

**Ogletree v. Cleveland State Univ.  
No. 1:21-CV-00500, 2022 WL 3581569 (N.D.  
Ohio Dec. 20, 2022)**

MADISON CASSULO\*

**BACKGROUND**

In May 2016, Cleveland State University (“CSU”), a public university, published campus-wide guidelines for online classes that permitted room scans for remote tests.

One of the test-proctoring devices CSU used was a third-party vendor who would record a student briefly by requiring the student to turn on their computer camera to scan the student’s surroundings and ensure the integrity of remote tests by preventing any impermissible study aids. CSU’s guidelines did not require or encourage classes to use the room scan. It was implemented at the professors’ discretion.

In 2021, CSU students were required to pass daily health assessments to attend classes in-person due to the COVID-19 pandemic. CSU student Aaron Ogletree could not pass the CSU daily health assessment due to medical issues, so he attended online courses. In the syllabus of one Ogletree’s online classes, the professor announced that room scans would be used “before, during, or after an exam to show their surroundings, screen and/or work area” at the proctor’s request.<sup>1</sup>

At the start of the semester, Ogletree successfully petitioned to remove the policy. However, a month later, two hours before an exam, Ogletree received an email notifying him he would be required to comply with a room scan. CSU’s online testing rules required students to take remote tests in an isolated room, but Ogletree could not be alone elsewhere, so he had to perform the room scan in his bedroom. Ogletree explained in an email that he had confidential documents and tax forms in his room which he could not put away in time for the test. Nevertheless, Ogletree complied with the room scan at the start of his test for the test proctor.

**PROCEDURAL HISTORY**

Ogletree sued CSU in the United States District Court for the Northern District Court of Ohio, claiming a Fourth Amendment violation. Both parties moved for summary judgment.

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\* Madison Cassulo is a 2023 Juris Doctor candidate at the University of San Francisco School of Law.

1. *Ogletree v. Cleveland State Univ.*, No. 1:21-CV-00500, 2022 WL 17826730, at \*2 (N.D. Ohio Dec. 20, 2022).

## ISSUE

Does a room scan done by a public school through a third-party test proctoring company violate a student's right to privacy as guaranteed under the Fourth Amendment?<sup>2</sup>

## DECISION

To determine if Ogletree's Fourth Amendment rights were violated, the district court determined whether there was a search and, if so, whether the search was reasonable. In its decision, the court concluded that the room scan violated Ogletree's Fourth Amendment rights because peering into a student's room through a test proctoring method constitutes a search, and this search was not reasonable per the "special needs" requirement under the *Griffin* test.<sup>2</sup>

The Court could not grant an injunction to prevent CSU from using room scans that violate the Fourth Amendment rights of all students, but this opinion has been published as a declaratory judgment. Additionally, CSU is permanently enjoined from subjecting Ogletree to room scans that are administered without his express consent or offering a reasonable alternative.

As of publication, this case has been appealed to the United States Court of Appeals for the Sixth Circuit.

## REASONING

The Fourth Amendment protects the rights of people to be secure in their houses against unreasonable searches.<sup>3</sup> In determining whether the room scan was an unreasonable search, the court analyzed cases that involved technological changes and searches of one's home.

First, the district court held that this room scan was a search because the government, acting through a public university, violated a subjective expectation of privacy that society recognizes as reasonable, by looking into one's home, which most people consider the most protected and private space per *Kyllo v. United States*.<sup>4</sup> *Kyllo* held that using technology not in general public use to look into one's home violated the Fourth Amendment.<sup>5</sup> The district court noted that "[w]hile cameras might be generally available and now commonly used, members of the public cannot use them to see into an office, house, or other place not publicly visible without the owner's consent."<sup>6</sup>

The district court also analyzed the defendant's argument under *Wyman v. James*, where the Supreme Court held that mandatory home visits for federal benefits did not violate the Fourth Amendment.<sup>7</sup> The district court here

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2. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).

3. *Ogletree v. Cleveland State Univ.*, No. 1:21-CV-00500, 2022 WL 3581569, at \*3 (N.D. Ohio Aug. 22, 2022) (citing U.S. CONST. amend. IV and *United States v. Jones*, 565 U.S. 400, 404).

4. *Id.* at \*4 (citing *Kyllo v. United States*, 533 U.S. 27, 33 (2001)).

5. *Id.*

6. *Id.*

7. *Wyman v. James*, 400 U.S. 309 (1971).

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contrasted *Wyman*, stating that technology has rapidly advanced since 1971.<sup>8</sup> The court also noted that the benefit considered in *Wyman* was one that all were entitled to, whereas college is not something people are entitled to.<sup>9</sup>

Second, the district court held this search was unreasonable per the four-part “special needs” *Griffin* test.<sup>10</sup> Reasonableness generally requires a search warrant and probable cause; however, in *Griffin v. Wisconsin*, the Supreme Court held that there is an exception in certain circumstances where the government has “special needs, beyond the normal need for law enforcement.”<sup>11</sup>

To determine if the government has special needs, and thus the search is reasonable, the district court must take into consideration the following: (1) the nature of the privacy interest affected; (2) the character of the intrusion; (3) the nature and immediacy of the government concern; and (4) the efficacy of this means of addressing the concern.<sup>12</sup>

Here, the first factor, the nature of the privacy interest affected, was high and in Ogletree’s favor because the room scans look into one’s home, which is the most private place.

Second, the character of the intrusion was problematic and in the student’s favor because while peering into one’s room is common in the Zoom era, this was still in one’s home where the school and other students could see. Additionally, CSU did not give the students any other options or enough notice.

The third factor, the nature and immediacy of the government concern, was high and in CSU’s favor because test integrity in schools is extremely important.

Lastly, the fourth factor regarding the efficacy of the means when addressing the concern was low and thus in the student’s favor because more effective and less intrusive test proctoring methods are available. Furthermore, the current method does not actually prevent cheating because once the room scan is completed, students may turn their cameras off.

Since three factors weighed in favor of Ogletree, this was determined to be an unreasonable search and therefore violated the Fourth Amendment.

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8. *Ogletree*, No. 1:21-CV-00500, 2022 WL 3581569, at \*6.

9. *Id.* at 5-7.

10. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995) (citing *Griffin*, 483 U.S. at 873).

11. *Ogletree*, No. 1:21-CV-00500, 2022 WL 3581569, at \*6 (quoting *Griffin*, 483 U.S. at 873).

12. *Id.* at \*7 (citing *Vernonia Sch. Dist. 47J*, 515 U.S. at 654-64).