Veto No. 1987-2

HB 1130 December 17, 1987

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

I am returning without my approval House Bill 1130, Printer's No.2546, entitled "An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, limiting the defense of justification in certain cases; providing for district attorneys' standing and interest in prisoner litigation; adding provisions relating to the establishment and operation of the Pennsylvania Commission on Sentencing; regulating matters relating to the performance and funding of abortions, the protection of women who undergo abortion and their spouses, and the protection of children subject to abortion; increasing the penalties for false reports to law enforcement authorities; making an editorial change; and making repeals."

I was elected Governor of Pennsylvania to carry out the pledges I made to the people of this Commonwealth, and I will not break faith with those people, or break my promises to them. I have stated repeatedly that I am opposed to abortion on every moral ground. I believe that our society must not tolerate the destruction of human life and that we have a moral obligation to work to end this tragedy. This legislation, if corrected in the manner discussed below, will provide us with an opportunity to take a step forward in limiting this destruction.

In its present form, however, I have concluded that it is not constitutional and that I must veto it. But I strongly reaffirm today my commitment to joining with the clear majority of the Legislature who voted for this bill, and the majority of Pennsylvanians who voted for me on the basis of my clearly stated agenda for this State, to sign into law the strongest possible measure controlling abortion consistent with the Constitution and my oath to it.

There are two considerations that the gubernatorial role in the process compels me to interject into the legislation at this point. These two concerns intersect. The first is simply this: In order to ensure that the measures we adopt actually take effect and contribute to the reduction and someday, I hope, the elimination of abortions in our State, they must be not only well intentioned but well drafted and able to withstand the constitutional challenges that will be mounted against them.

The second consideration may be just as simply stated: I promised the people of Pennsylvania, and I took an oath, that I would uphold the Constitution. The legitimacy of our system of government, the finest on earth, depends not just upon our pursuit of the moral good, but also upon our adherence to the rule of law. Our law, and my oath as Governor, require that I execute those laws—including the Constitution—as interpreted by the courts, until such time as we are successful, through the democratic process, in changing the courts or the law they interpret.

These tasks are not ones that I take lightly. I would do both the people, and the values I cherish and seek to promote, a grave disservice were I not to give them my fullest attention and care. Given the magnitude of the issue, and its importance to so many Pennsylvanians, I have taken it as a solemn duty to review this matter, and the state of the law, in considerable depth. The adoption of concrete, final language by the Legislature enabled me, beginning last week, to undertake a comprehensive study of that language and the United States Supreme Court's rulings on the subject of abortion. I have wrestled continuously over the past few days with each of the questions potentially raised by the state of the law and its application to this bill. It is only after this searching analysis that I am ready to discuss this legislation fully with the Legislature and the people of this State.

A few sections of the bill call for our particular attention. The first of these is the informed consent provision that would be included in section 3205 of the new law. The United States Supreme Court has ruled that a state cannot prohibit a physician from delegating to another qualified individual the counseling task in the informed consent context. The wording of the proposed section 3205 is, however, potentially ambiguous on that point and may possibly be read by some as requiring that counseling be carried out only by the performing or referring physician.

I do not believe that the legislation suffers from such a constitutional defect, however. When read ***in pari materia*** with the Medical Practice Act of 1985 governing all medical procedures in the Commonwealth, it is clear that, absent an express legislative declaration otherwise, physicians may delegate the functions in question to individuals qualified to perform such counseling. A statute is to be read so as to render it constitutional, and, with such a reading, section 3205 is constitutional. I therefore believe that this section of the bill must be so construed and thus passes constitutional muster.

Section 3209 requires that, except as provided in that section, before an abortion may be performed the woman must verify that she has notified the child's father of her decision to seek an abortion. To the extent that our law continues to allow the termination of the procreative process once set in motion, a decent society ought to do everything possible to promote participation and prudence in that decision by both the mother and father.

The Supreme Court has consistently adhered to a legal framework established in ***Roe v. Wade***, and which may be summarized as follows: The right to obtain an abortion is derived from the right of privacy. This right of privacy protects various facets of an individual's life against government intervention and surveillance. While some of the concerns that give rise to this right of privacy grow out of such contexts as marriage, procreation, family relationships, and child-rearing—all of which involve more than one individual—the right of privacy is an individual right, accruing to each and every person individually and beyond the reach of the state. It was on this basis that the Court struck down a requirement that a woman obtain her spouse's consent before she could undergo an abortion.

