



Opposition to CHEER Act Amendment to SF 1458 (S1458A62)

UNCONSTITUTIONAL: The federal rule on which the CHEER Act is based has been held to insufficiently protect the conscience rights and religious liberty of those who object to providing the mandated drugs and services. This week, the U.S. Supreme Court ordered a second federal court of appeals to reconsider its ruling to uphold the federal rule on which the CHEER Act is based.¹ This indicates that it does not satisfy federal protections for religious freedom. The CHEER Act would also likely be found unconstitutional under the Minnesota Constitution, which applies the same test.

Under the CHEER ACT, all insurers, and the third-party administrators for self-insured plans, must provide or arrange for the coverage; for-profit companies and non-profit organizations that are not explicitly religious (such as pro-life groups that object to abortifacient drugs) must provide the objectionable coverage to all employees; and almost all individuals who pay premiums (whether enrolled in an individual plan or an employer plan) have no escape from subsidizing that coverage. *Inexplicably, the CHEER Act places more mandates on specifically religious employers not required by the federal mandate. See line 1.24, omitting religious employers described in 45 C.F.R. 147.131(a).*

UNWISE: The CHEER Act forces coverage of sterilization and abortion-inducing drugs and devices as well as contraception,² along with “counseling and education” to promote them. Though commonly called the “contraceptive mandate,” the CHEER Act also forces employers to sponsor and subsidize coverage of female sterilization. And by including all drugs approved by the FDA for use as contraceptives, the mandate includes drugs that can induce abortion such as “Ella” (Ulipristal), a close cousin of the abortion pill RU-486.

The “women’s health” claims justifying the CHEER Act are doubtful at best. Pregnancy itself is not a disease, but the normal way each of us came into the world—and there are other ways to avoid an untimely pregnancy than the surgical procedures and prescription drugs mandated here that create risks for women’s health. Many studies³ have found that contraceptive programs fail to reduce unintended pregnancies or abortions. Hormonal contraceptives have been associated with an increased risk⁴ for stroke, heart attacks, vascular disease, and breast cancer, some of the most serious killers of women today. Further, the use of injectable contraceptive drugs correlates with an increased risk⁵ for contracting and transmitting AIDS, a deadly disease the “preventive services” mandate is supposed to help prevent. Medical experts raising such concerns cannot be accused of waging a “war on women.”
See reverse for more information on this point.

UNNECESSARY: Contraception is cheap and readily available. No one’s access to contraception is jeopardized by not enacting this law, with its insufficient protections for religious liberty.

¹ <http://thehill.com/policy/healthcare/240154-supreme-court-tosses-obamacare-contraception-ruling>

² The Catholic Church’s objection to the CHEER Act is not about any legitimate medical use for hormonal or other drugs. Contrary to some media claims, Catholic ethical directives on health care (and the health plans based on them) allow use of medications for serious non-contraceptive purposes, even if the same drugs could also be prescribed for contraception. The idea that Catholic moral objections to using such drugs for contraception endangers their legitimate use to heal disease is false.

³ Research summarized at <http://www.usccb.org/issues-and-action/human-life-and-dignity/contraception/fact-sheets/greater-access-to-contraception-does-not-reduce-abortions.cfm>

⁴ http://www.thepill.com/sites/default/files/pdf/Tri-Cyclen_Lo_PI.pdf

⁵ [http://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(11\)70247-X/abstract](http://www.thelancet.com/journals/laninf/article/PIIS1473-3099(11)70247-X/abstract)

What researchers have to say:

"[W]hen the cost of abortion is low, or contraceptives are readily available, potential male partners can easily obtain sexual satisfaction without making...promises [to marry in the event of pregnancy] and will thus be reluctant to commit to marriage." Akerlof, Yellen, and Katz¹

The Pill is an outdated method because it does not work well enough; it is very difficult for ordinary women to take a pill every day" James Trussell, Princeton University²

48% of women with unintended pregnancies & 54% of women seeking abortions were using contraception during the month they became pregnant³

Women are caught in a prisoners' dilemma:

A **prisoners' dilemma** is any social setting wherein all parties have a choice between cooperating with one another and noncooperation. **All parties would be better off if they chose cooperation, but -- like prisoners being held for questioning in separate chambers and offered individual deals which seemingly advantage the prisoner as an individual -- they accept what seems to be the best *individual* choice.** As a result, everyone involved is worse off. A woman in a dating market confronted by a man with choosing between a sexual relationship and no relationship is in the same position. Women as a *group* would be better off if they cooperated with one another and refused uncommitted sex, but women *individually*—and in a world where contraception and abortion make sex look "consequence free"—more often agree to uncommitted sex on the understanding that if they say "no," it is easy for the man to find another woman who will say "yes." Consequently, all women are worse off as the price of sex spirals down.

In the first 12 months of contraception use 16.4% of teens will become pregnant.⁴

"[I]ncreasing access to contraception may actually increase long run pregnancy rates even though short run pregnancy rates fall." Economist Peter Arcidiacono⁵

"Contraceptives like the pill, initially developed as a "foolproof" means to reduce fertility, helped spark a sexual revolution that swept the globe." Matthew Connelly⁶

According to economist **Timothy Reichert**, the prisoners' dilemma operates for women in the mating market as follows: **sex without the "cost" of pregnancy becomes the norm**, such that sexual partners don't even have to consider the possibility of marriage.⁷

More women than men begin populating the "marriage market" at a younger age because women generally want to have children sometime during their lives, but they are **biologically constrained to have them while they are younger**. By their early 30s, therefore, most women have entered the marriage market. Men have no similar, inbuilt impetus to leave the sex market and enter the marriage market. Thus, **women have more "power" in the sex market**, where they are relatively scarce, but face more competition in the marriage market, where they are competing for fewer men. **This translates into women more often striking "bad deals" at the margins in the marriage market.**

¹ George A. Akerlof, Janet L. Yellen, and Michael L. Katz, An Analysis of Out of Wedlock Childbearing in the United States, 111 *The Quarterly Journal of Economics*, 277 (1996).

² D. Rose, The Pill 'has had its day as an effective contraceptive,' *The Times* (UK), June 26, 2008 at timesonline.co.uk/tol/news/uk/health/article4215441.ece?articleid=4215441.

³ Heather D. Boonstra, Rachel Benson Gold, Cory L. Richards, and Lawrence B. Funder, Abortion in Women's Lives, at www.gutmacher.org/pubs/2006/05/04AIWL.pdf at 6-7; Guttmacher Institute, Facts on Induced Abortion in the United States, July 2008, at gutmacher.org/pubs/fb_induced_abortion.html.

⁴ H.Fu et al., Contraceptive Failure Rates: New Estimates from the 1995 National Survey of Family Growth, 31 *Family Planning Perspectives* 31, 56-63, at 61 (1999).

⁵ Peter Arcidiacono et al, Habit Persistence and Teen Sex: Could Increased Access to Contraception Have Unintended Consequences for Teen Pregnancies? Working Paper, Duke University Department of Economics (Oct 3, 2005), 1-38 at 31, at www.econ.duke.edu/~psarcidi/teensex.pdf.

⁶ Matthew Connelly, *Fatal Misconception: The Struggle to Control World Population* (Harvard University Press 2008).

⁷ Timothy Reichert, Bitter Pill, *First Things* (May 2010), 25-34.