

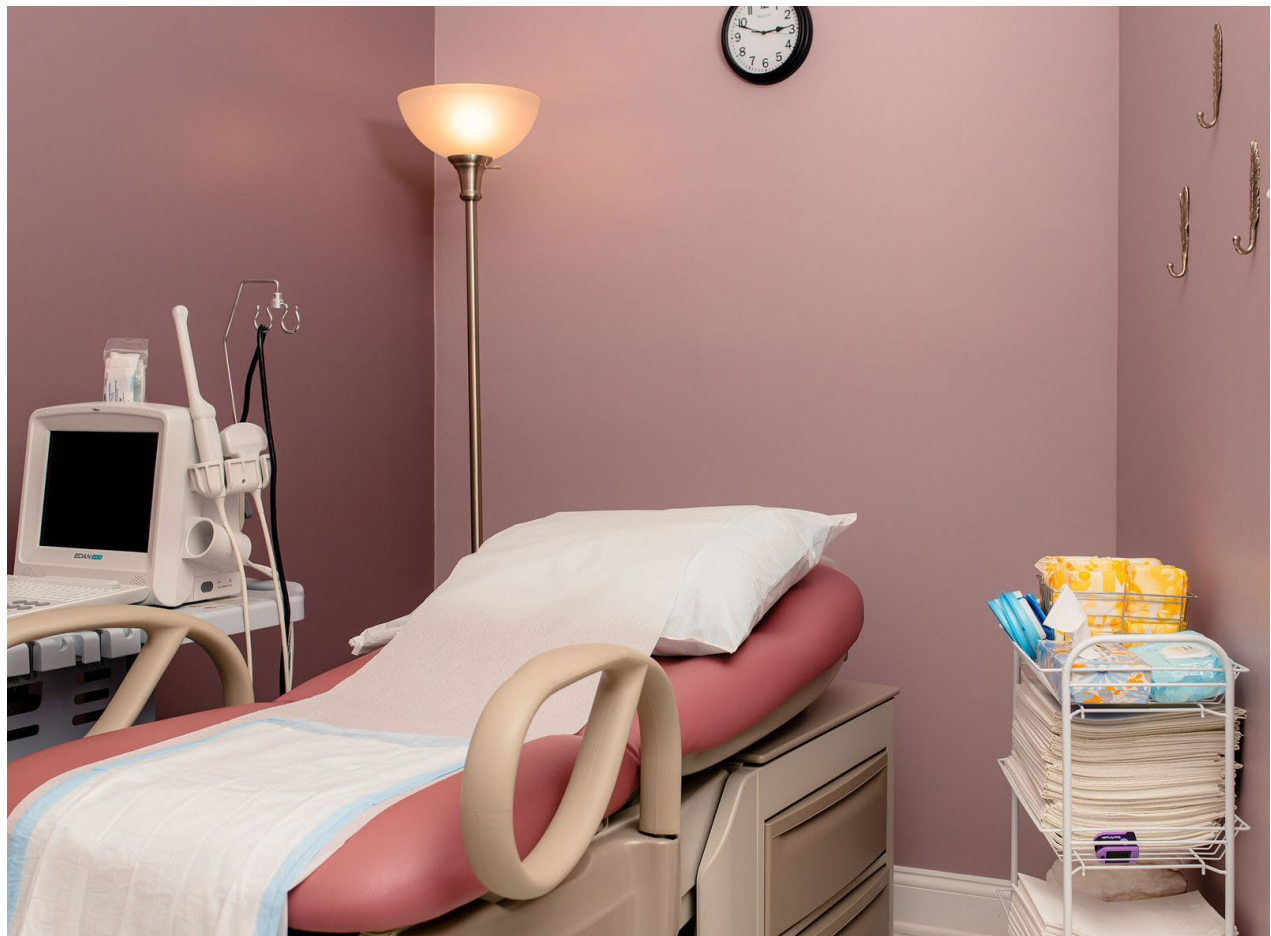
## Bloomberg Businessweek

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# Abortion Clinics Are Getting Nickel-and-Dimed Out of Business

From legal battles to securing vendors to getting the walls painted, every budget line is a struggle.