Other rulings by the Court have declared that a state may not compel disclosure of information protected by an individual's right of privacy to any third party; that a state lacks a legally justifiable interest in simply knowing the identity of a woman seeking an abortion; and that a state cannot intervene in the marital relationship to dictate the relations between husband and wife. In striking down spousal consent requirements, the Court held that a state cannot delegate to any third party—even a husband—a power that the state cannot exercise itself.

Moreover, in the one context in which the Court has upheld the involvement of others in an individual abortion decision—parental consent and notice laws regulating minors seeking abortions—the Court has permitted states to require such involvement only as a mature substitute for an immature minor's decision. The Court has mandated that a mature minor must be able to pursue an abortion without parental consent, or even notice. The case law makes plain that the Court treats consent and notice requirements equivalently in regard to their impingement upon the individual exercise of the abortion decision to which the Court has extended privacy protection.

I strongly disagree with this reasoning as a matter of morality, wisdom and constitutional interpretation. My duty, however, requires me to pursue our objectives within the Constitution. The Supreme Court's decisions make it clear that the paternal notice requirement will be struck down as unconstitutional if enacted. Moreover, every state statute requiring merely spousal notice that has been taken before a Federal court has been struck down. I am forced to conclude that this provision poses the almost-certain and unacceptable prospect of invalidation, and costly, unsuccessful and avoidable litigation.

In addition, section 3214, which requires the reporting of information to the Department of Health, remains substantially unchanged from the version summarily struck down by the Supreme Court less than two years ago. The Court has indicated that the government has a sustainable interest in the collection of health-related data in the abortion control context. However, where information concerning identifiable individuals is maintained by the government, sufficient safeguards against its release must exist under the law; the government must, of course, have a legitimate health-related concern for knowing the specific identity of the individuals to whom that data pertains. In its ***Thornburgh*** decision striking down this section, the Court explicitly found substantial portions of the data required under the act not to be health-related and therefore to be constitutionally infirm.

While eliminating the public-copying provision that the Court struck down, the bill as drafted neither provides the types of confidentiality safeguards required and which are utilized for other sensitive health data, nor excludes any of the data—such as method of payment, the woman's personal history and the bases for medical judgment—that the Court specifically singled out as unwarranted. In that light, the provision unnecessarily invites invalidation and would not represent responsible legislation.

Finally, I must note that our concerns cannot end with protecting unborn children, but must extend to protecting and promoting the health of all our children and their mothers. The right to life must mean the right to a decent life. Our concern for future mothers must include a concern for current mothers. Our respect for the wonders of pregnancy must be equaled by a sensitivity to the traumas of pregnancy. The administration has called for significantly increased support for child and maternal health programs, for education, for rape counseling and for support services. And we will continue to advance more programs born of the recognition that our moral responsibility to mothers and children does not end at birth. Those proposals deserve to receive the same overwhelming vote of approval in the Legislature that this bill received.

Let me restate in summary the distinction between personal belief and constitutional duty as it applies to this legislation. I believe abortion to be the ultimate violence. I believe strongly that ***Roe v. Wade*** was incorrectly decided as a matter of law and represents a national public policy both divisive and destructive. It has unleashed a tidal wave that has swept away the lives of millions of defenseless, innocent unborn children. In according the woman's right of privacy in the abortion decision both exclusivity and finality, the Supreme Court has not only disregarded the right of the unborn child to life itself, but has deprived parents, spouses and the state of the right to participate in a decision in which they all have a vital interest. This interest ought to be protected, rather than denied, by the law. This policy has had, and will continue to have, a profoundly destructive effect upon the fabric of American life. But these personal beliefs must yield to the duty, imposed by my oath of office, to follow the Constitution as interpreted by the Supreme Court of the United States.

In light of these conclusions imposed upon me by my oath and obligation as Governor, I am returning this bill to the Legislature without my signature, for revision along the lines indicated. Most importantly, I emphasize again that we must—and we will—enact a strong and sustainable Abortion Control Act that forms a humane and constitutional foundation for our efforts to ensure that no child is denied his or her chance to walk in the sun and make the most out of life. I will sign this bill when it reaches the end of the legislative process and attains those standards.

ROBERT P. CASEY