

Michael Sammons, pro se
15706 Seekers St.
San Antonio, TX 78255
Tel: 210-858-6199
michaelsammons@yahoo.com

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

Michael Sammons,
Plaintiff,

vs.

Case No. SA16-CA1054-FB

The United States,
Defendant.

**PLAINTIFF'S OBJECTION TO MAGISTRATE'S
REPORT AND RECOMMENDATION**

Comes the Plaintiff, Michael Sammons, and objects to the Report and Recommendation of the Magistrate ("RR") entered on February 7, 2017, Dkt. 30, as follows:

- (1) All of the Article III legal arguments presented by the Magistrate were thoroughly refuted by Law Professor Michael P. Goodman, J.D., Ph.D., in *"Taking Back Takings Claims: Why Congress Giving Just Compensation Jurisdiction to the Court of Federal Claims is Unconstitutional"*, 60 Vill. L. Rev. 83 (2015), a copy of which is on file with the Court, Ex. 1 to Dkt. 16, and which is incorporated fully by reference herein;¹
- (2) While numerous Courts have considered whether the Court of Federal Claims has "statutory" authority to decide takings, no court, *ever*, has considered whether that court has "constitutional" authority under Article III to do so.

¹ The Magistrate made no mention of Professor Goodman's authoritative 58 page dissertation on this precise Article III issue – and could not have possibly read it - Plaintiff readily concedes it is a complex read.

(3) The crux of the Magistrate's recommendation appears to be:

- (a) An Article III judge is not required for any case necessarily requiring a waiver of sovereign immunity; RR, pg. 11 (requires ... "waiver of sovereign immunity.") But as Professor Goodman explained in great detail, the Supreme Court has emphatically held that sovereign immunity neither applies nor is necessary for "self-executing" takings claims. See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 316 n.9 (1987)
- (b) A takings claim can never be made when "closely intertwined with a federal regulatory program", RR, pg. 12-13, so presumably, since *all* Government action by definition arises from federal law or regulations, any law or regulation necessarily suspends the Takings Clause of the Fifth Amendment of the U.S. Constitution. Congress, through law or regulation, has not such authority. Cf. Piszel v. U.S., 833 F.3d 1366, 1374 (Fed. Cir. 2016)
- (c) Even if, as alleged by the Plaintiff, the Net Worth Sweep in this case was executed for the *sole* purpose of stealing the Plaintiff's valuable contract rights for the *sole* purpose of reducing the government's deficit, while publically justified on patently false claims of financial or national necessity, a "takings claim" can never arise from "executive action" in a regulated industry, RR, pg. 12. So presumably, the Government, in the highly regulated banking industry, could pass another "Net Worth Sweep" declaring that because of some patently false financial or other national need, all assets of the nation's banks would be seized and nationalized by the President. According to the sweeping immunity embraced by the Magistrate, the Government may take any and all private property without compensation simply by making any patently false, even ridiculous, claim of financial or national need (like the government deficit) with no compensation, and such taking/nationalization is completely unreviewable by the judiciary. When was the Takings Clause

of the Fifth Amendment to the U.S. Constitution suspended?

CONCLUSION

With all due respect to the Magistrate, who could not have possibly even read Professor Goodman's authoritative 58 page treatise on this precise Article III question, her cursory review of this Article III issue does little credit to herself or the U.S. Constitution. The Magistrate's central premise belief that a takings claim requires a waiver of sovereign immunity is not a constitutional error a second year law student would make.

If ever a Report and Recommendation needed *de novo* review it is this one, in which it was held that a takings claim can *never* be made against the executive branch absent a waiver of sovereign immunity.

Respectfully submitted,


Michael Sammons

Certificate of Service

A true and exact copy was delivered to all parties this 7 day of Feb,
2017.


Michael Sammons