

Room Scans During Remote Examinations Violate Constitution, Ohio Federal District Court Says.

Last week, a federal district court in Ohio held that a university's use of room scanning technology in the administration of an examination was unconstitutional and barred by the Fourth Amendment's prohibition on unreasonable searches. The [decision](#), *Ogletree v. Cleveland State University*, is not binding on educational institutions in Illinois; nevertheless, the decision may foretell of similar challenges elsewhere in the United States.

The plaintiff, a student at Cleveland State University, was unable to attend in-person classes due to several factors, including the University's imposition of various protocols relating to COVID-19 with which the plaintiff could not comply. The University required that all exams be taken in a quiet space, free from potential disturbance by others. In the instance of the plaintiff, the only such space available was his bedroom.

While enrolled in an online chemistry class, the plaintiff was informed, two hours prior to taking a remote examination, that he would be required to scan the room in which he would be taking the exam, using his laptop camera, prior to the exam beginning. The plaintiff informed the University that he objected to the room scan, but he was nonetheless instructed to perform the scan, which was to last less than a minute. Despite his protest, the plaintiff agreed to the scan. Following his completion of the exam, the plaintiff filed suit against the University, arguing that the scan constituted an unreasonable search under the Fourth Amendment to the United States Constitution. The parties filed cross-motions for summary judgment, and the U.S. District Court for the Northern District of Ohio found in favor of the plaintiff, holding that the room scan was unconstitutional.

In reaching its decision, the Court first evaluated whether the scanning of a student's bedroom constituted a "search" within the meaning of the Fourth Amendment. The Court determined that a bedroom scan constituted a search because students have a "subjective expectation of privacy" in their bedroom space, and that expectation is one "that society recognizes as reasonable." The Court rejected the University's argument that the expectation for privacy in a student's bedroom is not reasonable simply because many of the University's students acquiesced to the scanning of their bedrooms, concluding the repeated use of a practice did not render the student's privacy interest any less important. The Court also rejected the University's assertion, based in part upon Seventh Circuit precedent, that the room scan was distinguishable from a Fourth Amendment search on the grounds that the scan was limited in scope, conducted for an administrative or regulatory purpose, and was not coerced.

After determining that the College had conducted a search within the meaning of the Fourth Amendment, the Court next examined whether the search was "reasonable," based upon the following factors:

- (i) The nature of the privacy interest affected;

IN BRIEF

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- (ii) The character of the intrusion;
 - (iii) The nature and immediacy of the government concern; and
 - (iv) The efficacy of the government’s method for addressing its concern.

In analyzing the first factor, the Court found that the privacy interest affected—namely, a student’s interest in privacy within their own home—was of a nature requiring substantial Fourth Amendment protection, and therefore, the first factor weighed in the plaintiff’s favor. The Court similarly found that the second factor weighed in favor of the plaintiff, emphasizing that the plaintiff had no available alternatives to remote-proctored exams, such as the option of taking his exams in person on the University’s campus.

As to the third factor, both the Court and the plaintiff acknowledged that the University had an interest in preserving the integrity of exams. However, in looking at the fourth factor—the efficacy of the University’s method to preserve such integrity—the Court determined that room scans were not a necessary safeguard, noting that various other measures designed to protect exam integrity, such as surveillance of the test-taker, the use of live proctors to monitor test-takers remotely, and the use of software preventing internet access, were all available to the University. The Court opined that these other methods could be used to limit or eliminate cheating in the same manner as room scans, and that the University failed to offer a compelling explanation for why room scans were a particularly effective means of proctoring exams.

Considering the four factors both individually and as a whole, the Court concluded that the privacy interest afforded to the plaintiff under the Fourth Amendment outweighed the University’s interest in carrying out room scans, thereby ruling in the plaintiff’s favor.

The *Ogletree* decision raises a number of questions for institutions of higher education that utilize remote proctoring protocols, including room scanning technology. Should you have questions about how this decision may impact your institution’s policies or practices, please contact your Robbins Schwartz attorney.