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By Cynthia Koons and Rebecca Greenfield

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**Amy Hagstrom Miller, owner of Whole Woman’s Health in Austin, has faced many existential threats to her business. When Texas passed a law in 2013 requiring abortion providers to have admitting privileges at a nearby hospital, she was forced to close the clinic. She fought the measure all the way to the Supreme Court, and in 2016, she prevailed. By a 5–3 decision, the court ruled in *Whole Woman’s Health v. Hellerstedt* that the law wasn’t medically justified. There’s an iconic photo of Hagstrom Miller descending the Supreme Court steps afterward, fist raised, smile radiant. Nine months later, she reopened her clinic.**

It looked like a happy ending. But a year later the Austin clinic was on the brink again. An anti-abortion funder offered Hagstrom Miller’s landlord five years of rent for the clinic and the offices she’d been renting next door to prevent anyone from setting up a crisis pregnancy center there. These places, which counsel women against having abortions, have proliferated in recent years, with more than 2,500 nationwide, and some try to operate as close to providers as possible. Hagstrom Miller estimates it would have cost her \$250,000 to match the group’s offer, a sum she simply couldn’t spend. The clinic is now a crisis

pregnancy center called the Source.



9650; Hagstrom Miller PHOTOGRAPHER: CAROLINE TOMPKINS FOR BLOOMBERG BUSINESSWEEK

The displacement sent her on a nine-month quest for a new location. Even in a liberal city like Austin, she had to tour more than 80 places before she found an appropriate site whose owner was willing to rent to her. She estimates that the relocation cost \$100,000—all part of what she calls

the “abortion tax,” a litany of extra, often unforeseen expenses providers must pay to open and operate. There’s security to protect staff and patients. Airfare to get doctors to areas lacking trained physicians willing to perform abortions. Higher rates for contractors concerned about protesters and boycotts. More stringent loan terms. Insurance can be canceled unexpectedly, and replacement plans can have higher premiums. And for some clinic owners, there are legal fees for defending the constitutionality of the procedure.

Hagstrom Miller is both an abortion provider and a de facto legal guardian of the pro-choice movement. At 51, she carries on the fight while simultaneously running a national network of clinics in some of the most strongly anti-abortion states. Having bought 14 clinics in her career, she jokes that she could host an HGTV show called Flip This Clinic given how many she’s renovated. (Providers who are thinking of closing down know to give her a call first.) Her clinics and the head office in Charlottesville, Va., carry the same feminist aesthetic, their violet walls featuring Georgia O’Keefe prints and inspirational quotations from Maya Angelou and Zora Neale Hurston. Sitting in her headquarters, Hagstrom Miller recounts story after story about struggles to secure vendors and about legal battles that forced her to delay opening clinics she’d already renovated. She usually finds a way. “I call myself a loophole archaeologist,” she says.

Less than four years after *Whole Woman’s Health v. Hellerstedt* was decided, her day-to-day work is at least as

challenging as it was before. The abortion tax has gone up, with new barriers that hurt clinics' bottom lines. Protests have increased in number, and providers are struggling to offer a medical procedure that's been legal in the U.S. since 1973 and whose legality 7 in 10 adults support, according to a recent Kaiser Family Foundation study. Clinic owners across the country describe a business environment that's curtailing their ability to operate. And if owners can't operate, access disappears.

Anti-abortion activists have adopted a two-part strategy. On one hand, they lobby for the continued passage of laws like the one Hagstrom Miller fought before the Supreme Court—abortion-rights advocates refer to these as TRAP (Targeted Regulation of Abortion Providers) laws. And on the other, they try to raise providers' operating costs directly or otherwise pressure clinics out of existence. It appears to be working. The number of independent clinics, which account for 60% of U.S. abortions, was down to 344 as of November, one-third fewer than in 2012, according to the Abortion Care Network, an association of independent providers. In the parts of the country most hostile to abortion, rates are declining sharply.

On March 4 a Supreme Court refashioned by President Trump will hear arguments in a case involving a Louisiana law similar to the one Hagstrom Miller got overturned. If the law is upheld, a wave of similar ones could follow, essentially mooting her 2016 win. But even if the providers' side wins, there's no guarantee their businesses will

endure. “We might have won a Supreme Court case that allows us to be open,” Hagstrom Miller says, “but you can’t be open if you can’t find space.”

Hagstrom Miller began her career in 1989, during an era of extreme violence against clinics. Fire bombings were widespread, and some doctors and staff were murdered. Five years later, President Bill Clinton signed a law to protect clinics and providers, banning blockades and punishing anyone who intentionally damaged a reproductive health facility.

