The Constitution and Online Exams: A New Fourth Amendment Take on *Ogletree v. Cleveland State University*

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ABSTRACT

In response to the COVID-19 pandemic, teachers across the United States adapted to online instruction. Unable to physically watch students during exams, schools devised new methods to catch and prevent cheating. One method is called a "room scan," in which the student uses a camera to show their surroundings before beginning an exam. One student, Amelia Ogletree at Cleveland State University, questioned whether room scans violated her Fourth Amendment rights against unreasonable searches. After being subjected to a room scan, Ms. Ogletree sued her university in federal court. Ms. Ogletree argued that because Cleveland State University is a government entity, the room scan equated to the government using a camera to investigate her bedroom without a warrant, a clear violation of the Fourth Amendment. The district court in *Ogletree v. Cleveland State University* agreed with Ms. Ogletree and ruled that the University had violated her rights. However, this decision was later vacated for procedural reasons, and the judiciary's future treatment of this important constitutional question is uncertain.

For procedural reasons, the district court did not analyze whether Ms. Ogletree consented to the room scan, which is problematic because Ms. Ogletree's conduct may indicate that she consented to the room scan. If future courts apply a consent analysis to this issue, they should consider the unequal power dynamics between teachers and students and require the student to know of their right to refuse the search. Regardless, universities should re-evaluate their online testing policies and make changes to ensure they do not unknowingly violate their students' constitutional rights.

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I. INTRODUCTION

Cleveland State University (hereinafter the "University") had offered online classes with remote tests before the COVID-19 pandemic began.[1] Schools proctor in-person exams by having someone walk around the testing room to watch over students and ensure they are not cheating. Because remote exams are not taken within a single room, schools must use different anti-cheating methods.

1. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 606 (N.D. Ohio 2022).

In *Ogletree v. Cleveland State University*, the University used a method called a "room scan," in which the professor asked the students to scan the room with their laptop cameras, before taking the test, to reveal impermissible study aids, notes, or other students.[2] Amelia Ogletree was a student at Cleveland State University enrolled in a General Chemistry II class in early 2021.[3] As of January 2021, this class had a room scan policy specifying that proctors could ask any student "before, during, or after an exam to show their surroundings, screen, and/or work area."[4] Early in the semester, Ms. Ogletree emailed her professor with concerns about the constitutionality of the room scan policy.[5] These concerns reached the University's Office of General Counsel.[6] The University's attorney, King, informed Ms. Ogletree that room scans did not constitute a search, that students consented to such practices by taking the course, that the University permitted students to take exams in the CSU Testing Center instead of their homes, and that Ms. Ogletree was welcome to take a different section of the chemistry class.[7] Ms. Ogletree responded, clarifying that she only took issue with room scans and that she did not believe taking the course qualified as consent because students would not know of their right to refuse the scan.[8]

The professor removed the room scan policy from the course's syllabus three days after class began.[9] One month later, hours before an exam was to begin, Cleveland State Testing Services informed Ms. Ogletree that the test would require a room scan.[10] Ms. Ogletree responded with concerns about having enough time to secure confidential documents scattered around her room but did not ask to be exempt from the scan.[11] When the exam started, the proctor asked Ms. Ogletree to scan her room, and she complied without objection.[12] "The scan lasted less than a minute, and as little as ten to [20] seconds."[13] Ms. Ogletree sued Cleveland State University, alleging that the room scan violated her Fourth Amendment right against unreasonable searches.[14] The U.S. District Court for the

2. *See id.*

3. *See id.* at 608; *see also* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *3 n.* (6th Cir. Dec 4, 2023) (referring to the plaintiff as "Amelia Ogletree" or "Ms. Ogletree" because she was transgender).

4. *Ogletree*, 647 F. Supp. 3d at 608.

5. *See id.*

6. *See* Notice of Filing Deposition of Aaron Ogletree at Ex. H., p.2, Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, (N.D. Ohio 2022) (No. 1:21-cv-00500).

7. *See id.*

8. *See id.* at Defendants' Ex. C.

9. *See Ogletree*, 647 F. Supp. 3d at 608.

10. *See id.* at 609.

