

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TRIJICON, INC., a Michigan Corporation)
49385 Shafer Avenue)
Wixom, MI 48393)

STEPHEN BINDON, an individual)
5321 Crooked Lake Road)
Howell, MI 48843)

MICHAEL BINDON, an individual)
8039 Chatham Court)
Canton, MI 48187)

MARK BINDON, and individual)
75 Blueberry Lane)
Naknek, AK 99633)

SHARON LYCOS, an individual)
8065 Milford Road)
Holly, MI 48442)

TIMOTHY BINDON, an individual)
6413 Sand Castle Drive)
Holland, MI 49423)

BETHANNE FALKOWSKI, an individual)
45702 Balfour Court)
Novi, MI 48377)

Plaintiffs,)

v.)

Civil Action No.)

KATHLEEN SEBELIUS, in her official capacity as)
Secretary, United States Department of Health and)
Human Services)
200 Independence Avenue, SW)
Washington, DC 20201)
)
UNITED STATES DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)
200 Independence Avenue, SW)
Washington, DC 20201)
)
JACOB LEW, in his official capacity as Secretary,)
United States Department of the Treasury)
1500 Pennsylvania Avenue, NW)
Washington, DC 20220)
)
UNITED STATES DEPARTMENT OF THE)
TREASURY)
1500 Pennsylvania Avenue, NW)
Washington, DC 20220)
)
THOMAS E. PEREZ, in his official capacity as)
Secretary, United States Department of Labor)
200 Constitution Avenue, NW)
Washington, D.C. 20210)
)
UNITED STATES DEPARTMENT OF LABOR)
200 Constitution Avenue, NW)
Washington, DC 20210)
)
Defendants.)
_____)

VERIFIED COMPLAINT

Plaintiffs, Trijicon, Incorporated, and its shareholders, Stephen Bindon, Michael Bindon, Mark Bindon, Sharon Lycos, Timothy Bindon, and BethAnne Falkowski, (“Trijicon”), by their attorneys, allege as follows:

INTRODUCTION

1. Trijicon and its shareholders have a deeply held religious belief that life begins at conception/fertilization. Therefore, for many years, they have instructed their insurance carrier

not to include coverage for the voluntary termination of pregnancies in the company's health insurance plan for employees. The Plaintiffs understood this to prohibit coverage of abortion-inducing drugs that prevent implantation of an embryo. The Patient Protection and Affordable Care Act ("ACA"), however, requires that in its health care plan for employees Trijicon include coverage for items that induce early abortions by preventing the implantation of an embryo after its conception/fertilization.

2. The ACA authorized Defendants the Department of HHS and its Secretary to develop a mandate that includes early abortion-inducing items under the category of preventive services for women ("Mandate")¹. The mandate is enforced by Defendants the Departments of HHS, Labor and Treasury and their respective Secretaries.

3. The Mandate illegally and unconstitutionally requires Trijicon to violate its and its owners' religious beliefs by forcing the company to provide abortion-inducing items, such as "Plan B" (the so-called "morning after pill"), Ella (the so-called "week after pill"), and intra-uterine devices ("IUDs"). The Mandate subjects the company to heavy fines and penalties if it

¹ The Mandate consists of a conglomerate of authorities, including: "Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act," 77 Fed. Reg. 8725-30 (Feb. 15, 2012); the prior interim final rule found at 76 Fed. Reg. 46621-26 (Aug. 3, 2011) which the Feb. 15 rule adopted "without change"; the guidelines by Defendant HHS's Health Resources and Services Administration (HRSA), <http://www.hrsa.gov/womensguidelines/>, mandating that health plans include no-cost-sharing coverage of "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" as part of required women's "preventive care"; regulations issued by Defendants in 2010 directing HRSA to develop those guidelines, 75 Fed. Reg. 41726 (July 19, 2010); the statutory authority found in 42 U.S.C. § 300gg-13(a)(4) requiring unspecified preventive health services generally, to the extent Defendants have used it to mandate coverage to which Trijicon and other employers have religious objections; penalties existing throughout the United States Code for noncompliance with these requirements; and other provisions of ACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

chooses not to violate those beliefs. Defendants' coercion tramples on the freedom of conscience, freedom of religious exercise, and freedom of speech of Trijicon and its owners.

