

1 Jeffery J. Harris  
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2 Bisbee, AZ 85603  
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3 *Petitioner-Plaintiff in Pro Per*

4 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
5 **IN AND FOR THE COUNTY OF COCHISE**

6  
7 **JEFFERY J. HARRIS,** )

8 Petitioner-Plaintiff, )

9 vs. )

10 **THE COUNTY OF COCHISE, ARIZONA,** )  
11 **and COUNTY ASSESSOR,** )  
12 **PHILIP S. LEIENDECKER** )

13 Respondents-Defendants. )

Case No. CV201300707

**AMENDED**  
**STATUTORY SPECIAL ACTION**  
**(COMPLAINT)**

Assigned to: Hon. John F. Keliher

14 The above named Petitioner-Plaintiff, JEFFERY J. HARRIS, respectfully petitions this  
15 Court to review the Cochise County Assessor’s refusal to accept as valid, for 2013, Harris’ well-  
16 established exemption for property as a disabled person pursuant to article IX, sections 2 and 2.3,  
17 Constitution of Arizona, and A.R.S. § 42-11111. Harris maintains that said refusal was arbitrary  
18 and capricious and an abuse of discretion, and in excess of jurisdiction. Moreover, the methods  
19 employed by the County, through its assessor, in depriving Harris of a constitutionally-provided  
20 benefit violated Harris’ rights to due process of law and infringed his rights to political speech  
21 under the Federal and Arizona Constitutions: the County deprived Harris of a substantial right  
22 established under the Arizona Constitution without first affording Harris an opportunity to be  
23 heard, and in a manner that impermissibly chills participation in the political process.  
24

25 **JURISDICTIONAL STATEMENT**



1 Absent any forewarning or opportunity for a hearing on the matter, for the tax year 2013,  
2 the County Assessor refused to apply Harris’ exemption of property as a disabled person, an  
3 exemption that was initially established in 2009. [See Exhibits A, D attached hereto.] This  
4 refusal to apply an established exemption was effected on July 25, 2013, by letter. [Exhibit A]  
5 This letter, signed by Maureen G. Bandosz, broadly cites A.R.S. §§ 42-11101 through 42-11115  
6 and advises that Harris’ “application” for exemption—despite being approved in 2009, some  
7 four years prior—has been “denied” on the ground that Harris purportedly engaged in political  
8 activity in 2012.<sup>2</sup> [*Id.*]  
9

10 In letters or memoranda dated July 29, August 5, and August 9, 2013, Harris  
11 “demand[ed] that the assessor’s office retract forthwith the asserted denial of [Harris’] well-  
12 established exemption under § 42-11111, or, in the alternative, specifically cite the authority  
13 under which the assessor’s office may lawfully deny an established exemption for the reason  
14 stated.” [Exhibits B, C, D]

15 The County Assessor did neither. In his only written response, dated August 7, 2013, the  
16 County Assessor failed to address Harris’ demands directly. [Exhibit D] No relevant authority  
17 was cited for the County Assessor’s actions, and the asserted “denial” of an established  
18 constitutional exemption was not retracted. [*Id.*]  
19

20 In his letter dated August 9, 2013, Harris asserted that the County Assessor was  
21 “threatening to exceed [his] lawful authority and deny [Harris his] rights under the Federal and  
22 Arizona Constitutions. [*Id.*] Moreover, after noting that the Assessor failed to mention the critical  
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24 <sup>2</sup> Entirely absent a citation to legal or medical authority which might conceivably justify its  
25 actions, the County, through its office of assessor, disregarded the previously approved medical  
Certificate of Disability for Harris, and declared Harris to be no longer disabled solely on the  
basis of Harris’ purported nomination for political office in the 2012 Cochise County election.