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

Northern District of Ohio granted summary judgment in favor of Ms. Ogletree, finding the room scan to be an unreasonable search in violation of Ms. Ogletree's Fourth Amendment rights.[15]

If other courts use the same approach and declare that room scans, or other forms of remote exam proctoring, violate students' rights, the trend could significantly impact the future of education. After the COVID-19 pandemic, online education skyrocketed in the United States. In spring of 2020, 77% of all public elementary, middle, and high schools moved to online learning,[16] and 84% of college students had some or all of their classes moved to online-only instruction.[17] Overall, the *Ogletree* ruling could seriously impact how schools implement online learning and whether many will choose to offer online options at all.[18]

In *Ogletree*, the district court enjoined Cleveland State University from subjecting Ms. Ogletree to a room scan without either a reasonable alternative or her express consent.[19] However, because the case was not brought as a class action lawsuit, the injunction was limited only to room scans of Ms. Ogletree.[20] This narrow holding puts the University in a strange position moving forward because the University is not technically prohibited from using room scans for other students, but if other students sue, they might win.[21] Regardless, the University will have to change something about its online testing policies.

After the district court's ruling, the University appealed to the Sixth Circuit.[22] Sadly, in February of 2023, Ms. Ogletree passed away.[23] The Sixth Circuit subsequently vacated the district court's ruling because Ms. Ogletree lacked both a personal representative to continue the case on her behalf and a cognizable interest in the case's outcome.[24] Although *Ogletree* was ultimately dismissed on procedural grounds,[25] the district

15. *See id.* at 619-20.

16. *See* M. BERGER ET AL., IMPACT OF THE CORONAVIRUS (COVID-19) PANDEMIC ON PUB. AND PRIVATE ELEMENTARY AND SECONDARY EDUC. IN THE U.S.(PRELIMINARY DATA): RESULTS FROM THE 2020–21 NAT'L TCHR. AND PRINCIPAL SURV. (NTPS) FIRST LOOK, Table A-1 (2022).

17. *See* M. CAMERON ET AL., 2019–20 NAT'L POSTSECONDARY STUDENT AID STUDY (NPSAS:20) FIRST LOOK AT THE IMPACT OF THE CORONAVIRUS (COVID-19) PANDEMIC ON UNDERGRADUATE STUDENT ENROLLMENT, HOUS., AND FIN. (PRELIMINARY DATA) 4, Table A-1 (2021).

18. *See Ogletree*, 647 F. Supp. 3d at 619-20.

19. *See id.* at 620.

20. *See id.* at 619.

21. *See id.* at 620 (ruling for the plaintiff).

22. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *2 (6th Cir. Dec. 4, 2023).

23. *See id.*

24. *See id.* at *2-3.

25. *See id.*

court's analysis still offers insight into how federal courts approach room scans' constitutionality.

This Comment argues that Ms. Ogletree consented to the room scan.[26] Part II first explains the history of the Fourth Amendment, reasonableness, and searches generally.[27] Then, Part II explores the consent and special needs search exceptions and how the *Ogletree* court analyzed the issue.[28] Part III argues that Ms. Ogletree consented to the room scan and that the *Ogletree* court's modification of the special needs search exception affected the case's outcome.[29] Finally, this Comment proposes what the future of room scans should look like and the scans' potential application to the law enforcement context.[30]

II. BACKGROUND

Ms. Ogletree argued that room scans violate the Fourth Amendment,[31] which prohibits unreasonable searches.[32] For a room scan to violate the Fourth Amendment, it must be both (1) unreasonable and (2) a search.[33]

A. Introduction to the Fourth Amendment

Ms. Ogletree grounded her claim on the Fourth Amendment right against unreasonable searches.[34] The Fourth Amendment has protected Americans from unreasonable searches and seizures since 1791, when the Bill of Rights took effect.[35]

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[36]

26. *See supra* Section III.A.1.
27. *See supra* Sections II.A.-C.
28. *See supra* Sections II.D.-F.
29. *See supra* Section III.A.
30. *See supra* Section III.C.
31. *See Ogletree*, 647 F. Supp. 3d at 609.
32. *See* U.S. CONST. amend. IV.
33. *See id.* (stating that the amendment prohibits "unreasonable searches").
34. *See Ogletree*, 647 F. Supp. 3d at 609.
35. *See* U.S. CONST. amend. IV.
36. *Id.*

The language of the Fourth Amendment clearly prohibits "unreasonable searches and seizures,"[37] but what does it mean to be unreasonable,[38] and what constitutes a search?[39]

