

**IN THE SUPREME COURT
OF THE UNITED STATES**

No. 2021-2022

December 20, 2021

Andrew Ashford, Petitioner

v.

Sunnyside State University and the State of Sunnyside, Respondents

On Writ of Certiorari to the Court of Appeals for the Fourteenth Circuit

ORDER OF THE COURT ON SUBMISSION

IT IS THEREFORE ORDERED that counsel appear before the United States Supreme Court to present oral argument on the following issues:

- 1) Whether Sunnyside State University's derecognition of the campus chapter of College Nationalists violates Andrew Ashford's First Amendment freedom of association?
- 2) Whether the identification of the MAC address of Andrew Ashford's phone from the hallway outside his apartment constitutes an unreasonable search in violation of the Fourth Amendment?

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Overview of the Facts

This case presents only constitutional questions—there are no jurisdictional, standing, or other procedural issues, nor are there issues of statutory interpretation. In addition, all parties stipulate to the undisputed material facts, which appear below. Issues not raised in this record are not preserved properly before this court.

Sunnyside State University (SSU) is a public university in the United States. SSU receives federal funding and has a student population of approximately 60,000 undergraduate students and 20,000 graduate students. The institution is home to a vibrant student population and over 600 recognized, student-run clubs.

The Network of College Nationalists (NCN) is the largest coalition of students supporting the Nationalist Party in the U.S., with 300 chapters at various universities across the country. The NCN generally supports the politics and policies of the Nationalist Party and engages students in campus activism on a wide range of political issues. SSU established its chapter of the College Nationalists in 1996 with the goal of expressing their political values and engaging in campus debate and advocacy.

Student organizations maintain recognition by the University so long as they have a faculty advisor, have at least 10 active members, and comply with the SSU Student Organization Non-Discrimination Policy (See Appendix I). The University Center for Student Engagement (UCSE) convenes every other month throughout the school year to determine whether student organizations continue to meet the criteria for recognition. UCSE can derecognize student groups by a majority vote, or they can impose alternative sanctions, such as suspensions or funding limitations, when student groups violate University policies.

Prior to the case at bar, only three student organizations had ever been derecognized by the SSU Administration in the University's 94-year history. Most recently, the SSU Human Rights Club was derecognized in 2017 because they were found to be in violation of the SSU Student Organization Non-Discrimination Policy. The SSU Human Rights Club was re-recognized by the University one year after the date of their derecognition.

College campuses have increasingly reported anti-Black racism nationwide, and SSU is no exception. The National Center for Education Statistics (NCES) identified a 40 percent increase in campus hate crimes between 2011 and 2016, with racial bias found to be the most common motivation for such crimes. In line with this finding, Black students are more than twice as likely as white students to report that the racial climate on their campus is poor.¹

¹ Nelson, Victoria. "Addressing Racial Trauma and Hate Crimes on College Campuses." *Center for American Progress*, 9 Aug. 2019, <https://www.americanprogress.org/article/addressing-racial-trauma-hate-crimes-college-campuses/>. (Links are provided for citation purposes only. Only material quoted in the case record or the Table of Authorities may be referenced in competition.)

White supremacy is a potential contributor to these instances of hate and bias. The Merriam-Webster Dictionary defines white supremacy as “the belief that the white race is inherently superior to other races and that white people should have control over people of other races” and “the social, economic, and political systems that collectively enable white people to maintain power over people of other races.”² The Anti-Defamation League documented at least 346 incidents of white supremacist propaganda on college campuses between 2016 and 2018.³ Since 2018, the Southern Poverty Law Center has identified over 1,000 incidents of white supremacist flyering on college campuses.⁴

Black students at Sunnyside State University account for approximately 15 percent of the University’s undergraduate population. Over the past ten years, Black students have been the victims of 80 percent of racially motivated hate crimes at SSU.⁵ Black students at SSU have reported feeling unsafe as a result of campus hate crimes in the past, and such crimes have been associated with negative mental health outcomes and persisting trauma for Black students. The latest campus well-being survey showed that Black students have lower self-reported well-being scores than their non-Black peers, and 45 percent of Black students reported that racial trauma negatively affected their academic performance at SSU.

SSU is largely a commuter campus during students’ upperclassman years, and most students choose off-campus, unaffiliated housing. One such apartment building is Shady Acres. Shady Acres Apartment Complex is a luxury living community located in downtown Scramble City, Sunnyside. Shady Acres is located less than half a mile from campus and provides a five percent discount to Sunnyside students. Although Shady Acres is independently owned and operated, the complex is known to cater to college students – approximately 80 percent of its residents in a given year are undergraduates at Sunnyside State University.