1 role that Harris played in the campaign of Assessor Leiendecker’s political rival in 2012,  
2 “[Harris ...] challenge[d Assessor Leiendecker’s] neutrality and respectfully request[ed] that [he]  
3 disqualify [him]self from the reconsideration of this matter.” [Id.] The County Assessor failed to  
4 respond to Harris’ challenge to the Assessor’s neutrality. [Id.]

5 For 2013, Harris’ property valuation was not reduced by the amount of the exemption for  
6 disability established in 2009 (and applied up through 2012). [Exhibits D, E.]

7 On October 5, 2013, Harris paid under protest his taxes on property that had been  
8 improperly valued for the tax year 2013 as the result of the County Assessor’s unlawful refusal  
9 to apply a well-established constitutional exemption of a disabled person. [Exhibit E]

### 11 ARGUMENT

12 The power to tax is an inherent power of government, but the “imposition, assessment  
13 and collection of taxes is a process that is dictated entirely by statute.” *Seafirst Corp. v. Arizona*  
14 *Dept. of Revenue*, 172 Ariz. 54, ¶ 2, 833 P.2d 725 (Ariz.Tax, 1992). In the instant action, the  
15 Cochise County Assessor impermissibly stepped outside the statutory limitations of his authority.  
16 In a manner inconsistent with Arizona law, the County Assessor employed hearsay evidence as  
17 the sole pretext to deprive Harris of a valid constitutional property tax exemption that had been  
18 in force for the previous four (tax) years. The whims of a county assessor do not trump the duly-  
19 enacted laws of the State of Arizona, and neither a county assessor nor his staff is above the law.  
20 *Cf., e.g., Tucson Botanical Gardens*, 218 Ariz. at ¶ 8 (holding “an exemption should ‘not be so  
21 strictly construed as to defeat or destroy the [legislative] intent and purpose’”) (Internal citation  
22 omitted.)

### 24 **I. AN ESTABLISHED EXEMPTION OF A DISABLED PERSON IS VALID UNTIL** 25 **DISQUALIFIED IN ACCORDANCE WITH ARIZONA LAW.**

1           Precisely because Harris’ claim for a property tax exemption as a disabled person, pursuant  
2 to article IX, sections 2, 2.2, and 2.3, Constitution of Arizona, and A.R.S. § 42-11111, was  
3 established initially in 2009, it is therefore no longer subject to (subsequent) administrative  
4 approval. A.R.S. § 42-11111(H). As § 42-11111(H) plainly states in the following passage, once  
5 eligibility for exemption has been established, the claimant is “not required to file [further]  
6 affidavit[s]”:

7           A [...] disabled person shall initially establish eligibility for exemption under this  
8 section by filing an affidavit with the county assessor under section 42-11152.  
9           Thereafter, the person is not required to file an affidavit under section 42-11152 ...

10 (Emphasis added.) *Id.*

11           This subsection charges the claimant—rather than the county assessor—with the  
12 responsibility to determine compliance in subsequent years:

13           ... the person or the person’s representative shall annually calculate income from  
14 the preceding year to ensure that the person still qualifies for the exemption and  
15 shall notify the county assessor in writing of any event that disqualifies the [...] disabled person from further exemption.

16 (Emphasis added.) *Id.*

17           Moreover, this subsection enumerates only four events which would invariably disqualify  
18 a claimant from an exemption under this statute, namely:

- 19           1. The person’s death.
- 20           2. The remarriage of a widow or widower.
- 21           3. The person’s income from all sources exceeding the limits prescribed by  
22           subsubsection E of this section.
- 23           4. The conveyance of title to the property to another owner.