1. History of the Fourth Amendment

The states ratified the Fourth Amendment in 1791.[40] English courts had recognized a similar right against unwanted government intrusion into one's home since the early 1600s.[41] Although England understood that some level of privacy in one's home is important, that understanding did not stop it from subjecting American colonists to invasive searches.[42] Particularly, the English utilized "writs of assistance," which were general warrants allowing an English government officer to enter any specified location to search for and seize any contraband.[43] The individual writ remained valid and enforceable as long the King of England remained alive and for an additional six months after his death.[44] Therefore, writs of assistance were nearly permanent search warrants with an almost boundless scope that allowed English officers to enter one's home whenever they wanted.[45]

Early Americans' distaste for general warrants like writs of assistance shaped the Fourth Amendment and its requirement for a warrant based on probable cause.[46] Colonists did not want to empower the government to search people's homes with little or no restriction.[47] "Opposition to such searches was in fact one of the driving forces behind the Revolution itself."[48] Three-fourths of the states had to ratify the Fourth Amendment before it was added to the Constitution officially.[49] The Fourth Amendment underwent almost no change between the amendment's originally proposed version and the version ratified by the states.[50] James Madison originally proposed the Fourth Amendment to read as follows:

37. *Id.*
38. *See infra* Section II.B.
39. *See infra* Section II.C.
40. *See* U.S. CONST. amend. IV.
41. *See generally Semayne's Case*, 77 Eng. Rep. 194, 194 (K.B. 1604).
42. *See, e.g.*, CONG. RSCH. SERV., CONST. OF THE U.S. OF AM.: ANALYSIS AND INTERPRETATION, S. Doc. No. 117-12, 1610 (2023).
43. *See id.*
44. *See id.*
45. *See id.*
46. *See* Riley v. California, 573 U.S. 373, 403 (2014) (explaining that "the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity").
47. *See id.*
48. *Id.*
49. *See* U.S. CONST. art. V.
50. *Compare* 1 *Annals of Cong.* 434–35 (June 8, 1789), *with* U.S. CONST. amend. IV.

> The rights to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.[51]

This lack of change illustrates early Americans' strong support for protections against government intrusion.[52]

2. The Fourteenth Amendment's Effect on the Fourth Amendment

The Fourth Amendment's prohibition on unreasonable searches and seizures did not always apply to the states or their officials.[53] Instead, the amendment only applied to the federal government.[54] The Supreme Court later recognized that much of the Bill of Rights can be selectively incorporated against the states, including the Fourth Amendment.[55] To enforce the Fourth Amendment against state officials who engage in unlawful searches, the Supreme Court held that courts must exclude any evidence obtained from unlawful searches.[56]

3. Who Can Violate the Fourth Amendment?

The Fourth Amendment's prohibition on unreasonable searches only applies to the government and government officials.[57] This means that the

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51. 1 *Annals of Cong.* 434–35 (June 8, 1789).

52. *See id.*; *see also* U.S. CONST. amend. IV.

53. *See* Wolf v. Colorado, 338 U.S. 25, 26, 33 (1949) (holding that evidence unlawfully seized by state officials is admissible), *overruled by* Mapp v. Ohio, 367 U.S. 643, 653 (1961).

54. *See id.*

55. *See id.* at 28-29 (holding that the right to privacy against unwanted government intrusion "is at the core of the Fourth Amendment" and " basic to a free society," and therefore "enforceable against the States through the [Fourteenth Amendment's] Due Process Clause"); *see also Mapp*, 367 U.S. at 655 (holding that any evidence seized by state officials in an unlawful search must be excluded because the Fourth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment, and because excluding evidence is the same sanction used against the federal government for Fourth Amendment violations).

56. *See Mapp*, 367 U.S. at 655.

57. *See* United States v. Booker, 728 F.3d 535, 540 (6th Cir. 2013) ("[The Fourth Amendment] is understood to refer to searches by, or made possible by, government officers."); *see also* United States v. Jacobsen, 466 U.S. 109, 113 (1984) (explaining the Fourth Amendment "is wholly inapplicable 'to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official'") (quoting Walter v. United States, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)); New Jersey v. T. L. O., 469 U.S. 325, 335 (1985) (noting that "th[e] Court has never limited the Amendment's prohibition on unreasonable searches and seizures to operations conducted by the police. Rather, the Court has long spoken of the Fourth Amendment's strictures as restraints

Fourth Amendment does not apply to any search, however unreasonable, conducted by a private party independently of the government.[58] Whether the private party acted independently depends on the "degree of the Government's participation in the private party's activities,"[59] which is determined by the totality of the circumstances.[60]

