

WilmerHale Wins Case Against Abortion Ban

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WilmerHale won a significant victory this past Thursday when the US District Court for the Southern District of New York permanently enjoined the government from enforcing the Partial-Birth Abortion Ban Act of 2003 (*National Abortion Federation v. Ashcroft* No. 03 Civ.8695).

A team of our lawyers, along with lawyers from the ACLU (principally the ACLU's Reproductive Freedom Project), represented the National Abortion Federation and seven individual doctors who alleged that the ban was unconstitutional on a variety of grounds, including those identified by the Supreme Court when it invalidated a similar state ban in 2000 in *Stenberg v. Carhart*—principally that such a ban was required to contain an exception for women's health and that the language of the ban was so broad as to encompass virtually all procedures used to perform abortions during the second trimester.

"This is an extremely important victory for women's reproductive rights," said partner [Stephen Hut](#). "At the same time," Hut continued, "this was not your typical case. This is a case that addressed a subject matter that is extremely controversial, and there were—and are currently—differing views about it within our firm. It's a testament to our firm and its pro bono traditions that there is a shared understanding that permits those who feel strongly about a matter to pursue a case even though there are such differences."

The district court issued a temporary restraining order in November, and then ordered highly expedited discovery and trial. The court denied plaintiffs' motion for summary judgment on the health-exception ground, and held a 16-day bench trial in March and April, at which 15 witnesses testified live and nine by deposition. The court heard a full day long oral argument in June.

In the end, the court concluded that plaintiffs had proved that there was a substantial division of opinion among medical experts as to whether the procedure in question needed to be available in the interests of women's health, and, under *Stenberg*, this required invalidation of the ban. In so ruling, the court rejected all of Congress's findings to the contrary as without foundation.

In addition to [Mr. Hut](#), members of the WilmerHale litigation team included [Amy Wigmore](#), [Kim Parker](#), [Paul Wolfson](#), Karen Daly, Kyle DeYoung, Caroline Rogus, [Anja Manuel](#) and [Elizabeth Gill](#).