Since then, anti-abortion activists have turned the law in their favor. The TRAP approach started taking off around 2011. Some of the most challenging of these regulations require providers to qualify as “surgery centers,” facilities equipped for procedures more complex than a typical abortion; these measures can dictate a building’s specifications right down to hallway widths, forcing renovations or relocations that can cost upward of \$1 million. Other regulations add hurdles before patients can get the procedure. When Texas passed one law requiring an extra clinic visit for women seeking an abortion, Hagstrom Miller says, her labor costs increased to the point that her clinics in the state haven’t been profitable since.

In the wake of TRAP laws, her vendors were targeted by protesters. Contractors from plumbers to roofers to parking lot pavers expressed fears for their businesses and

about dealing with demonstrators, whose numbers in the U.S. have more than doubled, to more than 280,000 over the past decade, according to the National Abortion Federation. When Hagstrom Miller tried to hire security, activists would target the guards or their employers, too. “Does that work?” she asks. “Yes. It gets them scared. They’re worried they’re going to lose their clients.” Tammi Kromenaker, director of the Red River Women’s Clinic in Fargo, N.D., says a window-washing company once claimed it couldn’t work with her because it didn’t clean “older windows.” Other providers say they’ve resorted to arranging for their waste contractors to work incognito.

## Outnumbered

Nearly every U.S. state has more crisis pregnancy centers than abortion clinics

Clinics defined as offices performing 400 or more procedures annually. Legal climate based on a Guttmacher Institute study of six categories of abortion restrictions and six categories of legal protections, counted as of Jan. 24.

Data: Crisis Pregnancy Center Map, Guttmacher Institute, American Community Survey

The difficulties of the TRAP law era have been compounded by social media, where viral videos have sparked new forms of protest. In one prominent example in 2015, a group called the Center for Medical Progress released tapes claiming to show that Planned Parenthood was selling fetal tissue for profit, which is illegal. A congressional inquiry and multiple state investigations concluded that the claim wasn’t true, but activists noticed the attention the video garnered. One of them was Mark Harrington, who seized on a claim made in Ohio’s

investigation that a medical waste management company called Stericycle Inc. had been putting fetal remains in landfills—something the attorney general said violated humane disposal codes. Harrington’s organization, Created Equal, decided to target Stericycle, which it identified as one of the biggest players in the medical waste industry.

According to a lawsuit brought by the company against Created Equal, the activist group posted the home address of Stericycle’s then-chief executive officer, Charles Alutto, on Facebook and on postcards it distributed near his home in Illinois. “Medical waste companies, which dispose of the victims and the instruments used to kill them, are the industry’s Achilles’ Heel,” Harrington wrote on his website. (Stericycle didn’t respond to multiple requests for comment but appears in legal filings to have contested Harrington’s accusations, saying it had a long-standing policy against accepting fetuses as medical waste. Created Equal won the suit and was allowed to continue its campaign.)





Security camera images at a women's health clinic in Brookline, Mass. PHOTOGRAPHER: HEATHER STEN FOR BLOOMBERG BUSINESSWEEK

Trump's appointments of Neil Gorsuch and Brett Kavanaugh to the Supreme Court further emboldened activists. Gorsuch had never ruled on an abortion case prior to his nomination, but he was on the shortlist the president drew on from the resolutely anti-abortion Federalist Society and had been described by Christianity Today as an "evangelical favorite." Kavanaugh famously