The Constitution protects students at universities.[61] Teachers and other school officials hold great authority over students, and the relationship between teachers and their students parallels the relationship between parents and their children. However, unlike parents, who have immunity from the Fourth Amendment because they do not represent the government, teachers must abide by the guarantees of the Fourth Amendment because they are considered representatives of the state.[62] Courts use a different standard, the special needs search standard, to analyze searches conducted in the school context because these school searches are so different from typical law enforcement searches.[63]

B. Reasonableness

The Fourth Amendment does not prohibit all searches and seizures, only unreasonable ones.[64] Therefore, determining whether conduct is "unreasonable" is a vital inquiry in Fourth Amendment cases.

The warrant requirement is an important part of the reasonableness inquiry in Fourth Amendment cases.[65] Warrants must be issued based upon probable cause, which is determined by a neutral magistrate.[66]

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imposed upon 'governmental action'") (quoting Burdeau v. McDowell, 256 U.S. 465, 475 (1921)).

58. *See* Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 614 (1989) ("Although the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government.").

59. *Id.*

60. *See id.*

61. *See* Robinson v. Bd. of Regents, 475 F.2d 707, 709 (6th Cir. 1973) (reasoning that "students, no less than any other citizens of the United States, are protected by the Constitution of the United States"; and holding that "the state, in operating a public system of higher education, cannot condition attendance at one of its schools on the student's renunciation of his constitutional rights"); *see also* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

62. *See T. L. O.*, 469 U.S. at 336-37.

63. *See infra* Section II.E.

64. *See* U.S. CONST. amend. IV.; *see also* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652 (1995) ("As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'").

65. *See* U.S. CONST. amend. IV.; *see generally* Illinois v. Gates, 462 U.S. 213, 238 (1983).

66. *See* Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances . . . before him

Searches "conducted without a warrant issued upon probable cause [are] '*per se* unreasonable'"[67] if they do not fall under an exception.[68] There are many exceptions to the warrant requirement, including searches incident to arrest;[69] exigent circumstances, such as hot pursuit,[70] and emergency aid;[71] the automobile exception;[72] inventory searches;[73] special needs searches;[74] and valid consent searches.[75] In the education context, the most important of these exceptions are consent searches and special needs searches.[76]

C. Fourth Amendment Searches

What constitutes a "search" for purposes of the Fourth Amendment has changed significantly over time.[77] Determining whether a search

. . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.").

67. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (quoting Katz v. United States, 389 U.S. 347, 357 (1967); Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Chambers v. Maroney, 399 U.S. 42, 51 (1970)).

68. *See infra* Sections II.D.-E.

69. *See* Chimel v. California, 395 U.S. 752, 773-76 (1969) (holding that when police make an arrest pursuant to probable cause, they may search the arrestee's person and the area within the arrestee's immediate control without a warrant because of the possible danger of the arrestee accessing a weapon or destroying evidence). This exception likely would not apply to Ms. Ogletree's situation, as she was not arrested or at risk of being arrested. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 608-09 (N.D. Ohio 2022).

70. *See* Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (finding the warrantless entry and search of a home where police had been informed that an armed robbery suspect had entered five minutes earlier was constitutional because "[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others"); *see also* United States v. Santana, 427 U.S. 38, 42-43 (1976) (concluding that the arrest and subsequent search incident to arrest of a suspect who had retreated into her home when police came to arrest her were constitutional).

71. *See, e.g.*, Brigham City v. Stuart, 547 U.S. 398, 400 (2006) (holding that "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury").

72. *See* Carroll v. United States, 267 U.S. 132, 156 (1925) (holding that the mobility of automobiles can justify warrantless searches); *see also* California v. Carney, 471 U.S. 386, 392-93 (1985) (holding that automobiles have a diminished expectation of privacy because they are open to public view and subject to extensive regulation, therefore only probable cause is needed to search an automobile, rather than a warrant). This exception would not apply to Ms. Ogletree's situation because she was not in an automobile at the time of the room scan. *See Ogletree*, 647 F. Supp. 3d at 608-09.

73. *See* Colorado v. Bertine, 479 U.S. 367, 371-74 (1987) (holding a warrantless search of a lawfully impounded vehicle and any containers therein does not violate the Fourth Amendment, even if there was no probable cause).

74. *See infra* Section II.E.

