

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50605

UNITED STATES OF AMERICA, ex rel.,
JAMES M. CHURCHILL,

Plaintiff-Appellee,

versus

STATE OF TEXAS, ET AL,

Defendants,

STATE OF TEXAS; TEXAS DEPARTMENT OF HUMAN SERVICES; TEXAS
DEPARTMENT OF HEALTH; TEXAS HEALTH & HUMAN SERVICES COMMISSION,

Defendants-Appellants.

Appeal from the United States District Court
for the Western District of Texas
(P-97-CV-57)

August 5, 1999

Before JONES and WIENER, Circuit Judges, and LITTLE,* District
Judge.

BY THE COURT:**

This appeal involves a qui tam action brought under the
False Claims Act against the State of Texas and several state
entities. This interlocutory appeal arises from the district
court's denial of the state defendants' motion to dismiss on
grounds of sovereign immunity. As all parties agree, the appeal is

*District Judge of the Western District of Louisiana, sitting by
designation.

**Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this
opinion should not be published and is not precedent except under the limited
circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

controlled by this court's recent decision in United States ex rel. Foulds v. Texas Tech. Univ., 171 F.3d 279, 294 (5th Cir. 1999) ("when the United States has not actively intervened in the action, the Eleventh Amendment bars qui tam plaintiffs from instituting suits against the sovereign states in federal court").

Accordingly, the district court's order denying the state defendants' motion to dismiss is REVERSED, and the case is REMANDED for the entry of a judgment dismissing the complaint as to the State of Texas, the Texas Department of Human Services, the Texas Department of Health, and the Texas Health and Human Services Commission.

REVERSED and REMANDED for Entry of Judgment Dismissing Appellants.