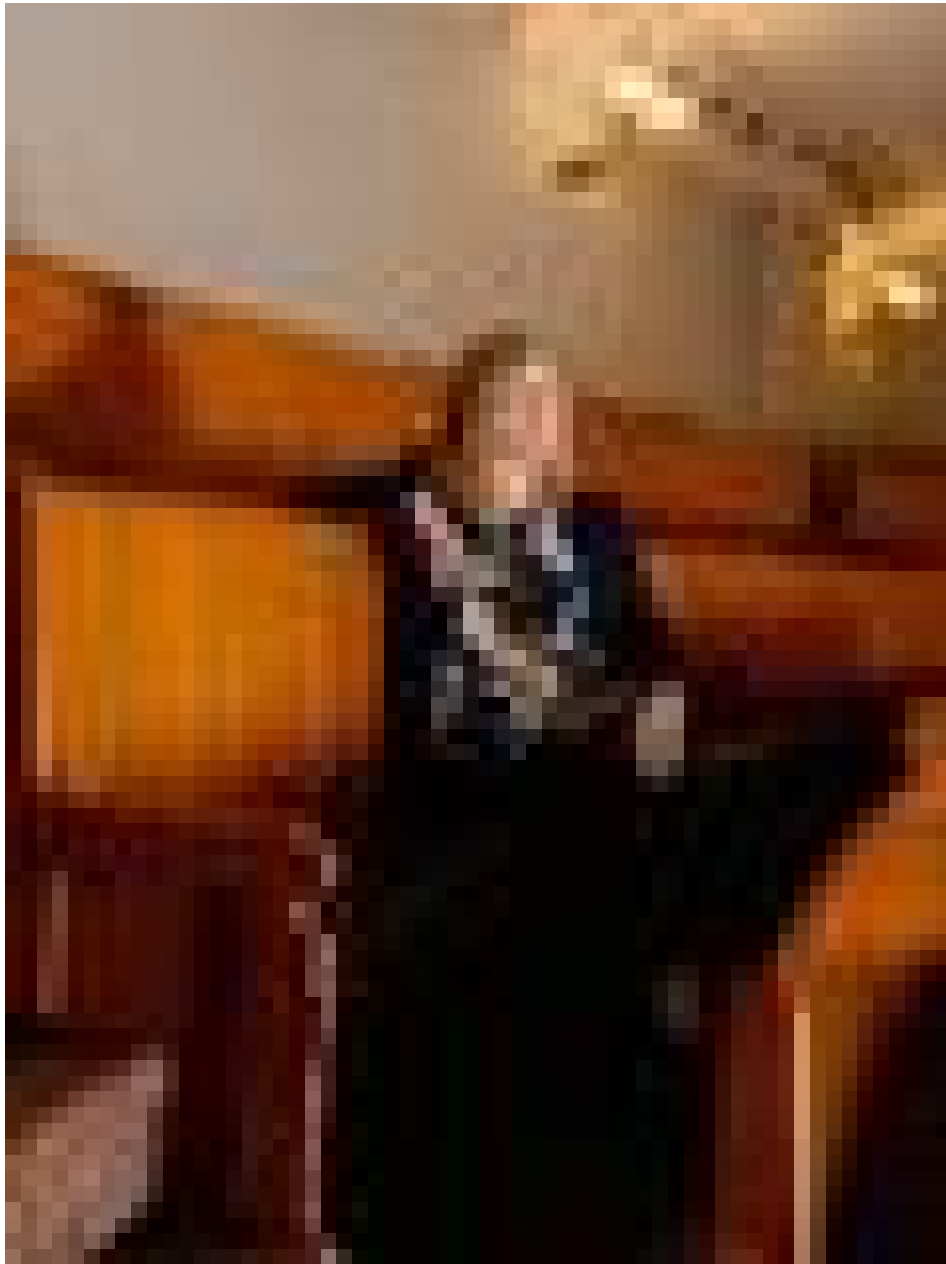
argued in a dissenting opinion for delaying the abortion of an immigrant teenager while she was in federal custody.

Encouraged by the prospect of a solidly conservative majority at the high court, Republican lawmakers have lately passed a surge of abortion regulations. In 2019 alone, state legislatures enacted at least 58 new restrictions, including five that effectively ban abortions six weeks after conception, which is early enough that some women don't yet know they're pregnant. Several states started requiring providers to counsel patients on the possibility of taking a drug that purportedly acts as an "abortion pill reversal"—a claim the American College of Obstetricians & Gynecologists has publicly said is "not based on science." (One study testing an abortion reversal medication was halted last July after three women were hospitalized for severe bleeding.) And more than a dozen states now make abortion clinics qualify as surgery centers. "In other parts of medicine," Hagstrom Miller points out, compliance costs "are passed on to patients or insurers." The nuisance to providers, she says, "is by design. This isn't by default."

Catherine Glenn Foster, CEO of Americans United for Life, which has crafted a playbook for activists lobbying state legislatures to pass TRAP laws, argues that the regulations are necessary to protect women. She says that, while she would prefer there be no abortions in the U.S., "right now abortion is legal. As long as it is, I am going to fight for every woman's safety. That may end up costing a little bit more."

In an era of high medical cost inflation, abortion is an outlier. A first-trimester abortion might cost between \$400 and \$1,000, depending on the method and the clinic. In Minnesota it's about \$650. "You can't get a mole removed for \$650," says Nikki Madsen, executive director of the Abortion Care Network. She calculates that in her 15 years in the field, the price of an abortion has gone up only \$50. Go back 45 years, and it was \$125 to \$200, according to a 1974 New York Times article. Based on U.S. Bureau of Labor Statistics data, a procedure that cost \$200 in 1974 would be around \$2,686 today had it kept pace with medical inflation.