75. *See infra* Section II.D.

76. *See* New Jersey v. T. L. O., 469 U.S. 325, 337-43 (1985) (creating the special needs exception specifically to consider the education context).

77. *See supra* Sections II.C.1-2.

occurred is important because the Fourth Amendment itself states that it is only applicable to "searches and seizures."[78] Therefore, if a government action was not a search or seizure, it would not fall within the Fourth Amendment's bounds.

1. Historical Definition of a Search

Historically, courts employed a trespass-based definition of search, and thus, a court's inquiry focused primarily on *where* the alleged search took place and whether the government official physically entered that location.[79] Based on this understanding, courts considered purely visual surveillance lawful in all circumstances because such surveillance involved no physical trespass.[80] The Supreme Court overruled this strict trespass-based understanding of searches in the 1967 case *Katz v. United States*.[81] In *Katz*, the Supreme Court famously declared that "the Fourth Amendment protects people, not places."[82] Justice Harlan clarified this point in his concurrence, explaining that "a person has a constitutionally protected reasonable expectation of privacy."[83] This "reasonable expectation of privacy" language strongly influenced future Fourth Amendment search cases.[84] The Court has since applied *Katz* as a two-part test. Under the *Katz* test, courts first ask whether "the individual manifested a subjective expectation of privacy."[85] Second, courts analyze whether "society [is] willing to recognize that expectation as reasonable[.]"[86] Thus, the *Katz* test includes both a subjective and objective inquiry regarding the expectation of privacy.[87]

2. Modern Understanding of a Search

Not fully satisfied with how lower courts applied the *Katz* test, in 2012 the Supreme Court again examined what constitutes a search.[88] In *United States v. Jones*, the Supreme Court explained that it intended the

78. U.S. CONST. amend. IV.

79. *See* Olmstead v. United States, 277 U.S. 438, 465 (1928) (holding that wiretapping did not constitute a search or seizure because there was no physical intrusion) *overruled by* Katz v. United States, 389 U.S. 347, 353 (1967).

80. *See* Kyllo v. United States, 533 U.S. 27, 31 (2001).

81. *See Katz*, 389 U.S. at 353.

82. *Id.* at 351.

83. *Id.* at 360 (Harlan, J., concurring).

84. *See, e.g.*, United States v. Jones, 565 U.S. 400, 406 (2012) ("Our later cases have applied the analysis of Justice Harlan's concurrence in [*Katz*], which said that a violation occurs when government officers violate a person's 'reasonable expectation of privacy.'") (quoting *Katz*, 389 U.S, at 360 (Harlan, J., concurring)).

85. California v. Ciraolo, 476 U.S. 207, 211 (1986).

86. *Id.*

87. *See id.*

88. *See Jones*, 565 U.S. at 407.

Katz test to supplement the earlier trespass-based test, not fully replace it.[89] The Court then clarified that courts should not "*exclusively* [apply] *Katz*'s reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed."[90] Essentially, the Court held that alleged searches should be analyzed both under the *Katz* reasonable expectation of privacy test *and* under a trespassory test based on constitutionally protected areas,[91] and that neither test should be used exclusively.[92]

3. The Significance of the Home

English courts have recognized the home's significance since the early 1600s, declaring that a man's home is his castle.[93] The Fourth Amendment only expressly protects four things from unreasonable searches and seizures: "persons, houses, papers, and effects."[94] Unsurprisingly, the Supreme Court often emphasizes the home's importance when discussing Fourth Amendment protection.[95] "With few exceptions, the question [of] whether a warrantless search of a home is reasonable and hence constitutional must be answered no."[96] Even a minimal intrusion into someone's home can be unconstitutional.[97] Still, not every warrantless intrusion into someone's home by a government official automatically violates the Fourth Amendment.[98] For example, a police officer may look through a home's window from the sidewalk without violating the Fourth Amendment.[99]

89. *See id.* at 409 (stating that "the Katz reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test").

90. *Id.* at 411.

91. *See id.* at 408 ("*Katz* did not erode the principle 'that, when the Government *does* engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.'") (quoting United States v. Knotts, 460 U.S. 276, 286 (1983) (Brennan, J., concurring)).

92. *See id.* at 411 ("For unlike the concurrence, which would make *Katz* the *exclusive* test, [the majority does] not make trespass the exclusive test.").

93. *See Semayne's Case*, 77 Eng. Rep. 194, 194 (K.B. 1604).