24 *Id.*

25           A.R.S. § 42-11111(H) makes it plain that an established exemption for property of a  
disabled person is valid until disqualified in accordance with Arizona law. *Id.*

1 **II. THE COUNTY FAILED TO DISQUALIFY HARRIS' ESTABLISHED**  
2 **EXEMPTION IN ACCORDANCE WITH ARIZONA LAW.**

3 The County Assessor arbitrarily and capriciously “denied” Harris’ well-established  
4 constitutional property tax exemption as a disabled person. The County Assessor failed to cite  
5 any authority which would permit him to engage in the logical absurdity of “denying” an  
6 exemption already established pursuant to A.R.S. § 42-11111. Plainly, once approved,  
7 exemptions must be “disqualified” rather than “denied,” if the circumstances dictate such action.  
8 Notwithstanding such improper usage of terminology, in the instant case, the County Assessor  
9 failed to demonstrate the occurrence of a valid disqualifying event of any sort, much less one  
10 enumerated in the statute. Precisely because the statute does not provide the assessor’s office  
11 with the authority to challenge medically determined disability on the basis of an assessor  
12 technician’s medically unqualified assessment regarding the effect of political involvement on  
13 disability status, the assessor’s office has arbitrarily and capriciously exceeded its lawful  
14 authority, and abused its discretion, in nonsensically asserting that an existing exemption has  
15 been “denied.”  
16

17 **III. THE COUNTY ASSESSOR IMPERMISSABLY DENIED A BENEFIT ON A**  
18 **BASIS THAT INFRINGES HARRIS' CONSTITUTIONALLY PROTECTED**  
19 **INTERESTS.**

20 As is set forth in the preceding chapter, the County Assessor failed to disqualify Harris’  
21 exemption for property as a disabled person in accordance with Arizona Law. Rather, the County  
22 Assessor created a legal fiction wherein he denied a “renewed” application for an exemption of a  
23 disabled person that he had no authority to solicit.<sup>3</sup> In the instant case, the County Assessor  
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25 <sup>3</sup> Beyond the abuse of discretion in this specific instance, it is noteworthy that the assessor’s  
office has been exceeding its lawful authority by requiring Harris to annually re-establish  
eligibility for his exemption as a disabled person: the statute does not provide the assessor’s

1 impermissibly denied Harris’ property tax exemption on a basis that infringes Harris’  
2 constitutionally protected interests: especially, the County Assessor impermissibly dampened the  
3 exercise generally of Harris’ First Amendment right to participate in the political process.

4       ‘In *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972),  
5 the Supreme Court explained that “even though a person has no ‘right’ to a valuable  
6 governmental benefit and even though the government may deny him the benefit for any number  
7 of reasons,” the government “may not deny a benefit to a person on a basis that infringes his  
8 constitutionally protected interests-especially, his interest in freedom of speech.”’ *Taxation With*  
9 *Representation of Washington v. Regan*, 676 F.2d 715, 725, 219 U.S.App.D.C. 117, 127  
10 (C.A.D.C., 1982) citing *Accord, McDaniel v. Paty*, 435 U.S. 618, 626, 98 S.Ct. 1322, 1327, 55  
11 L.Ed.2d 593 (1978); *Pickering v. Board of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20  
12 L.Ed.2d 811 (1968); *Shelton v. Tucker*, 364 U.S. 479, 485-86, 81 S.Ct. 247, 250-51, 5 L.Ed.2d  
13 231 (1960); *Tygett v. Barry*, 627 F.2d 1279 (D.C. Cir. 1980); and comparing *Speiser v.*  
14 *Randall*, 357 U.S. 513, 518, 78 S.Ct. 1332, 1338, 2 L.Ed.2d 1460 (1958) (“conditions imposed  
15 upon the granting of privileges or gratuities must be ‘reasonable’ ”). “The Supreme Court’s  
16 decisions ‘have prohibited conditions on public benefits ... which dampen the exercise generally  
17 of First Amendment rights, however slight the inducement to the individual to forsake those  
18 rights.’” *Id.*, quoting *Elrod v. Burns*, 427 U.S. 347, 358 n.11, 96 S.Ct. 2673, 2682 n.11, 49  
19 L.Ed.2d 547 (1976) (plurality opinion).