According to their website, the Acres offers “an island of peace, security, and privacy amidst the tumult of the urban landscape.” To this end, Shady Acres has implemented an advanced patron protection and security framework. Although the complex itself houses 500 residents, the building is subdivided into “blocks.” Each block contains approximately 10 apartments and the hallway connecting them. Blocks are designed for security and privacy purposes, as well as to encourage a more cordial relationship with one’s neighbors. Many SSU students report that the blocks remind them of their dorm living as underclassmen. The first floor of Shady Acres is devoted entirely to guest amenities and gathering spaces; there are no common

² “White Supremacy Definition & Meaning.” *Merriam-Webster Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/white%20supremacy>.

³ Nelson, Victoria. “Addressing Racial Trauma and Hate Crimes on College Campuses.” *Center for American Progress*, 9 Aug. 2019, <https://www.americanprogress.org/article/addressing-racial-trauma-hate-crimes-college-campuses/>.

⁴ “Map of White Supremacist Flyering in the U.S.” *Southern Poverty Law Center*, <https://www.splcenter.org/flyering-map%20>.

⁵ SSU uses the FBI’s definition of a hate crime, which defines a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”

rooms on the upper floors. Per apartment policy, residents are not permitted to have parties or gatherings in the hallways of their block.

A resident's keycard must be scanned to access all exterior entrances to the complex, each individual block, and each individual apartment. Only residents who reside in a particular block have access. All apartments lock automatically upon closure of the door. In order to enter Shady Acres, all guests must be personally let in by a resident. There is no buzzer system. Shady Acres adopted this policy in light of increasing crime rates in Scramble City. Residents can view live video footage of the main entrance of the building from their apartments. The guest policy is featured prominently on their website and is a major marketing point for Shady Acres.

Bluetooth is a short-range wireless communication standard. Bluetooth technology allows for the wireless transmission of data over a distance of approximately 30 feet, although a closer connection will be more reliable. Bluetooth is distinct from WiFi in that it has a smaller range and a weaker connection. Bluetooth capability is a standard feature on cell phones and laptops. Consumers have the ability to turn their device's Bluetooth on and off at will. If a device is set to "discoverable" and Bluetooth is turned on, that device may be "seen" by any other Bluetooth-enabled devices within up to a 30-foot radius.

The following information can be gleaned from a Bluetooth connection: the chosen name of the device (i.e. "Jenna's uPhone," "YNOS Speaker") and the device's Media Access Control (MAC) address. The chosen name is non-unique and set by the device owner, but the MAC address is unique to that device and set by the manufacturer. The default settings on most devices will only display the chosen name of nearby Bluetooth devices. However, several free apps allow one to view the MAC addresses of all nearby devices. These apps are legal for private citizens to use. A Trot survey asking Americans, "Could you download an app to identify the MAC address of nearby Bluetooth devices?" yielded the following results: 13% yes, 30% unsure, 57% no.

The MAC address of a device is a unique identifier that can only be tracked when a device connects directly to a network. Websites and other carriers cannot view a person's MAC address when they are browsing the internet. In this way, a MAC address is distinct from an IP address. Therefore, a MAC address is not associated with one's browsing history. The MAC address can only be obtained via a direct connection, which requires that both devices be within a 30-foot radius of each other and have Bluetooth enabled. An individual can prevent their MAC address from being identified by turning off Bluetooth capabilities on their device.

MAC address collection is growing in prevalence in major shopping chains across the country. Many large department stores install sensors throughout their premises which detect the MAC address of Bluetooth-enabled devices and allow for tracking the device's location in the store, as well as the frequency and duration of visits. This is used for the purpose of in-store display design, product marketing, and consumer data-gathering. These commercial sensors,

which collect and store the MAC addresses of all nearby devices, are generally not sold to individual consumers.

The Controversy

On February 12, 2021, Sunnyside State University's chapter of College Nationalists ("SSUCN") posted on their public Facebook and Twitter accounts and put up flyers around campus to announce their upcoming speaker event with Paul Daniels, scheduled for March 20, 2021. SSUCN registered their speaker event with the University, received funding from the University to pay Daniels, and complied with all University policies to publicize the event. Paul Daniels is a public figure known for his stances on white supremacy and police brutality. Daniels has publicly stated that white supremacy is not a significant issue in the United States today. Daniels is also known for staunchly defending Officer Philip Jones after he was convicted of excessive use of force (See Appendix II).