4. Plaintiffs seek declaratory and injunctive relief for the Defendants' violations of the Religious Freedom Restoration Act 42 U.S.C. § 2000bb *et seq.* (RFRA), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 500, *et seq.*, ("APA") via 5 U.S.C. § 700, *et seq.*, (allowing for judicial review of APA violations), by Defendants' actions in implementing the ACA, in ways that coerce the Plaintiffs to engage in acts that they consider sinful and immoral in violation of their most deeply held religious beliefs.

5. Plaintiffs urgently need relief from this court. Absent an injunction, on September 1, 2013, Plaintiffs will be forced to include abortion-inducing items in their health insurance plan in violation of their religious beliefs.

IDENTIFICATION OF PARTIES

6. Trijicon, Inc. is a Michigan corporation located at 49385 Shafer Avenue, Wixom, Michigan 48393. It is owned and operated by Plaintiffs Stephen Bindon, Michael Bindon, Mark Bindon, Sharon Lycos, Timothy Bindon, and BethAnne Falkowski. Together they possess full ownership of and management responsibility for Trijicon. Stephen Bindon is Trijicon's president and owns the controlling voting shares in the company.

7. Trijicon asserts its claims on behalf of itself as well as on behalf of its owners, all of whom share Trijicon's religious beliefs against the Mandate's application in this case.

8. Plaintiff Stephen Bindon is a resident of Howell, Michigan. He is president of Trijicon and the son of Trijicon founder Glyn Bindon. He owns the controlling voting shares in the company, with 62% of those shares.

9. Michael Bindon is a resident of Canton, Michigan. Michael Bindon is a shareholder of Trijicon and participates in the operation and management of the company.

10. Mark Bindon is a resident of Naknek, Arkansas. Mark Bindon is a shareholder of Trijicon and participates in the operation and management of the company.

11. Sharon (Bindon) Lycos is a resident of Holly, Michigan. Sharon Lycos is a shareholder of Trijicon and participates in the operation and management of the company.

12. Timothy Bindon is a resident of Holland, Michigan. Timony Bindon is a shareholder of Trijicon and participates in the operation and management of the Company.

13. BethAnne (Bindon) Falkowski is a resident of Novi, Michigan. BethAnne Falkowski is a shareholder of Trijicon and participates in the operation and management of the Company.

14. Defendants are appointed officials of the United States government and United States Executive Branch agencies responsible for issuing and enforcing the Mandate.

15. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

16. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate.

17. Defendant Thomas Perez is the Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Perez is sued in his official capacity only.

18. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

19. Defendant Jacob Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

20. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

JURISDICTION AND VENUE

21. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

22. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). The United States Defendants are located in this district.

FACTUAL ALLEGATIONS

23. Trijicon is an industry-leading maker of aiming systems such as riflescopes and sights for tactical and sporting firearm applications.

24. Founded in 1981, Trijicon quickly became world-renowned for its innovation of tritium and advanced fiber optics in its firearm aiming systems.

25. Because of Trijicon's history of innovation and excellence, it has become a major supplier of the U.S. military, and especially the Special Forces, as well as state and local law enforcement.

26. Trijicon also sells its products to U.S. allies, such as Britain and New Zealand, which consider Trijicon's aiming systems to be the best in the world.

27. Trijicon also manufactures sights and riflescopes for hunting and sporting applications for private citizens.

The Bindons' Religious Beliefs and Operation of Trijicon According to the Same

28. Trijicon was founded by Glyn Bindon, who led the company until his tragic death in a plane crash in 2003.

29. Six of Glyn's nine children are the sole shareholders of Trijicon.

30. Glyn's son, Stephen Bindon, owns the majority of the voting shares in the company.

31. Glyn Bindon had a deep, Christian faith, which he imparted to his children, and which guided his founding and management of Trijicon.

32. Glyn's children, the shareholders of Trijicon, strive to follow their Christian beliefs in all aspects of their lives, including how they operate Trijicon.

