



Georgia

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August 7, 2018

Dr. Ray Perren
President, Lanier Technical College
2990 Landrum Education Drive
Oakwood, GA 30566
Via kminor@laniertech.edu

CC by e-mail: Jill Cantrell, Director of Human Resources, cantrell@laniertech.edu

Via Certified Mail and E-mail

Re: Requiring employees to disclaim membership with the Communist Party in violation of the First Amendment

Dear Dr. Perren:

The First Amendment guarantees the right to freedom of association, and the government cannot refuse employment based on mere membership of an unpopular group. The ACLU of Georgia writes on behalf of Dr. Bill Ellenberg, who has informed us that when applying to be an adjunct professor of English, he was required to swear a “Loyalty Oath” affirming that he is “not a member of the Communist Party.”¹

Requiring prospective or current employees to swear that they are not members of the Communist Party—or any group or organization considered unpopular—is unconstitutional. Over 50 years ago, the United States Supreme Court held that it was unconstitutional for government employers to require employees to swear that they are not a member of the Communist Party or any other group, absent a showing of specific intent to further unlawful activity. *See Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 605-10 (1967) (“Mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion . . .”).

Rooting out employees who are members of the Communist Party was unconstitutional during the Cold War, and it remains unconstitutional today. The government, including state colleges, may not require individuals to sign a certification regarding their political expression in order to obtain employment, contracts, or other benefits.

¹ Lanier Technical College currently requires job applicants and employees to “hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of the State of Georgia, and I am not a member of the Communist Party.” A copy of the document is attached as Exhibit A. Dr. Ellenberg ultimately signed this Loyalty Oath but with strenuous objections.

Your Loyalty Oath also does not comply with state law. Georgia law requires “[a]ll persons who are employed by and are on the payroll of the state” to “take an oath that they will support the Constitution of the United States and the Constitution of Georgia,” O.C.G.A. § 45-3-11, which is language your Loyalty Oath does contain. But nowhere in the law does it require employees to disclaim allegiance with the Communist Party as your Loyalty Oath does (and if it did, it would be unconstitutional).

Potentially thousands of current and prospective employees at Lanier Technical College are being forced, or have been forced, to sign this unconstitutional oath as a condition of employment. Lanier Technical College violates the First Amendment every single day that this portion of the Loyalty Oath remains in place.

To avoid continuing legal exposure, we ask that you cease and desist from requiring current or prospective employees to disclaim membership of the Communist Party.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean J. Young". The signature is fluid and cursive, with a large initial "S" and "Y".

Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A

NOTE: Before signing this form, check all answers and explanations to see that you have answered all questions fully and correctly. This form is to be executed under oath subject to the penalties of false swearing as prescribed in Code Section 16-10-71 of the Criminal Code of Georgia.

LOYALTY OATH

I, William Arthur Ellenberg, a citizen of United States and being an applicant/employee of Lanier Technical College and the recipient of public funds for services rendered as such applicant/employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of the State of Georgia, and I am not a member of the Communist Party.

AFFIDAVIT OF VERIFICATION

Georgia Forsyth County

Personally appeared before the undersigned officer, duly authorized to administer oaths William Arthur Ellenberg who, after being duly sworn, deposes and says and declares under penalties of false swearing that he is the person who executed the foregoing instrument; that he has read and completed the same and knows and understands the contents thereof; that the matters stated therein and the answers and information furnished by him in the foregoing questionnaire, and loyalty oath, including any attachments thereto, are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME: [Signature]
(Signature of Affiant)

This 29th day of June, 2018
[Signature]
(Notary Public)

My commission expires _____

