

Analysis: Catholic bishops divided in legal battle against Obama birth control mandate

by [David Gibson](#)

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c. 2012 Religion News Service NEW YORK (RNS) The wave of lawsuits filed this week by more than 40 Catholic groups against the Obama administration's birth control mandate was meant as a demonstration of church unity and influence in the face of what some bishops see as a grave threat to the church's very existence.

But the strategy has also exposed serious fault lines within the U.S. hierarchy, as some leaders are privately and even openly questioning the legal and political ramifications of the bishops' latest battle with the White House.

The first public sign of the internal split came on Tuesday (May 22), a day after 43 Catholic dioceses, universities and other church institutions filed a dozen lawsuits around the country seeking to overturn a policy from the Department of Health and Human Services that requires employers or their insurance companies to provide free contraceptive coverage to employees.

In an interview with America magazine, a national weekly published by the Jesuits, Bishop Stephen E. Blaire of Stockton, Calif., warned that "there is a concern among some bishops that there ought to have been more of a wider consultation" regarding overall strategy before such aggressive legal action was taken.

Blaire, a leading spokesman on social justice issues as head of the domestic policy committee of the U.S. Conference of Catholic Bishops, worried that the confrontational approach taken by the bishops was being exploited by political groups "very far to the right" who are trying to use the conflict with the White House as "an anti-Obama campaign."

"I think there are different groups that are trying to co-opt this and make it into political issue, and that's why we need to have a deeper discussion as bishops," said Blaire, who reiterated that he opposes the contraception mandate and fully supported efforts to defend the church's religious liberty.

The entire U.S. hierarchy is to meet in Atlanta in June for its annual spring meeting, and Blaire and others have suggested the lawsuits could have waited until after that meeting.

Blaire cited a number of other concerns about the legal strategy, including that plaintiffs could lose. That already happened in 2004, when the California Supreme Court upheld a mandate much like the one proposed by Obama's HHS. If the current plaintiffs lose in a federal case before the U.S. Supreme Court, that could enshrine the principal they oppose as a judicial precedent.

Another problem noted by Blaire, and one that several bishops have privately lamented, is that different bishops and conservative activists are citing different rationales for opposing the mandate: some see the fight as a defense of religious freedom, others say it is about protecting individual consciences, and still others object to the mandate as promoting birth control and sexual license.

Some of those claims are weaker than others, and Blaire said some could feed into the "war on women" meme. He also said they might detract from ongoing efforts to craft an acceptable accommodation with the White House, but above all they represent a failure by the bishops to act in unison to achieve an agreed upon goal.

Even before Blaire made his comments there were indications that the legal approach promoted by many bishops and Catholic conservatives was not as widely embraced as its promoters made it seem.

Just 13 of the nearly 200 U.S. dioceses signed onto the suit. Moreover, while the staff of the Washington-based USCCB was "facilitating and coordinating" Monday's lawsuits, the bishops' public policy arm did not join the suits. Neither did a number of bishops who have been sharply critical of Obama, such as Chicago Cardinal Francis George, who explained that the archdiocese "is still in the process of working out how it might best initiate or join any legal action."

Perhaps the most important player in the lawsuits filed Monday was the University of Notre Dame, which had angered many bishops by granting Obama an honorary

degree in 2009. Yet even Notre Dame's president, the Rev. John Jenkins, sounded more rueful than triumphal when he said the school "filed this lawsuit neither lightly nor gladly, but with sober determination."

Privately, several bishops and Catholic leaders had already been questioning the USCCB's headlong charge against the contraception mandate.

They worried that the campaign -- which is built around a "Fortnight of Freedom" promotion that concludes with church services on July 4 -- appears to ally the hierarchy with the Republican Party, and also detracts from a number of other concerns like poverty and immigration.

The lawsuits filed this week prompted a fresh round of behind-the-scenes complaints that emerged in a more diplomatic form in Blaire's interview.

For years, conservatives have held the upper hand in the USCCB while moderates and more progressive-minded prelates, fearing a rebuke from Rome, held their tongues. But some believe that an overreach on the contraception campaign may be shifting that dynamic.

"It was only a matter of time before some of the less arch among the bishops went public with their concerns the way conservative bishops did in previous times when they thought the conference was too moderate," church analyst Michael Sean Winters wrote in the National Catholic Reporter on Wednesday.

"This is the dam that was waiting to be broken, and Blaire's comments broke it."