

October 15, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-11138

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UNITED STATES OF AMERICA, ex rel. Ann GAY and Jayne McCabe

Plaintiffs-Appellants

versus

LINCOLN TECHNICAL INSTITUTE, INC.,

Defendant-Appellee

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Appeal from the United States District Court for  
the Northern District of Texas  
(Civ. A.301CV505K)

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Before DeMOSS, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

In this False Claims Act case Relators Ann Gay and Jayne McCabe sued Lincoln Technical Institute, Inc. ("Lincoln") alleging violations of the False Claims Act, 31 U.S.C. §3729, *et seq.* Lincoln participated in federal student financial aid programs under Title IV of the Higher Education Act of 1995, 20 U.S.C. §1078, *et seq.* Under these programs the United States Government insured educational loans and made direct educational grants to

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

students enrolled at Lincoln. Title IV, Part G, §487(a)(20) of the HEA prohibits participating educational institutions such as ITT from making commission or incentive payments to admissions or recruitment personnel based on success in securing enrollments or financial aid to students. Relators allege that Lincoln falsely promised that Lincoln would comply and certified that Lincoln had complied with this regulation.

In its memorandum and order, *United States ex rel. Gay v. Lincoln Technical Institute, Inc.*, 2003 WL 22474586 (N.D. Tex. Sept. 3, 2003), the district court dismissed Relators' complaint for failure to state a claim upon which relief can be granted. Having reviewed the record and fully considered the parties' respective briefing and arguments, we AFFIRM the district court's judgment for essentially the same reasons as well stated in its memorandum opinion and order.