33. The Bindons sincerely believe that their Christian faith does not allow them to violate Biblical teachings on morality or ethics when they make decisions as owners and operators of Trijicon.

34. The Bindons believe that operating their business in accordance with their religious beliefs is a genuine calling from God, that Christian teaching prohibits them from severing their religious beliefs from their daily business practice, and that Christian teaching

requires them to integrate the virtues, morals, and ethical principles of the Bible into their life and work.

35. For example, one of Trijicon's five "Values" is "Morality," which is defined as follows: "We believe that America is great when its people are good. This goodness has been based on biblical standards throughout our history and we will strive to follow these morals."

36. The Bindons provide a Chaplain Assistance Program as a voluntary benefit for all employees.

37. The Trijicon benefit guide describes the Chaplain Program as follows: "The Chaplain offers confidential meetings and support in many areas including hospital visitation, stress management, divorce, serious illness, drug and alcohol dependency, long term grief support and more. The Chaplain will visit Trijicon at least weekly and strives to make contact with each employee during the visit. The Chaplain is also available 24 hours a day 7 days a week."

38. Under the Bindons' direction, Trijicon donates 10% of its annual profits to Christian charities, based on a vote of its shareholders. Common recipients of these donations include evangelical ministries like Focus on the Family, and Christian adoption agencies that provide pregnant mothers a life-affirming alternative to abortion, like Bethany Christian Services. The shareholders also vote to donate funds to several other pro-life ministries and events each year.

39. Glyn Bindon began the practice of etching Bible references on the company's products over 30 years ago, as a reflection of the Christian values of the company and its owner.

40. Trijicon continues to etch Biblical references on all consumer products to this day, except those products made specifically for use by the military.

41. Trijicon funds and participates in prayer breakfasts for Christian-run businesses at trade shows they attend. The purpose of these breakfasts is to gather like-minded representatives of other businesses so that they can pray together and discuss the importance of operating their businesses on the basis of Biblical values and in a manner that honors and glorifies God.

Trijicon's Health Insurance Plan

42. Under the Bindons' direction, and as part of fulfilling Trijicon's organizational values, Trijicon provides generous health insurance for its employees.

43. Trijicon has 257 full-time employees, approximately 212 of whom have elected to be covered under Trijicon's health insurance plan.

44. Trijicon contracted with Alliance Health and Life Insurance (AHL) to provide its current insurance plan.

45. The plan year for Trijicon's current health insurance plan begins on September 1 of every year, with the next plan year starting on September 1, 2013.

46. Pursuant to their sincerely held religious beliefs, Trijicon and the Bindons believe that life begins at conception/fertilization and that any method that functions to prevent or disrupt implantation of a fertilized human embryo is morally wrong and results in the wrongful taking of a human life.

47. Pursuant to Trijicon's and the Bindons' religious beliefs, Trijicon's current insurance plan does not cover "voluntary termination of pregnancy."

48. Pursuant to Trijicon's and the Bindons' religious beliefs, Trijicon has consistently instructed its insurance carrier not to include services related to the voluntary termination of a pregnancy in the company's health insurance plan.

49. In making this demand, Trijicon's intent was to ensure that, among other things, abortifacient items, such as Plan B and ella, would not be covered.

50. Trijicon learned in July 2013 that the "voluntary termination of pregnancy" exclusion did not include certain abortifacient items because some insurance carriers include such items under the category of contraceptives, which Trijicon's plan generally covered. Until that time, Trijicon was unaware that these abortifacient items were being covered by their plan and believed they were not.

51. Upon learning this information, Trijicon immediately voiced its religious objection to the inclusion of these abortion-inducing items in its plan and requested that they be removed from the plan starting September 1, 2013.

52. Trijicon's insurance carrier responded by informing Trijicon that it, like all other insurance carriers, was required to comply with the Mandate and that Trijicon's plan commencing on September 1, 2013 would therefore include the abortion-inducing items to which Plaintiffs religiously object.

53. Plaintiffs immediately explored its options to seek an injunction against enforcement of the Mandate, which other religious employers have successfully secured, before the start of its next plan year.

