Veto No. 1978-1

HB 71 April 4, 1978

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith without my approval, House Bill No. 71, Printer's No. 2579, entitled "A Joint Resolution making application to the Congress of the United States to call a convention for drafting and proposing an amendment to the Constitution of the United States to guarantee the right to life to the unborn fetus."

This bill presently before me for approval by the terms of Article III, Section 9 of the Pennsylvania Constitution is a Joint Resolution calling for the convening of a national convention for the purpose of adding an anti-abortion amendment to the United States Constitution.

Without regard to the "rightness" or "wrongness" of abortion, House Bill No. 71 raises several serious legal problems.

There can be no doubt that a large segment of our society does not share the views advanced by House Bill No. 71. On the contrary, millions of Americans believe that for moral, social, religious or medical reasons, every woman should have the right to make such a choice for herself.

It is for this reason — the very strong and persuasive arguments on both sides of the abortion question — that I believe a constitutional convention is the wrong forum for discussion of this issue. I believe that the Constitution should state only those broad fundamental tenets of American political philosophy, and that noble document which has stood the test of time, and has indeed made this country the oldest continuing form of government in the world, should not be altered on points so specific and inflammatory as the abortion issue.

Amending the Federal Constitution is a major event and not one which is lightly undertaken. Indeed, since the adoption of the Bill of Rights in 1791 only 16 amendments have been added over a period of 186 years.

Article V outlines two amendment procedures: the convention method and the Congressional method.

The Congressional method has been the exclusive method used in our 200 year history. It is clearly defined and has worked well.

It provides that Congress propose and approve any contemplated amendment, after which it is sent to the states for ratification. Upon approval by three fourths of the states, the amendment becomes part of the Federal Constitution.

The convention method provides that, upon application of two thirds of the states, the United States Congress must convene a constitutional convention. Because there has been no convention in 200 years, no one can be sure who sets the agenda of the convention of what the limitations are. How is it financed? What is the basis of representation of the respective states? Are Rhode Island and Pennsylvania to be represented equally, or would their voting strengths be based on population?

More serious is the scope of what may be considered. Eminent constitutional scholars have expressed concern that such a convention, once convened, could not be limited to a single topic even if the resolution so states. If this position is correct, the entire Constitution would be subject to review if a convention were held.

Would the Bill of Rights survive? Even the most ardent opponents of legal abortion have grave doubts about this vehicle of achieving their goal. Dr. Mildred Jefferson, President of the National Right to Life Committee, a major anti-abortion group, has this to say about why she, a black woman, was afraid of the constitutional convention approach:

"I don't want to run the risk of ending up in slavery. Once they open the matter of amending the Federal Constitution, they just might do away with the amendment establishing my right to live as a free person in this land."

Similarly, Professor Henry Witherspoon of the University of Texas School of Law and legal advisor of the National Right to Life Committee stated that he preferred going through Congress rather than "turning an unexperienced, one-shot constitutional convention loose."

Thus it appears that, without regard to what one feels about the propriety of legal abortion, House Bill No. 71 is an approach to be rejected.

If it is proper and desirable to make such a single-purpose amendment — moreover, one that lacks any national consensus — part of the Federal Constitution, it should be accomplished at least by a method which does not threaten the basic fabric of our Constitution.

As Governor, I have a special obligation to speak out to the General Assembly and the citizens of this Commonwealth concerning the possible legal consequences of amending the Constitution in this manner. For these reasons I withhold my approval of House Bill No. 71.

MILTON J. SHAPP