

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20099
Summary Calendar

UNITED STATES OF AMERICA, ex rel.,
CHANDRA MITTAL, Ph.D,

Plaintiff-Appellee,

versus

TEXAS SOUTHERN UNIVERSITY, et al.,

Defendants,

TEXAS SOUTHERN UNIVERSITY; BARBARA HAYES;
ARUN JADHAV, Doctor; CURTIS W. MCDONALD;
JOSEPH JONES,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-97-CV-554

December 20, 1999

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

This interlocutory appeal involves a *qui tam* action brought under the False Claims Act ("FCA") against Texas Southern University and some of its employees and former employees. Defendants appeal the district court's denial of their motion to dismiss, which averred that plaintiff/relator's action is barred

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by the Eleventh Amendment and that defendants are not "persons" within the meaning of the FCA. This appeal is controlled by this court's 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 defendants.

REVERSED AND REMANDED FOR ENTRY OF JUDGMENT DISMISSING
APPELLANTS