54. The need for injunctive relief to issue is immediate.

55. Absent an injunction, on September 1, 2013, Plaintiffs will be forced to include abortion-inducing items in their health insurance plan in violation of their religious beliefs.

56. If Trijicon receives an injunction, Plaintiffs would be able to obtain a plan that omits abortifacient items.

57. Trijicon's insurance plan is not subject to a Michigan state requirement to cover contraception including abortifacients.

The ACA and Defendants' Mandate Thereunder

58. Under the ACA, employers with over 50 full-time employees are required to provide a certain minimum level of health insurance to their employees.

59. Many such plans must include "preventive services," which must be offered with no cost-sharing by the employee.

60. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this Complaint as "the Mandate") that imposes a definition of preventive services to include all FDA-approved "contraceptive" items, surgical sterilization, and education and counseling for such services.

61. This final rule was adopted without giving due weight to the tens of thousands of public comments submitted to HHS in opposition to the Mandate.

62. In the category of "FDA-approved contraceptives" included in the Mandate are several drugs or devices that may cause the demise of an already-conceived but not-yet-implanted human embryo, such as "emergency contraception" or "Plan B" drugs (the so-called "morning after" pill) as well as IUDs.

63. The FDA approved in this same "contraception" category a drug called "ella" (the so-called "week after" pill), which studies show can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

64. The manufacturers of some such drugs, methods, and devices in the category of "FDA-approved contraceptive methods" indicate that they can function to cause the demise of an early human embryo.

65. The Defendants admit that Plan B, ella, and IUDs can function in part to cause the demise of the embryo after its fertilization and before its implantation.

66. The Mandate also requires applicable group health care plans to pay for the provision of counseling, education, and other information for all women beneficiaries who are capable of bearing children concerning and in support of covered devices and drugs, including Plan B, Ella, and IUDs that cause early abortions or harm to human embryos.

67. The Mandate applies to Trijicon's September 2012 – August 2013 health insurance plan year.

68. An entity cannot escape the Mandate by self-insuring.

69. Absent relief from this Court, Plaintiffs are subject to the Mandate's requirement of coverage of the above-described items starting in their September 1, 2013 plan.

70. Plaintiffs have a sincere and deeply-held religious objection to providing coverage for abortifacients and related education and counseling in Trijicon's health insurance plan.

71. Plaintiffs cannot in good conscience violate their religious beliefs by providing coverage for emergency contraception, IUDs, or counseling or education in furtherance of the same, in Trijicon's health insurance plan, including starting on September 1, 2013.

72. The Mandate therefore imminently threatens to impose its heavy penalties, fines, and lawsuits against Trijicon in violation of the beliefs and rights of Trijicon and its owners.

73. The Mandate makes little or no allowance for the religious freedom of entities and individuals, including Trijicon and its owners, who object to paying for or providing insurance coverage for such items.

74. An entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the ACA imposes monetary penalties on entities that would so refuse.

75. The exact magnitude of these penalties may vary according to the complicated provisions of the ACA, but the fine is approximately \$2,000 per employee per year for employers such as Trijicon.

76. In addition, if Trijicon dropped insurance for its employees, such an action would not only harm Trijicon's employees, but it would harm Trijicon financially and it would harm Trijicon's ability to retain and attract qualified employees.

77. The ACA also threatens monetary penalties against Trijicon for continuing to offer its insurance plan but continuing to omit abortifacients.

78. The exact magnitude of these penalties may vary according to the complicated provisions of the ACA, but the fine is approximately \$100 per day per employee, with minimum amounts applying in different circumstances.

79. If Plaintiffs do not submit to the Mandate then they also trigger a range of enforcement mechanisms, including but not limited to civil actions by the Secretary of Labor or by plan participants and beneficiaries under ERISA, which would include but not be limited to relief in the form of judicial orders mandating that Trijicon violate its and its owners' sincerely held religious beliefs by providing coverage for items to which they religiously object.

80. The lawsuit penalties that the Mandate triggers under ERISA are in no way speculative since Defendants Secretary Perez and the Department of Labor intend to fully and imminently enforce the Mandate against Trijicon.