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21  
22       The County Assessor failed to cite any authority which would permit him to deny an  
23 applicant’s constitutional property tax exemption as a disabled person—much less an established

24  
25 office with the authority necessary to make such additional demands on persons with claims  
established under A.R.S. § 42-11111. A.R.S. § 42-11111, *cf.* A.R.S. § 42-11152.

1 exemption—for purportedly being placed in nomination for political office. Plainly this was  
2 unlawful overreach by the county, but even if such authority were to exist, it would  
3 impermissibly chill Harris’ exercise of his speech rights. *Id.* at 748 citing *Speiser*, 357 U.S. at  
4 513 (“the enjoyment of a government-conferred benefit cannot be made contingent upon  
5 compliance with a condition that violates the first amendment rights of one who would otherwise  
6 qualify for the benefit”<sup>4</sup>).

7  
8 **IV. THE COUNTY ASSESSOR DEPRIVED HARRIS OF PROPERTY ABSENT THE  
PROCESS THAT WAS DUE.**

9 The County Assessor deprived Harris of property, in the form of his established  
10 constitutional property tax exemption as a disabled person, with no forewarning and with no  
11 opportunity to be heard prior to disqualification. And, precisely because the County deprived  
12 Harris of property without first affording him an opportunity to be heard, the County Assessor’s  
13 determination in these matters conflicts with the authority of the U.S. Supreme Court in *Mullane*  
14 with respect to the constitutional right to due process. *Mullane v. Central Hanover Bank & Trust*  
15 *Co.*, 339 U.S. 306, 70 S.Ct. 652, 656-657 (1950) (due process commands that interested parties  
16 be afforded an opportunity to be heard before the entry of a decision affecting their rights).

17  
18 **V. THE COUNTY ASSESSOR IMPERMISSABLY FAILED TO RESPOND TO A  
19 CONSTITUTIONAL CHALLENGE TO HIS NEUTRALITY.**

20 In his letter of August 9, 2013, Harris challenged the neutrality of Assessor Leiendecker,  
21 seeking the Assessor’s disqualification. With no explanation given, the County Attorney failed to  
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23 <sup>4</sup> “*Speiser* invalidated a requirement that persons seeking to qualify for a state constitutional  
24 property tax exemption for veterans sign a loyalty oath. The Court held that the requirement  
25 improperly created a presumption of disloyalty on the part of applicants the burden of  
overcoming which impermissibly chilled the applicants' exercise of their speech rights. ‘The man  
who knows that he must bring forth proof and persuade another of the lawfulness of his conduct



1 respond to, much less rule on, Harris’ quest for recusal. This lack of an on-the-record ruling upon  
2 a critical issue of fundamental-law dimension impermissibly deprived Harris of his fundamental  
3 right to make his case before a tribunal whose detachment stands unclouded. *Clark v. Board of*  
4 *Education of Ind. Sch. Dict. No. 89*, 2001 OK 56, 32 P.3d 851 (holding that a failure to rule on a  
5 quest for recusal is reversible error in that it deprives the movant of a fundamental right  
6 guaranteed by due process clauses), citing, in part, U.S.C.A. Const.Amends. 5, 14; *Marshall v.*  
7 *Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed.2d 182 (1980) (as matter of  
8 procedural fairness “[t]he Due Process Clause entitles a person to an impartial and disinterested  
9 tribunal in both civil and criminal cases”); *Ward v. Village of Monroeville*, 409 U.S. 57, 61-62,  
10 93 S.Ct. 80, 84, 34 L.Ed.2d 267 (1972) (a “neutral and detached [decision-maker]<sup>5</sup> in the first  
11 instance” is a fundamental right guaranteed by the Due Process Clause). As was Clark, Harris is  
12 entitled to hearing before a decision-maker whose neutrality is not at issue.  
13

## 14 CONCLUSION

15 The County of Cochise, through its assessor, Philip S. Leiendecker, has unduly  
16 broadened its authority to reject an established constitutional exemption of a disabled person in a  
17 manner not consistent with Arizona Revised Statutes. Although this exemption was established,  
18 and in force for four full years, on the basis of medically certified disability, it was arbitrarily  
19 rejected with no basis other than an unqualified interpretation of hearsay evidence reputedly  
20

21  
22 necessarily must steer far wider of the unlawful zone than if the state must bear these burdens.”  
23 357 U.S. at 526, 78 S.Ct. at 1342.” 676 F.2d at 124, n. 12.