Paul Daniels arrived at SSU on March 19th and was greeted by the members of SSU's chapter of College Nationalists, including Andrew Ashford, the President of SSU College Nationalists. The next day, Daniels arrived at an auditorium in the University Campus Center for his speech, which was scheduled to begin at 1:30pm. For just under an hour, Daniels spoke to a crowd of approximately 2,000 students about the state of the Nationalist Party and his views on the importance of supporting the police. Towards the end of Daniels's speech, a crowd of students gathered in the back of the auditorium. Ashford and the rest of SSUCN's Executive Board recognized members of the crowd to be leaders of SSU's chapter of College Federalists (the opposing political party).

At 2:24pm, Kirk Stevenson, the Vice President of SSUCN, shouted at the College Federalists, "We stand with Officer Jones! We refuse to be brainwashed with all this 'white supremacy' nonsense." Then, a shouting match erupted in the auditorium between SSU's College Nationalists and the College Federalists. Multiple students reported hearing anti-Black racial slurs shouted during this encounter, but no one was able to conclusively identify who yelled these racial slurs. Many students were distraught after this event and the shouting match that ensued, and 35 students reported missing their afternoon classes on March 20th because of what happened at SSUCN's speaker event.

Following Daniels's visit to SSU and the shouting match that ensued at SSUCN's speaker event, there was a major uptick in anti-Black racist incidents reported at the University. In the entire 2019-2020 academic year, SSU reported two anti-Black hate crimes. From March 20 to April 20, 2021, in the aftermath of SSUCN's speaker event with Paul Daniels, SSU reported six anti-Black hate crimes.

In one major incident reported on March 22, 2021, anti-Black racial slurs were graffitied on the side of SSU's Center for Black Culture. This graffiti included a message stating, "We love

Paul Daniels!” The University has been unable to identify the perpetrators of these hate crimes. However, SSU’s Administration issued an official statement in response, which stated,

“The College Nationalists are responsible for these reprehensible hate crimes because they sparked an anti-Black sentiment by allowing a speaker event with Paul Daniels to get out of hand. At this event, many Black students reported feeling unsafe because of the views espoused by Daniels and the shouting match that erupted, which resulted in anti-Black racial slurs being yelled in the auditorium. We will not tolerate discrimination of any sort. When student groups interfere with fellow students’ opportunities to further their education at SSU, we must take action.”

In response to SSUCN’s speaker event and the subsequent anti-Black hate crimes that ensued, the Sunnyside State University Administration revoked student group recognition for the College Nationalists on April 25, 2021. SSU’s Administration cited the University’s Student Organization Non-Discrimination Policy to justify their decision (See Appendix I). As a derecognized group, SSUCN is not eligible to receive funding from the University, request access to campus spaces/facilities, or promote any of their events through official University channels. The College Nationalists can still receive funding from other sources, including their national organization, and they are allowed to organize off campus as a non-SSU-affiliated group.

The SSU Administration mandated that the College Nationalists could not reapply for recognition as a student organization at SSU until two years after the date of their derecognition. If the College Nationalists were to reapply for recognition in two years, a five-person panel of University officials would determine whether SSUCN could be reinstated by a majority vote. In the meantime, other Nationalist student groups or organizations with similar political views to the Nationalists can be recognized by the University, so long as they are not affiliated with the Network of College Nationalists.

Andrew Ashford, a junior at SSU and President of SSU College Nationalists, filed suit in the District Court, asserting that the University’s decision to derecognize his club violated his First Amendment associational rights.⁶ As noted by Ashford, SSU maintains its chapter of College Federalists, yet the College Nationalists must wait two years before consideration for re-recognition as a campus organization. While SSUCN has some options for association in the meantime, the Petitioner contends that SSU’s actions severely limit the associational rights of the College Nationalists.

In a separate and unrelated issue, the Scramble City Police Department (SCPD) received reports on February 13th, 2021 of suspicious activity and what seemed to be a drug deal in the

⁶ Andrew Ashford does not allege a violation of his free speech rights under the First Amendment; rather, Ashford’s First Amendment lawsuit is based on the freedom of association. Claims of free speech violations in the case record are not properly preserved before this court.

parking lot outside a CJ Nickel store at 9:33pm. An investigation resulted in eyewitness confirmation that an unidentified individual driving a black Coyota Torolla had exchanged money for what appeared to be illegal drugs in the parking lot. After speaking with the store manager, the police obtained the Media Access Control (MAC) address of the suspect's mobile phone from the CJ Nickel store.⁷ SCPD had recently upgraded its officers' iPhones with a proprietary app developed in-house at SCPD for the purpose of viewing the MAC addresses of nearby devices. The app alerts police officers when a MAC address in the police suspect database is detected.