81. The Mandate applies not only to employers, but also to issuers of insurance. Accordingly, Trijicon cannot avoid the Mandate by shopping for an insurance plan that accommodates their right of conscience, because Defendants have intentionally foreclosed that possibility.

82. The Mandate does not apply equally to all religious adherents or groups.

83. The Mandate offers the possibility of a narrow exemption to religious employers, but only if it “is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).”

84. Trijicon does not qualify under this definition because it is not a church, integrated auxiliary of a particular church, convention or association of a church, or the exclusively religious activities of a religious order.

85. The ACA and the Mandate grant unbridled discretion to the government to create or modify this “religious employer” definition.

86. The ACA and the Mandate grant unbridled discretion to the government to give exemptions to some, all, or none of the organizations meeting the Mandate’s four-part definition of “religious employers” or any future definition.

87. The Mandate picks and chooses among religions, religious believers and religious doctrines, including on the issue of what constitutes religion and religious exercise.

88. The Mandate is not neutral towards religion because it allows exemptions based on religious criteria, and it refuses those exemptions to Trijicon.

89. The Mandate fails to protect the statutory and constitutional conscience rights of religious Americans like Trijicon and its owners, even though those rights were repeatedly raised in public comments against the Mandate's regulations.

90. The Mandate requires that Trijicon provide coverage for abortifacient methods, and education and counseling related to the same, in violation of the religious beliefs of Trijicon and its owners, in a manner that is contrary to law.

91. The Mandate constitutes government-imposed coercion on Trijicon and its owners to change or violate their sincerely held religious beliefs.

92. The Mandate exposes Trijicon to draconian fines and other penalties for refusal to change or violate its and its owners' religious beliefs.

93. The Mandate will impose a burden on Trijicon's employee recruitment and retention efforts by creating uncertainty as to whether or on what terms they will be able to continue offering health insurance due to the prospect of suffering penalties as a result of the Mandate.

94. The Mandate will have a profound and adverse effect on Trijicon and how it negotiates contracts and compensates its employees.

95. Trijicon has already expended considerable time and expense determining the application of the Mandate against its religious beliefs and its options in relation thereto.

96. Unless relief issues from this Court, Trijicon is forced to take the Mandate into account now as it plans expenditures, including employee contracts, compensation and benefits packages, as well as potential government fines and lawsuits, for the September 1, 2013 plan year and into the future.

97. The ACA and the Mandate are not generally applicable because they provide for numerous exemptions from their rules.

98. For instance, the Mandate does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds. See 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii). Trijicon does not meet this exemption.

99. In addition, as described above, the Mandate exempts certain churches and religious orders narrowly considered to be religious employers. Trijicon does not meet this exemption.

100. The Mandate also offers an “accommodation” to certain non-profit entities, which causes payments for the mandated items in ways that are different than the application of the Mandate to Trijicon, and in ways that Defendants claim do not require the non-profit entities to arrange, refer, contract or pay for the coverage. This “accommodation” is not available to Trijicon because it is not a non-profit entity.

101. Furthermore, the ACA creates a system of individualized exemptions because under the ACA’s authorization the federal government has granted discretionary compliance waivers to a variety of businesses for purely secular reasons.

102. Also, the ACA and its Mandate do not force employers having fewer than 50 full-time employees to provide a health insurance plan to its employees at all.

103. Defendants have also unilaterally suspended or delayed portions of the ACA such as certain employer reporting requirements. This demonstrates that Defendants have unfettered discretion to decide not to apply their rules in circumstances they consider appropriate, and that Defendants are content to allow some women to not receive the Mandated coverage from their

employers. This delay does not benefit Trijicon, however, since it already offers generous health insurance and dropping that plan would be harmful both to Trijicon and to its employees.

104. Additionally, the Mandate does not apply to employers with preexisting plans that are “grandfathered.”

105. Trijicon’s plan is not grandfathered under ACA, nor will its plan year starting on September 1, 2013 have grandfathered status.

106. Trijicon’s plan lacks grandfathered status because, *inter alia*, the facts described in the following five paragraphs deprive the plan of such status according to the Defendants’ regulations governing grandfathered status.

