

1 **The Remote Proctoring Room Scan Decision: Understanding Its Limitations**

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4 September 1, 2022

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6 On August 22, 2022, the United States District Court for the Northern District of Ohio ruled in  
7 *Ogletree v. Cleveland State University* that the Fourth Amendment privacy interests of Aaron  
8 Ogletree, a student at Cleveland State, were infringed by the school’s requirement that he scan  
9 the room of his home in which he was going to take an online final examination. It is essential to  
10 understand the law and facts of this decision to grasp its import and precedential weight.

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12 ***Constitutional background***

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14 The Fourth Amendment of the United States Constitution reads, in relevant part, as follows:

15       The right of the people to be secure in their persons, houses, papers, and effects, against  
16       unreasonable searches and seizures, shall not be violated...

17 The Fourth Amendment is applicable to the states through the Due Process Clause of the  
18 Fourteenth Amendment and applies to Cleveland State University because it is an instrumentality  
19 of the State of Ohio.

20  
21 The court in *Ogletree*, invoking the very words of the Fourth Amendment, acknowledged that  
22 only *unreasonable* searches are unconstitutional. Determining whether a particular search is  
23 unreasonable requires a balancing of the privacy interests of the individual with the state’s  
24 “legitimate governmental interests”—in this case, the prevention of cheating at a state university.

25  
26 (It is important to note that the Fourth Amendment is not applicable to private actors such as  
27 non-governmental testing bodies, test centers, and proctoring companies. In *Ogletree*, for  
28 example, no third-party proctoring vendors of Cleveland State were parties to the lawsuit.)

29  
30 ***General facts that diminished Cleveland State’s interests in requiring room scans before***  
31 ***online examinations***

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33 1. Cleveland State University allowed each teacher for each course to decide whether online tests  
34 would be proctored or non-proctored. There were no room scans for non-proctored tests. This  
35 fact argued against the school’s assertion that room scans are vital for preventing cheating and  
36 safeguarding academic integrity. Note the following from the court’s opinion in *Ogletree*:

37       Additionally, the record shows a variable policy—enforced, unevenly, in the discretion of  
38       a combination of proctors and professors—of using remote scans...

39       .....

40       Defendant [Cleveland State] does not require a room scan; rather, the decision is left to  
41       individual faculty in their discretion—a policy that acknowledges that such means are not  
42       strictly necessary, but one available option among many.

43       .....

44           Whatever the case, a record of sporadic and discretionary use of room scans does not  
45           permit a finding that room scans are truly, and uniquely, effective at preserving test  
46           integrity. Accordingly, this factor weighs in Plaintiff's [Ogletree's] favor too.  
47

48           2. Cleveland State did not employ other, seemingly more important, security measures to prevent  
49           cheating on examinations. According to the court:

50           Further, [Ogletree] argues that room scans have minimal value for preserving test  
51           integrity because there are numerous ways students could cheat that they would not catch.  
52           For instance, students could access their cell phones or notes in another room, since  
53           [Cleveland State] does not require students to remain on camera for the duration of the  
54           test.  
55

56           ***When weighing students' privacy interests against the school's interests in preventing***  
57           ***academic dishonesty, the fact that test takers were able to see the room scans of other test***  
58           ***takers weakened Cleveland State's position.***  
59

60           The court made mention of an unusual fact in this case: the room scans of test takers were visible  
61           to other test takers. In balancing the school's legitimate interests in stopping cheating against  
62           students' interests in privacy (especially if they were taking an online exam in their home), this  
63           seemingly avoidable state of affairs tipped the scales even further toward the conclusion that  
64           these particular room scans were treading on Fourth Amendment privacy rights.  
65

66           ***Mr. Ogletree was given only two-hours notice of the necessity of a room scan. This fact***  
67           ***further tilted the balance in his favor.***  
68

69           Adequate and reasonable notice is a fundamental principle of fairness. The court recounted what  
70           happened on the day of Mr. Ogletree's final online examination:

71           That morning at 10:25 a.m., almost two hours before [the] scheduled exam, Cleveland  
72           State Testing Services emails Mr. Ogletree to inform him the proctor would be "checking  
73           your ID, your surroundings and your materials." At 10:40 a.m., Mr. Ogletree replied to  
74           the email. Mr. Ogletree explained that he "currently [had] confidential settlement  
75           documents in the form of late arriving 1099s scattered about [his] work area and there is  
76           not enough time to secure them."  
77

78           ***Given the facts and circumstances of this case, as well as the Fourth Amendment principles, it***  
79           ***is not surprising that the court ruled in favor of Mr. Ogletree.***  
80

81           The court opined as follows:

82           Although the intrusion at issue might not strike a person as especially problematic,  
83           particularly in the Zoom era, the core protection afforded to the home, the lack of options,  
84           inconsistency in application of the policy, and short notice of the scan weigh in Plaintiff's  
85           favor.....  
86

.....

87 Based on consideration of these factors, individually and collectively, the Court  
88 concludes that Mr. Ogletree’s privacy interest in his home outweighs Cleveland State’s  
89 interests in scanning his room. Accordingly, the Court determines that Cleveland State’s  
90 practice of conducting room scans is unreasonable under the Fourth Amendment.

91

92 ***Limited significance of this decision***

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94 A familiar legal maxim is that “bad facts make bad law.” Even aside from the facts that this  
95 decision may be appealed and the Fourth Amendment applies only to government actors, the odd  
96 and atypical facts of this case limit its precedential usefulness. Internally consistent and  
97 consistently applied test security principles, and generally accepted remote proctoring  
98 procedures, would avoid most if not all of the legal issues in *Ogletree v. Cleveland State*  
99 *University*.

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