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Being the Unstoppable Force (in the Face of an Immovable Object)

What's a nonprofit leader to do when facing both a once-in-a-generation opportunity to move the sector forward and an impediment no less immovable than the state constitution? Change the constitution, of course! In the coming weeks, Tsiporah Nephesh and **New Mexico Thrives** are seeking to do just that.

As all readers know by now, the [Coronavirus State and Local Fiscal Recovery Fund](#) provision in the American Rescue Plan Act promises \$350 billion in federal funds to state, local, Tribal, and territorial governments over a few years. Federal law allotted the governments in New Mexico \$2.5 billion to provide “assistance to households, small businesses, **and nonprofits**, or to aid impacted industries” (emphasis added). In other states, governments are using the federal funds to provide direct assistance to charitable organizations and to hire the nonprofits to provide assistance to others.

The problem for New Mexico nonprofits, however, is that the [state constitution](#) (at Article IX, Sec. 14) says that governments may not “directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad ...,” with certain exemptions. This so-called “anti-donation” clause is leading policymakers to exclude charitable nonprofits from any plans to allocate ARPA funds to address community needs. While the clause was reportedly included

in the state constitution to protect state funds from fraud, it has become a barrier to projects involving state funds.

In the [view of New Mexico Thrives](#), the state association of nonprofits, New Mexico's anti-donation clause “gets in the way of rural development, particularly in the areas of broadband and water infrastructure.” Further, “It complicates the capital outlay process” and “is an impediment to providing disaster relief to individuals, businesses, and nonprofits.” Moreover, the provision “complicates government partnering with nonprofits to promote community well-being.” In other words, the state constitution is getting in the way of charitable nonprofits advancing their missions to improve the “Land of Enchantment,” and must be changed.

New Mexico Thrives is working with nonprofit leaders, legislators, members of the counties association, and state administrative staff directly involved with the capital outlay process and the anti-donation clause to propose a remedy. There are two phases to make the anti-donation clause more workable. The first phase is a constitutional amendment, which must pass both chambers of the legislature. After the bill is passed, the proposed amendment must be voted on by the public in a general election. The second phase is to pass enabling legislation.

The legislation New Mexico Thrives supports, [Senate Joint Resolution 7](#) (SJR 7), would amend the anti-donation clause in New Mexico's constitution to make it more workable with three new exemptions. The first would allow for the state to invest in infrastructure to provide essential household services (electricity, broadband, water, and wastewater). The second would allow the state to use funds for disaster relief. The third would allow the state to invest in community well-being through investments with 501(c)(3) nonprofits and 501(c)(12) cooperatives.

Time is short, however, because the legislation session ends on February 17.