24 <sup>5</sup> “The Due Process Clause of the Fifth and Fourteenth Amendments require that notice and  
25 opportunity for a hearing must precede a deprivation of life, liberty, or property by adjudication.  
*Mullane v. Cent. Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). This  
requirement applies equally to courts and to administrative agencies that adjudicate. *Gibson v.*  
*Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973).” (as expressed by *Kutty v.*  
*U.S. Dept. of Labor*, Not Reported in F.Supp.2d, 2011 WL 3664476 (E.D.Tenn.,2011)).

1 medical in nature. Once established, medical certification of disability cannot be properly  
2 invalidated absent controverting medical evidence applied in a manner consistent with Arizona  
3 Law. No controverting medical evidence<sup>6</sup> was ever provided and Arizona Law was not followed.  
4 Moreover, a government-conferred benefit cannot be disqualified absent the process that is due  
5 and in a manner that violates the First Amendment rights of one who would otherwise qualify for  
6 the benefit. Disqualification of a government benefit on the basis of (purported) participation in  
7 the political process impermissibly chills constitutionally protected political speech.  
8

9 WHEREFORE, Petitioner-Plaintiff Harris requests a refund and a determination that his  
10 property is tax exempt and has been improperly valued, classified, and assessed by the County of  
11 Cochise County, Arizona, and directing the County to cease and desist requiring Harris to  
12 (periodically) re-establish his existing constitutional exemption as a disabled person.

13 Harris also requests that, should this matter be remanded to the County of Cochise for  
14 further action, the Court maintain continuing jurisdiction. Subjecting the County Assessor's  
15 actions to further scrutiny would prevent the possibility that the County Assessor subsequently  
16 rule against Harris and in doing so leave Harris without a remedy due to the expiration of the  
17 time limit specified in A.R.S. § 42-16201(A), as well as the possibility that the County Assessor  
18 unlawfully require Harris to re-establish his constitutional exemption for subsequent tax years.  
19

20 Harris, as petitioner-plaintiff seeking the statutory special action equivalent of a writ of  
21 mandamus, further requests that he be awarded the costs incurred herein, including any  
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23 <sup>6</sup> Noteworthy, perhaps, on the issue of disability is the holding in *Benecke v. Barnhart*, 379 F.3d  
24 587, 594 (9<sup>th</sup> Cir. 2004): "This court has repeatedly asserted that the mere fact that a plaintiff has  
25 carried on certain daily activities ... does not in any way detract from her credibility as to her  
overall disability. One does not need to be 'utterly incapacitated' in order to be disabled." quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9<sup>th</sup> Cir.2001) (in turn quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir.1989)).

1 reasonable attorney fees, and for such other and further relief as the Court deems just in the  
2 premises.

3 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of November, 2013  
4

5 \_\_\_\_\_  
6 JEFFERY J. HARRIS,  
7 *Petitioner-Plaintiff in Pro Per*

8 Original filed this 19<sup>th</sup> day of August, 2013 with:

9 Mary Ellen Dunlap  
10 Clerk of the Superior Court of Cochise County  
11 P.O. Drawer CK  
12 Bisbee, Arizona 85603

13 Copy of the foregoing amended complaint  
14 hand-delivered this 19<sup>th</sup> day of November to:

15 Edward G. Rheinheimer  
16 Cochise County Attorney  
17 P.O. Drawer CA  
18 Bisbee, Arizona 85603  
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20  
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25