94. U.S. CONST. amend. IV.

95. *See, e.g.*, Kyllo v. United States, 533 U.S. 27, 37 (2001) ("In the home, our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes."); *see also* Florida v. Jardines, 569 U.S. 1, 6 (2013) (explaining that "when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion'") (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)).

96. *Kyllo*, 533 U.S. at 31.

97. *See id.* at 37 ("The Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained.").

98. *See supra* Section II.B. (discussing exceptions to the warrant requirement).

99. *See* California v. Ciraolo, 476 U.S. 207, 213 (1986) ("The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares.").

D. Consent Searches

Searches typically require warrants based on probable cause to be considered reasonable, but "one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent."[100] To overcome the warrant requirement, consent must be valid,[101] meaning "'freely and voluntarily given.'"[102] Consent cannot "be coerced, by explicit or implicit means, by implied threat or covert force."[103] To determine whether consent was voluntarily given, courts analyze the totality of the circumstances, with no single factor being determinative.[104] The suspect's knowledge of the right to refuse is not required for consent to be voluntary.[105] Consent also need not be express; it "can be inferred from words, gestures, and other conduct."[106] Depending on the situation, even a third party can consent on a property owner's behalf.[107]

Consent searches are common. In fact, researchers have estimated that officers accomplish over 90% of warrantless searches via consent.[108] 90% might sound suspiciously high, but any time a police officer pulls someone over and asks to search their vehicle, the officer is asking for consent.[109] As police pull over more than 20 million drivers every year, one can imagine how the consent exception impacts many Americans every day.[110] Again, suspects do not need to be informed that they can refuse in order for consent to be considered valid and voluntary.[111] People consent so often that commentors have critiqued whether the consent

100. Schneckloth v. Bustamonte 412 U.S. 218, 219 (1973).

101. *See id.* at 222.

102. *Id.* at 222. (quoting Bumper v. North Carolina, 391 U.S. 543, 548 (1968)).

103. *Id.* at 228.

104. *See id.* at 226.

105. *See id.* at 227.

106. United States v. Jones, 254 F.3d 692, 695 (8th Cir. 2001).

107. *See* Illinois v. Rodriguez, 497 U.S. 177, 183, 188-89 (1990) (holding that police officers can lawfully enter a home if they reasonably believe the person consenting to the entry has the authority to give said consent, even if the person does not have the actual authority); *see also* United States v. Matlock, 415 U.S. 164, 169-71 (1974). Courts have set limits on who can consent on another's behalf. *See, e.g.*, Chapman v. United States, 365 U.S. 610, 616-18 (1961).

108. *See* Ric Simmons, *Not "Voluntary" but Still Reasonable: A New Paradigm for Understanding the Consent Searches Doctrine*, 80 IND. L.J. 773, 773 (2005).

109. *See, e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218, 220 (1973) (applying consent search analysis when a suspect gave police permission to search the vehicle after police asked if it was okay to do so).

110. THE STAN. OPEN POLICING PROJECT, *FINDINGS: THE RESULTS OF OUR NATIONWIDE ANALYSIS OF TRAFFIC STOPS AND SEARCHES*, https://perma.cc/6P8J-9TZ7 (last visited Jan. 22, 2025).

111. *See Schneckloth*, 412 U.S. at 227.

doctrine effectively ensures that consent was voluntary.[112] Some commentators argue that individuals should at least have to be informed of their right to refuse for their consent to be found voluntary.[113]

Notwithstanding the doctrine's criticisms, consent still does not give government officials free reign to search whatever they want.[114] Individuals giving consent may limit the scope of the subsequent consent search.[115] But courts analyze the scope of consent objectively, not subjectively.[116] "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness,"[117] meaning that courts ask "what would the typical reasonable person have understood by the exchange between the [government agent] and the suspect?"[118] A case illustrating this concept is *Florida v. Jimeno*, in which police officers pulled over a suspect and asked for permission to search his car.[119] The suspect consented to the search, and police found a closed, brown paper bag of cocaine on the floorboard.[120] The suspect moved to suppress the cocaine, alleging that his "consent to search the car did not extend to the closed paper bag inside of the car."[121] The Supreme Court rejected this argument and concluded that searching the bag was reasonable.[122] The Court reasoned that the police told the suspect that they suspected narcotics were present in the car, and therefore "it was objectively reasonable for the police to conclude that the general consent to search [the suspect's] car included consent to search containers within that car which might bear drugs."[123] *Jimeno* illustrates

