended the protected classes to sexual orientation by simple administrative declaration. When the supervising Interior Department learned of the new policy, it rescinded it — arguing that such an extension required Congress first to change the law. Bruce Babbitt, the new Clinton interior secretary, told the San Fran-

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cisco Examiner that he would reverse the decision, and a subordinate did sign such an order.

When this column criticized that action, a spokesman denied such a deed took place — for by then the gays in the military policy was in full retreat. In fact, the new policy proceeded. Today, the president has extended it to the rest of government.

Homosexual activist groups have called "the Christian right" extremist for its opposition to adding sexual orientation to the protected categories. The activists argue "they only want to be treated like everyone else." But not everyone else is protected. And the assistance is substantial — an entire federal equal employment agency to fight

employers on their behalf, plus state and local equivalents, and the special right to have legal fees paid by the government. This is not "equal" but giving a substantial advantage to favored groups over employers who would rather settle than get the bad publicity anyway. Whatever the merits, any non-extreme group should agree that the law must be changed first if anyone is to be protected.

De facto, the president has changed the law without a by-your-leave from Congress. He makes it up as the mood moves him. Fortunately, there is a third branch that just might be retrograde enough to think the legislature should still be a required part of the process. As a public service, this column will forward any reasonable complaint by a federal employee that the policy of sexual orientation resulted in the selection, promotion, advancement, pay or step increase over them or any other employee, to a legal foundation or law firm, to test this unconstitutional action by the president.

The same offer is made to anyone affected by a complaint filed by another individual citing the orientation policy as justification for some personnel action.

President Clinton had no legal or constitutional authority to issue this Executive Order. He simply did it to pay a political debt to his homosexual activist allies. As he nears the 1998 election and a possible impeachment, he feels he needs some friends. While he does, it is time to teach the Flower Child of the '60s that law has some meaning. It is time to test this arrogation of power in court. Or, perhaps, Congress might show some spine. Or it is time for the rest of us to discover whether the Age of Aquarius has truly arrived, with anything going under the cover of law, anything so long as the ruler merely wishes it so.

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