107. For financial reasons, Trijicon’s September 1, 2010 PPO health insurance plan increased the Emergency Room Copay from \$50 to \$75, which exceeded the allowable maximum increase. This increase exceeded the grandfathering limit.

108. For financial reasons, Trijicon’s September 1, 2010 PPO health insurance plan increased the prescription copayment from \$10/\$20 to \$20/\$50, which exceeded the allowable maximum increases. These increases exceeded the grandfathering limit.

109. For financial reasons, Trijicon’s September 1, 2010 HMO health insurance plan increased the Emergency Room Copay from \$50 to \$75, which exceeded the allowable maximum increase. This increase exceeded the grandfathering limit.

110. Due to the September 1, 2010 changes stated above, both of Trijicon’s offered health insurance plans, its PPO and HMO plans, lack grandfathered status.

111. Neither Trijicon, its plan administrator, nor its September 2012–13 health insurance plan provided a disclosure to plan participants that the plan possessed grandfathered status under ACA (because the plan did not possess such status).

112. According to the government's statistics, tens of millions of American women in 2013 will be covered under plans where, because they possess grandfathered status, the ACA and Defendants do not subject those plans to the requirements of the Mandate.

113. Despite Defendants' and the ACA's choice not to impose the Mandate and its required items to tens of millions of American women in grandfathered plans, Defendants refuse to allow Trijicon's plan with fewer than 300 employees to be exempt from the Mandate.

114. On February 10, 2012, a document was issued from the Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS), of HHS, entitled "Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code."

115. Under this "Guidance," an organization that truthfully declares "I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, contraceptive coverage has not been provided by the plan, consistent with any applicable State law, because of the religious beliefs of the organization," and that provides a specified notice to plan participants, will not "be subject to any enforcement action by the Departments for failing to cover recommended contraceptive services without cost sharing in non-exempted, non-grandfathered group health plans established or maintained by a n organization, including a group or association of employers within the meaning of section 3(5) of ERISA, (and any group health insurance coverage provided in connection with such plans)," until "the first plan year that begins on or after August 1, 2013."

116. The February 10, 2012 “ safe harbor” was recently extended so that it encompasses plans beginning before January 1, 2014.

117. The February 10, 2012 “ Guidance” and its recent extension categorically disqualifies Trijicon from making use of this “extra year and a half” because, among other reasons, Trijicon is not a non-profit entity and further because it objects only to the provision of abortifacient contraceptives.

118. On August 15, 2012, in response to litigation against the Mandate that illustrated the February 10, 2012 press conference “Guidance” was sloppily drafted and omitted a variety of organizations, Defendants used their unfettered discretion over the Mandate to issue yet another version of the “safe harbor” Guidance.

119. Under the August 15, 2012 “Guidance,” employers who object to some but not all contraception could be covered, but the “safe harbor” was still limited to non-profit entities.

120. Thus the August 15, 2012 “Guidance” also continues to categorically disqualify Trijicon from making use of this “extra year” because, among other reasons, Trijicon is not a non-profit entity.

121. Through their “safe harbor” Guidances, Defendants have essentially granted what they consider to be the equivalent of preliminary injunctions to potentially hundreds or thousands of non-profit corporate entities that possess exactly the same objection that Trijicon possesses.

122. If Trijicon qualified for the “safe harbor,” Defendants would not enforce the Mandate against Trijicon until the beginning of its September 1, 2014, plan year.

123. The ACA and the Mandate confer unfettered discretion upon Defendants to create and modify rules such as the Guidances with respect to their categorization and treatment of religious entities.

124. The Mandate, Defendants' "Guidances," their multiple federal regulations on this Mandate, and their four-part "religious employer" definition in its various changing forms, all omit Trijicon from any protection from the Mandate, despite Trijicon and its owners desire to operate Trijicon according to their sincerely held religious beliefs.

125. Therefore, while President Obama's and Defendants' ever-changing "compromises" purport to accommodate the religious beliefs of a variety of groups, none of these measures will stop the Mandate from being imposed on Trijicon's September 1, 2013 plan year.