On March 17th, SCPD received a report of vandalism with anti-Black racist content at Shady Acres. Police spoke with Building Manager Johnson, who provided them with a building map indicating the location of the graffiti on the wall of Block F on the second floor. Suspecting that the incident might be related to similar occurrences at SSU due to Shady Acres's large undergraduate tenant base, Officers Florentine and Benedict were dispatched on March 18th to make an official report.

Officers Florentine and Benedict arrived in uniform outside Shady Acres at approximately 1:13pm on March 18th. The pair noticed a resident, Jay Agrawal, entering the building. Agrawal held the door for the officers. Mr. Johnson had indicated he would meet police at the front desk. However, they found it unattended at the time of their arrival. The officers decided to go find the graffiti themselves. Unfamiliar with the building layout, police unintentionally took a circuitous route in reaching Block F, passing through Block E along the way. Police found the door to Block E propped open. The record includes testimony from Agrawal, stating, "The doors are often propped open for convenience, especially when someone is moving in or out or expecting guests. Nobody really cares about block security." As the officers walked into Block E, Officer Florentine's MACscan app alerted him to a match with the police database. He took out his iPhone and opened the app to scan nearby connections. When passing by apartment 505, he noticed a device with MAC address "00A00400100C" had been detected. This address matched the one from the prior incident at CJ Nickel. From this, Florentine inferred that the phone held by the drug suspect was inside apartment 505. The officers made a note of this information, then proceeded into Block F. After logging an incident report for the vandalism, the officers left Shady Acres.

The following day, Officers Florentine and Benedict obtained a warrant from a magistrate to search apartment 505 for a device with MAC address "00A00400100C" and drug paraphernalia. The warrant was issued upon a successful demonstration of probable cause, based on the MAC address evidence.⁸ The parties do not dispute that Ashford had Bluetooth enabled

⁷ Ashford does not contest the constitutionality of the police's actions in obtaining his MAC address from the store. Thus, any arguments related to the reasonableness of that collection, his expectation of privacy in the department store, or related matters are not properly preserved before this court.

⁸ Ashford contests the legitimacy of the warrant on the sole basis that the MAC address evidence was obtained through an unreasonable search. Any other objections to the warrant are not properly preserved before this court.

on his device both during his initial visit to the CJ Nickel store and at the time that the officers obtained the information needed for the warrant on March 18th.

Florentine and Benedict next contacted the apartment manager, informed him of the warrant, and obtained his cooperation in executing the warrant. Manager Johnson greeted them at the entrance of the complex at 4:12pm on March 19th; he scanned them into the building, the second floor, and Block E using his key card. Johnson then left the scene, and Officers Florentine and Benedict knocked on the door of apartment 505. Andrew Ashford answered, and when presented with the warrant, allowed the officers to retrieve his cell phone from the apartment. After Ashford confirmed that he was the sole resident of the apartment and the phone was his property, the police placed him under arrest for suspected drug activity. They searched the rest of the apartment and discovered drug paraphernalia throughout the apartment. Ashford was charged with possession with intent to distribute.

At trial, Ashford testified to the importance of privacy in choosing this apartment, stating, “Yeah, I convinced my parents to pay like \$500 more for this apartment so that I could have some space for myself. It was a hard sell at first, but once I explained all the safety and security benefits, they were down.” Ashford never props open the door to his apartment and closes block doors whenever he sees that someone has propped them open. Ashford engages in conversations with friends in the hallway of his apartment, recalling that he often talks to a guest for another half hour in the hallway after saying goodbye in his apartment. Ashford has also held small “food for family” events within the hallway of his block. Each Friday, he bakes two trays of cookies. He then gathers his fellow block members in the hallway where they share the food and talk for about 15 minutes. Seven of the apartments in his block join regularly for these events.

Based on a forensic analysis of Shady Acres’s layout and the location of Ashford’s apartment, approximately six apartments would be able to view Ashford’s phone’s Bluetooth signal while he is within his apartment. In addition, portions of the hallway within Block E would be able to view the device.⁹

Following his conviction, Ashford brought forth a new suit in this case, seeking to overturn his conviction on the grounds that evidence obtained as a result of Officer Florentine’s Bluetooth identification and the subsequent warrant should not have been admitted in court. Ashford claims that the identification of his MAC address – while his phone was within his apartment – from the hallway outside the apartment constituted an unconstitutional search and, thus, violated his Fourth Amendment rights.