Prices remain static because abortion exists largely outside the traditional health insurance model. Eleven states ban or heavily restrict abortion coverage by private insurers, and more than half of all states have stringent rules that limit coverage on the insurance exchanges created by the Affordable Care Act, according to the nonprofit Guttmacher Institute. Most of the demand comes from low-income women, who got 3 out of 4 abortions in the U.S. in 2014. But Medicaid, which provides many of these women with coverage, is prohibited by a 1970s law from using federal funds to cover the procedure, and state funding fills the breach only if politics allow it.



Julie Burkhardt PHOTOGRAPHER: HEATHER STEN FOR BLOOMBERG BUSINESSWEEK

All of that leaves abortion largely a cash business, with doctors charging what they believe a patient, rather than an insurer, can pay. Many clinics cover the entire cost of services for those who can't afford it, often drawing on donor support.

It can be a struggle even to open the doors, let alone to keep them open. Before Julie Burkhardt started her clinic in Wichita in 2013, she spent two years trying to get funding.

Everyone from Bank of America Corp. to Wells Fargo & Co. to some smaller regional institutions declined to give her money. “After I announced that we would be providing abortion care, that’s where the conversation stopped,” she says. In the end, she relied on donations, opening the same month as Kansas lawmakers passed sweeping anti-abortion legislation. “To all the lenders who thought we were too high-risk, here we are still open seven years later,” she says. (In a statement, Wells Fargo said, “We do not have a policy against lending to family planning providers.” Bank of America didn't respond to a request for comment but has previously said it doesn't have information on Burkhart's clinic.)

The chill has spread to pro-choice regions, too. After Trump was elected, Burkhart, concerned that *Roe v. Wade* might be overturned, decided to set up an operation somewhere more politically hospitable. She settled on Seattle, a liberal city in a state with abortion protections written into law. Even there, she quickly ran into issues. Her lease with the University of Washington for space in a skyscraper had clauses saying that Burkhart couldn’t engage in “advocacy” and that she could be evicted if her business caused “any demonstration, protest, picketing, rally” for more than two straight business days. In May 2018, after a picture of Burkhart in her office appeared in the local newspaper, she got a cease-and-desist letter from a lawyer for the university, warning her that she’d violated these clauses. The message cited the article, as well as a protest that had taken place outside in December 2017 and

descriptions of her clinic's advocacy for reproductive rights on its website.

“I was a little disturbed, and floored, by the fact that an organization in the state of Washington, in the city of Seattle, would take such a punitive approach,” Burkhart says. To placate her landlord, she agreed not to do media interviews in her office anymore. Ultimately, feeling muzzled and seeing less business than expected, she closed and refocused her attention on her clinic in Kansas. (In a statement, the university said, “The lease terms are established to ensure that any disruptions in the building potentially caused by a tenant's use can be addressed by the landlord.”)



&#9650; Delli-Bovi PHOTOGRAPHER: HEATHER STEN FOR BLOOMBERG BUSINESSWEEK

Another provider described a similar experience in New York City, which last year became the first U.S. municipality to directly finance abortion, allocating \$250,000 to an access fund that helps lower-income women living in states with restrictive laws to pay for abortions in New York. The provider, who asked to remain unnamed for fear of reprisal, was on the verge of opening a clinic in Manhattan in 2018 when she discovered a clause

buried deep in her lease that said the tenant couldn't terminate a life or end a pregnancy. After a heated negotiation, she agreed to a provision that allowed her to provide birth control and the emergency contraceptive Plan B, but not abortions, for three years. The landlord told her he wasn't against abortion but was concerned that protests would limit his ability to lease property.

The national shift in climate also seems to be influencing insurers. Several providers describe having policies canceled over the past few years. One of them, Dr. Laurent Delli-Bovi, who owns a clinic in Massachusetts and teaches at Harvard Medical School, got a letter in 2017 from her insurance company, a division of Hartford Financial Services Group Inc. It was ending her property and general liability insurance, even though she'd never filed a claim. "We will not renew this policy when it expires," the letter read. "We have learned that your operations include [an] abortion clinic."