126. Any alleged interest Defendants have in providing free FDA-approved abortifacient contraception and related education and counseling without cost-sharing could be advanced through other, more narrowly tailored mechanisms that do not burden the religious beliefs of Trijicon and its owners and do not require them to provide or facilitate coverage of such items through Trijicon's health plan.

127. The federal government provides massive coverages and subsidies of contraception for women who cannot afford it, without forcing their employers to participate.

128. Unless relief issues from this Court, the Mandate directly and imminently threatens Trijicon with its draconian penalties.

129. Without injunctive and declaratory relief as requested herein, including preliminary injunctive relief, Trijicon and its owners are suffering and will continue to suffer irreparable harm.

130. Trijicon and its owners have no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

131. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

132. Trijicon’s and its owners’ sincerely held religious beliefs prohibit them from providing coverage for abortifacients, including “emergency contraception” and IUDs and related education and counseling, in Trijicon’s employee health plan.

133. When Trijicon and its owners comply with their sincerely held biblical principles and Christian beliefs on abortifacients such as emergency contraception and IUDs, they exercise religion within the meaning of the Religious Freedom Restoration Act.

134. The Mandate imposes a substantial burden on Trijicon’s and its owners’ religious exercise and coerces them to change or violate their sincerely held religious beliefs, or be subject to penalties and harm to their property and livelihood.

135. The Mandate chills Trijicon’s and its owners’ religious exercise within the meaning of RFRA.

136. The Mandate exposes Trijicon to lawsuits, substantial fines, and financial burdens, and pressures Trijicon and its owners by threatening their property and livelihood based on their religious exercise.

137. The Mandate exposes Trijicon to substantial competitive disadvantages because of uncertainties about Trijicon’s health insurance benefits caused by the Mandate.

138. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

139. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

140. The Mandate violates RFRA.

WHEREFORE, Trijicon prays for the relief set forth below.

SECOND CLAIM FOR RELIEF
**Violation of Free Exercise Clause of the First Amendment
to the United States Constitution**

141. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

142. Trijicon's and its owners' sincerely held religious beliefs prohibit them from providing coverage for abortifacients, including "emergency contraception" and IUDs and related education and counseling, in Trijicon's employee health plan.

143. When Trijicon and its owners comply with their sincerely held biblical principles and Christian beliefs on abortifacients such as emergency contraception and IUDs, they exercise religion pursuant to the Free Exercise Clause.

144. The Mandate is not neutral and is not generally applicable.

145. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

146. The Mandate furthers no compelling governmental interest.

147. Defendants have conceded the lack of a compelling interest in the Mandate by virtue of their and ACA's voluntary exclusion and exemption of millions of Americans from the Mandate's coverage.

148. The Mandate is not the least restrictive means of furthering Defendants' purported interests.

149. The Mandate chills Trijicon's and its owners' religious exercise.

150. The Mandate exposes Trijicon to lawsuits, substantial fines, and financial burdens, and pressures Trijicon and its owners by threatening their property and livelihood based on their religious exercise.

151. The Mandate exposes Trijicon to substantial competitive disadvantages because of uncertainties about Trijicon's health insurance benefits caused by the Mandate.

152. The Mandate imposes a substantial burden on Trijicon's and its owners' religious exercise and coerces them to change or violate their sincerely held religious beliefs, or be subject to penalties and harm to their property and livelihood.

153. The Mandate is not narrowly tailored to any compelling governmental interest.

154. By design, Defendants framed the Mandate to apply to some religious Americans but not to others, resulting in discrimination among religions.

155. Defendants have created exemptions to the Mandate for some religious believers but not others based on characteristics of their beliefs and their religious exercise.

156. Defendants designed the Mandate, the religious employer exemption thereto, and the "compromise" and guidance allowances thereto, in a way that makes it impossible for Trijicon and other similar religious Americans to comply with their sincerely held religious beliefs.

157. Defendants promulgated both the Mandate and the religious exemption/allowances with the purpose and intent to suppress the religious exercise of Trijicon and its owners and other religious Americans.

158. The Mandate violates Trijicon's and its owners' rights secured to them by the Free Exercise Clause of the First Amendment of the United States Constitution.