112. *See, e.g.*, Roseanna Sommers & Vanessa K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 YALE L. J. 1962, 2011-19 (2019) (explaining the psychological reasons people feel pressured to consent, even in the absence of coercion); Alafair S. Burke, *Consent Searches and Fourth Amendment Reasonableness*, 67 FLA. L. REV. 509, 525-31 (2015) (arguing that consent searches are never truly consensual because of citizens' lack of knowledge of their right to refuse and their natural tendency to comply with authority); Simmons, *supra* note 108, at 820-21 (arguing that suspects should be informed of their right to refuse for their consent to be deemed voluntary).

113. *See* Sommers & Bohns, *supra* note 112, at 2014-19; *see also* Simmons, *supra* note 108, at 820-21. *But see* Burke, *supra* note 112, at 553 (arguing that, although the current system is ineffective, warning an individual of their right to refuse would not solve the problem).

114. *See* Painter v. Robertson, 185 F.3d 557, 567 (6th Cir. 1999) (explaining that "the consenting party may limit the scope of th[e] search, and hence at any moment may retract his consent").

115. *See id.*

116. *See* Florida v. Jimeno, 500 U.S. 248, 251 (1991).

117. *Id.*

118. *Id.*

119. *See id.* at 249.

120. *See id.* at 250.

121. *Id.*

122. *See id.* at 251.

123. *Id.*

that individuals who consent may limit the scope of their consent, but any limits will be analyzed depending on what a typical, reasonable person would have understood the consent to apply to, not based on what the consenting individual subjectively believed.[124]

1. Coercion

If consent is coerced, it is not voluntary, making any search conducted pursuant to said consent unreasonable.[125] Courts consider the totality of the circumstances to determine whether consent was coerced.[126] Consent is invalidated because of coercion if acquired "by explicit or implicit means, by implied threat or covert force."[127] Harming, or threatening to harm, someone would obviously be considered coercive because valid consent cannot be obtained by force.[128] However, nonviolent conduct can also be coercive.[129] In *Schneckloth v. Bustamonte*, the Supreme Court explained that consent "granted only in submission to a claim of lawful authority . . . [has been] found . . . invalid and the search unreasonable."[130] The Court did not elaborate on the phrase "lawful authority," but it cited multiple cases in which an individual submitted to law enforcement authority.[131] Thus, the Court failed to clarify if it intended submission to lawful authority to include submission to non-law enforcement authority.[132]

124. *See id.*

125. *See* Bumper v. North Carolina, 391 U.S. 543, 550 (1968) ("Where there is coercion there cannot be consent.").

126. *See* Schneckloth v. Bustamonte 412 U.S. 218, 233 (1973) ("[I]t is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced.").

127. *Id.* at 228.

128. *See id.* at 223 (comparing voluntariness of consents to voluntariness of confessions and explaining that confessions "obtained by brutality and violence [are] constitutionally invalid").

129. *See Bumper*, 391 U.S. at 550 (finding a suspect's consent invalid when police lied about having a warrant to search the suspect's home).

130. *Schneckloth*, 412 U.S. at 233 (first citing *Bumper*, 391 U.S. at 548-49; then citing Johnson v. United States, 333 U.S. 10, 12 (1948); and then citing Amos v. United States, 255 U.S. 313, 316-17 (1921)).

131. *Id.; see also Bumper*, 391 U.S. at 549 (explaining that the prosecution cannot discharge its burden of showing consent was voluntary "by showing no more than acquiescence to a claim of lawful authority"); *Johnson*, 333 U.S. at 13 (finding a suspect's consent invalid when it was only given after police demanded to enter the suspect's home); *Amos*, 255 U.S. at 317 (holding an individual's consent to search her home invalid when police "demand[ed] admission to make search of [the home] under Government authority").

132. *See Schneckloth*, 412 U.S. at 233; *see also Bumper*, 391 U.S. at 549; *Johnson*, 333 U.S. at 13; *Amos*, 255 U.S. at 317.