Seeking other options, Delli-Bovi contacted the broker for her workers' compensation insurer, Travelers, because it had once provided her with general liability coverage for a different location. Instead of a new policy, she got another letter. "We wish to inform you that your 'WORKERS COMPENSATION POLICY' Policy Number UB-4K987411-18-42-G will not be renewed on its expiration date 04-13-19," it read. The broker relayed that the decision was "because of your operations." After Delli-Bovi finally got a policy through Lloyd's, the broker sent word about that, too: "We have received a non-renewal



notice from your current insurance carrier.” All the broker could say was that “this happens from time to time” and that Lloyd’s had attributed its decision to the “class of business.”

It’s been the same story for malpractice insurance. Dr. DeShawn Taylor, who operates a clinic in Phoenix, says she lost her coverage out of the blue even though she’d never had a claim or a suit against her. “It’s really sad, because abortion is one of the safest possible things that a health provider can do. We don’t admit people to the hospital,” Taylor says. Research published in Obstetrics & Gynecology found that around 1 in 5,400 abortions results in a same-day ambulance transfer to an emergency room.

Spokespeople for Hartford, Travelers, and Lloyd’s said that they couldn’t or wouldn’t comment on specific policies, and that they don’t have blanket rules denying coverage to abortion providers. “We occasionally learn information about businesses that we were unaware of initially that makes them ineligible under our underwriting guidelines,” the spokesperson for Hartford wrote. Michael Barry, head of media and public affairs at the Insurance Information Institute, an industry body, ties the phenomenon to risk assessment. An insurer might, for example, be “concerned about the higher risk of property damage,” he says.

As the hassles mount, clinics are shutting down. There were 19% fewer abortions in the U.S. in 2017 than in 2011. A lot of this traces to the Affordable Care Act, which increased access to contraceptives and drove down the rate of unwanted pregnancies, but there’s evidence that TRAP

laws are playing a role in the decline, too. According to the Guttmacher Institute, states whose laws led to clinic closures saw abortion-rate declines that outpaced the national average. In Arizona and Ohio, the drop was 27%. In Texas, 30%. In Virginia, 42%.

The consequences are manifold. Studies have shown, for example, that women who want an abortion but can't get one are four times more likely to be in poverty four years later, are more likely to stay with violent men, and are more likely to experience complications from pregnancy, including death. The effects also stretch beyond elective abortions and into maternal health generally. Dr. Anuj Khattar, a Seattle-based family medicine practitioner, frequently flies to Oklahoma to fill a gap in abortion coverage there. While he was in the state last year, he was called in to perform an emergency abortion when a woman lost her pregnancy at a hospital whose staff doctor hadn't been trained to remove a fetus. Had Khattar not been there, the patient could have lost her uterus. "It's just frustrating," he says. "We have created this system that separates abortion care from the rest of medicine."

When the Supreme Court returns its decision in the Louisiana case this summer, the worst-case scenario for providers will be if the court takes the opportunity to overturn Roe entirely. In an amicus brief drafted by Americans United for Life and filed this January, a group of 39 senators and 168 House members petitioned the court

to do just that. “That is possible in any abortion case,” says Foster, of Americans United for Life. “I would expect at some point the court would overturn Roe, and at that point the issue would return to the states.”

Were that to happen, providers in states with abortion protections written into their constitutions would be able to continue their work. “I think we’re perfectly poised to be a safe haven and provide service to women from other states,” Delli-Bovi says. But, she adds, “we can only do that if we can stay in business, and right now that doesn’t look that good.”

Her clinic, which provides abortions at up to 24 weeks’ gestation and takes patients from all over New England, hasn’t been profitable for 13 years because of rising costs for insurance, anesthesia, rent, and property taxes. In December, as the business was facing more than \$300,000 in debt (not counting \$600,000 in loans from her and her husband, nor the 12 months’ worth of back pay she was due), she started a GoFundMe campaign with a \$250,000 goal. She warned that if she didn’t hit it, she’d have to close within three months.

She’s now more than three-quarters of the way to her target, which has allowed her to pay some of her bills. When the debt is gone, Delli-Bovi says, she’s hoping a hospital or philanthropist will take over the clinic. She doesn’t want to deal with the hassle anymore. “It’s terribly stressful living like this,” she says. “It’s week to week, can we pay our bills? Debt collectors hounding you to pay them. That’s not a pleasant way to live.”

(Corrects details of New York City funding for abortion access in  
22nd paragraph.)

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