WHEREFORE, Trijicon prays for the relief set forth below.

THIRD CLAIM FOR RELIEF
**Violation of the Establishment Clause of the
First Amendment to the United States Constitution**

159. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

160. The First Amendment’s Establishment Clause prohibits the establishment of any religion and/or excessive government entanglement with religion.

161. The Mandate discriminates among religions and among denominations, favoring some over others, and exhibits hostility to religious beliefs.

162. The Mandate discriminates against and among religions in refusing to accommodate or exempt a company that follows religious beliefs, while exempting or accommodating others.

163. The Mandate violates Trijicon’s and its owners’ rights secured to them by the Establishment Clause of the First Amendment of the United States Constitution.

WHEREFORE, Trijicon prays for the relief set forth below.

FOURTH CLAIM FOR RELIEF
**Violation of the Free Speech Clause of the First Amendment
to the United States Constitution**

164. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

165. Defendants’ requirement of provision of insurance coverage for education and counseling regarding abortifacient drugs and devices such as “emergency contraception” and IUDs forces Trijicon and its owners to speak and fund speech in a manner contrary to their religious beliefs.

166. Defendants have no narrowly tailored compelling interest to justify this compelled speech.

167. The Mandate violates Trijicon's and its owners' rights secured to them by the Free Speech Clause of the First Amendment of the United States Constitution.

WHEREFORE, Trijicon prays for the relief set forth below.

FIFTH CLAIM FOR RELIEF
Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution

168. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

169. Because the Mandate sweepingly infringes upon religious exercise and speech rights that are constitutionally protected, it is unconstitutionally vague and overbroad in violation of the due process rights of Trijicon and its owners and other parties not before the Court.

170. This Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner.

171. The ACA and the Mandate vest Defendants with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations, in crafting “religious employer” exemptions and changing the same, in crafting and modifying further “accommodations” and additional definitions of entities that qualify for the same, and in enforcing the Mandate and crafting rules regarding the same such as through its repeatedly issued enforcement “Guidances.”

172. The Mandate is an unconstitutional violation of Trijicon's and its owners' due process rights under the Fifth Amendment to the United States Constitution.

WHEREFORE, Trijicon prays for the relief set forth below.

SIXTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

173. Trijicon realleges all matters set forth in paragraphs 1–130 and incorporates them herein by reference.

174. As set forth above, the Mandate violates RFRA and the First and Fifth Amendments to the U.S. Constitution.

175. The Mandate is also contrary to the provisions of the ACA which states that “nothing in this title”—i.e., title I of the Act, which includes the provision dealing with “preventive services”—“shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” Section 1303(b)(1)(A). Some items included as “FDA-approved contraceptives” under the Mandate cause abortions by causing the demise of human embryos before and/or after implantation. By Executive Order, this provision prohibits Defendants from requiring abortion in Trijicon’s plan.

176. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . i f such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

177. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that “No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in

part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.”

178. The Mandate is contrary to existing law and is in violation of the APA under 5 U.S.C. § 706(2)(A)f.

WHEREFORE, Trijicon prays for the relief set forth below.

PRAYER FOR RELIEF

Trijicon respectfully requests the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Trijicon and its insurer, and others similarly situated but not before the Court, to be an unconstitutional and illegal violation of Trijicon’s, its owners’, and others’ rights protected by RFRA, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act, and therefore invalid in any way applicable to them;

B. That this Court enter a preliminary and a permanent injunction and declaratory relief prohibiting the Mandate from being applied to or considered applicable to Trijicon and its plan and others similarly situated but not before the Court in a way that substantially burdens the religious beliefs of Trijicon and its owners, or any person, in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against Trijicon and others not before the Court by requiring them to provide or cause to be provided health insurance coverage for abortifacients, contraception, sterilization and related education and counseling to employees of entities they own or operate;

C. That this Court award Trijicon court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. § 1988);

D. That this Court grant such other and further relief as to which Trijicon may be entitled.

Trijicon demands a jury on all issues so triable.

Respectfully submitted this 5th day of August, 2013.

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**VERIFICATION OF COMPLAINT
PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2013.


STEPHEN G. BINDON