

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. ROGER C. S. LIN, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 06-1825 (RMC)
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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INTRODUCTION

On October 24, 2006, Plaintiffs filed a Complaint for Declaratory Relief with this Court, seeking a declaration of Plaintiffs' rights under the United States Constitution and laws. On January 12, 2007, Defendant filed a Motion to Dismiss, arguing that the Complaint should be dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

Defendant contends that the "political . . . nature" of this action requires dismissal. (Memo. Def.'s Mot. to Dismiss at 1.) This action does not present a nonjusticiable political question, but rather requires treaty, statutory, and constitutional interpretation, which this Court has the power and duty to do.

Defendant contends that Plaintiffs lack standing, and the "advisory nature" of this action requires dismissal. (*Id.*) Plaintiffs suffered an injury-in-fact caused by Defendant's wrongful conduct that will be redressable by this Court's declaration of Plaintiffs' rights.

Defendant argues it has sovereign immunity from this action. Defendant waived sovereign immunity by specific statutory consent.

Defendant erroneously contends this Court does not have Federal Question jurisdiction to interpret federal statutes, treaties, and the Constitution. Nothing could be more wrong.

Lastly, Defendant argues Plaintiffs do not have a private cause of action under the applicable statutes and treaties. Again, we will show they do.

For the reasons set forth below, Defendant's Motion to Dismiss should be denied.

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THIS ACTION.

This Court has subject matter jurisdiction over this action. The case does not present a nonjusticiable political question, but rather requires interpretation of treaties, statutes, and the United States Constitution using regular means of interpretation. Plaintiffs are not asking this Court to issue an advisory opinion. Instead, Plaintiffs have standing to bring this action as they have suffered an injury-in-fact caused by Defendant's conduct and redressable by this Court's declaration of Plaintiffs' rights. This Court's subject matter jurisdiction is specifically authorized by statutes. Defendant waived sovereign immunity from this action by statutes.

A. This Case Does Not Present a Non-Justiciable Political Question.

This case does not present a nonjusticiable political question. The question presented in this case is simply whether the United States Constitution and laws guarantee any rights to Plaintiffs. The question presented in this case requires interpretation of treaties, statutes, and the Constitution using regular means of interpretation. Adjudicating this question does not require the court to contradict any policy determination already made by the political branches or interfere with their conduct of foreign relations.

1. The *Baker/Goldwater* standard for determining whether a case presents a nonjusticiable political question.

The political question doctrine is a narrow doctrine that restrains the courts from deciding "political questions," not "political cases." *Baker v. Carr*, 369 U.S. 186, 217, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962) (emphasis added); *see also Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 796-798, 233 U.S. App. D.C. 384 (1984) ("Nonjusticiability based upon "political question"