All issues raised in this case are legal – there are no material factual disputes. Accordingly, the Court reviews all questions *de novo*.

⁹ The information within this paragraph was provided at trial by Dr. Beauchamp, testifying at the request of the Petitioner. Dr. Benji, forensics expert for the Respondents, concurred with the analysis.

Legal Proceedings

Andrew Ashford filed suit in the District Court, asserting the unconstitutionality of Sunnyside State University's and the State of Sunnyside's actions on the grounds that they violated the First and Fourth Amendments. Andrew Ashford alleged that SSU's derecognition of the College Nationalists violated his associational rights under the First Amendment. Ashford further contended that the police's actions outside his apartment on March 18th constituted a warrantless search in violation of the Fourth Amendment, and he sought to overturn his conviction. Thereafter, the State of Sunnyside moved for summary judgment.

The U.S. Court of Appeals for the Fourteenth Circuit found in favor of the Respondents, ruling that SSU's and the State of Sunnyside's actions did not violate the Petitioner's First or Fourth Amendment rights. The Honorable Judge Weston Zahn stated that the SSU Student Organization Non-Discrimination Policy served as a "reasonable campus regulation," consistent with the Court's ruling in *Healy v. James*, that justified the University's derecognition of SSU College Nationalists. Furthermore, the Honorable Judge Zahn noted that the area outside an apartment has never been recognized by the Supreme Court as constitutionally protected from searches under the doctrines of *Katz v. United States*, *Florida v. Jardines*, or *Kyllo v. United States* (despite conflicting appellate decisions on this matter), and Judge Zahn is unwilling to make that determination himself, preferring to defer to the Supreme Court on whether to expand Fourth Amendment protections.

In her dissent, the Honorable Judge Sara Rosen argued that SSU failed to meet its burden of justifying the derecognition of the College Nationalists. She cited *Roberts v. U.S. Jaycees* and *Boy Scouts of America v. Dale* to substantiate her use of strict scrutiny, which she argued could not be withstood by SSU's application of the Student Organization Non-Discrimination Policy in the case at bar. The Honorable Judge Rosen also stated that if the front porch is protected from intrusion, then the apartment hallway should be protected as well. She continued, noting that at least one of the three frameworks mentioned by the majority requires that the Petitioner prevail. Petitioner appealed, and the U.S. Supreme Court granted the petition for a writ of certiorari.

Case Note:

Please note that the Respondent represents two separate clients in this hypothetical scenario. The attorneys for the Respondent will represent the interests of Sunnyside State University in defending the freedom of association issue and will represent the State of Sunnyside on the Fourth Amendment issue. Due to the involvement of the Petitioner in both issues, these challenges were joined in a single legal challenge.

Appendix I

Sunnyside State University Student Organization Non-Discrimination Policy

The following is an excerpt from the University's official non-discrimination policy, which includes the following sections outlining standards that must be upheld by all recognized student organizations.

- Section 1: The University prohibits unlawful discrimination by student organizations on the basis of:
- (a) race,
 - (b) color,
 - (c) religion,
 - (d) sex,
 - (e) sexual orientation,
 - (f) national origin,
 - (g) age, or
 - (h) disability.
- Section 2: Student organizations at SSU must not engage in activity that promotes discrimination against members of the aforementioned protected classes.
- Section 3: If a student organization at SSU is found to be in violation of this policy, the organization's recognition may be revoked for up to two years without an opportunity for reconsideration.
- Section 4: Discretion on the duration of the period of derecognition and the process by which an organization may be re-recognized is left to the University's Board of Governors.

Appendix II

Public Statement by Paul Daniels (@Paul_Daniels) on Twitter on February 3, 2021

“(1/2) White supremacy is not a significant issue in the United States today. The U.S. has faced issues with racism in the past, but these problems have been resolved since the Civil Rights Act of 1964 was passed. White people are no more privileged than anyone else.

(2/2) This talk of persisting white supremacy from the Federalists is just an excuse to undermine our precious police force. I stand with Officer Jones despite his conviction. We must defend the police and work towards racial equality by acknowledging that white supremacy does not pose a major threat in the year 2021.”

These Tweets were liked by the official Twitter account of the SSU College Nationalists (@SSU_CollegeNationalists) on February 5, 2021.

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