2. *Ogletree's* Analysis of Consent

The court in *Ogletree* did not analyze whether Ms. Ogletree consented to the room scan, instead ruling in favor of Ms. Ogletree using an analysis of the special needs exception.[133] The court did not analyze consent at all because the University did not offer a consent argument in its motion for summary judgment, instead waiting to raise the argument until its motion for reconsideration.[134]

E. Special Needs Searches

Another type of search that does not require a warrant or probable cause is a special needs search.[135] In *New Jersey v. T. L. O.*, the Supreme Court carved out an exception for school officials to search students without needing a warrant or probable cause due to the unique context of the school setting.[136] Special needs searches occur in situations "beyond the normal need for law enforcement,"[137] when getting a warrant or probable cause is not practical.[138] When analyzing special needs searches, courts apply the balancing test originally articulated in *T. L. O.*[139] This test requires courts to balance "the individual's legitimate expectations of privacy and personal security [against] the government's need for effective methods to deal with breaches of public order."[140] The factors considered in this balancing test are: (1) "the nature of the privacy interest upon which the search [] at issue intrudes";[141] (2) "the character of the intrusion that is complained of";[142] and (3) "the nature and immediacy of the governmental concern at issue [], and the efficacy of th[e] means for meeting it."[143]

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133. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 614-18 (N.D. Ohio 2022); *see also infra* Section II.E.

134. *See* Ogletree v. Cleveland State Univ., No. 1:21-cv-00500, 2022 U.S. Dist. LEXIS 229053, at *4 (N.D. Ohio Dec. 22, 2022) ("In its summary judgment papers, however, Cleveland State did *not* argue consent although it had the opportunity to do so. Accordingly, it is not a proper basis for reconsideration.").

135. *See* New Jersey v. T. L. O., 469 U.S. 325, 337-43 (1985); *see also* Griffin v. Wisconsin, 483 U.S. 868, 873 (1987).

136. *See T. L. O.*, 469 U.S. at 340 (reasoning that "[t]he warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the . . . disciplinary procedures needed in the schools").

137. *Griffin*, 483 U.S. at 873 (quoting *T. L. O.*, 469 U.S. at 351 (Blackmun, J., concurring in judgment)).

138. *See id.*; *see also* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 653 (1995).

139. *See T. L. O.*, 469 U.S. at 337 (explaining that whether a search is reasonable hinges on the balance between the need to search against the invasion of privacy involved) (citing Camara v. Municipal Court of San Francisco, 387 U.S. 523, 536-37 (1967)).

140. *Id.*

141. *Vernonia*, 515 U.S. at 654.

142. *Id.* at 658.

143. *Id.* at 660.

1. *Ogletree*'s Special Needs Search Analysis

The court first determined that the privacy interest factor weighed in Ms. Ogletree's favor because "it is well settled that the home lies at the core of the Fourth Amendment's protections . . . ."[144] The court then determined that the character of the intrusion factor favored the University because the room scan was minimally intrusive, exceedingly short in duration, and Ms. Ogletree controlled the camera's movement around her room.[145] The district court in *Ogletree* split the third factor from *Vernonia* into two separate factors, meaning it considered the nature of the government's concern factor and efficacy of means factor separately.[146] The court reasoned that the government concern factor also favored the University because the University had a legitimate interest in preserving academic integrity.[147] Finally, the court determined that the efficacy of means factor favored Ms. Ogletree because (1) students could cheat using methods that room scans could not detect, and (2) other classes had already implemented alternative anti-cheat methods.[148] Although two factors weighed in favor of the student and two factors weighed in favor of the University, the court ultimately concluded that "M[s]. Ogletree's privacy interest in [her] home [outweighed] Cleveland State's interests in scanning [her] room."[149]

F. Other Arguments Addressed in Ogletree v. Cleveland State University

The district court ruled in favor of Ms. Ogletree based purely on its special needs search analysis.[150] Consent was not addressed because the University did not timely raise the argument.[151] The district court quickly disclaimed many of the University's other arguments. First, it addressed the University's argument, based on *California v. Ciraolo*, that room scans are not searches because they are routine.[152] The court disagreed with this argument because *Ciraolo* "buil[t] on the traditional notion that governmental officials, lawfully in a public place, do not conduct unlawful

144. Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 615 (N.D. Ohio 2022).
145. *See id.* at 615-16.
146. *See id.* at 615 (N.D. Ohio 2022); *see also Vernonia*, 515 U.S. at 660.
147. *See Ogletree*, 647 F. Supp. 3d at 616.
148. *See id.* at 616-17.
149. *Id.* at 617.
150. *See id.*; *see also supra* Section II.E.
151. *See* Ogletree v. Cleveland State Univ., No. 1:21-cv-00500, 2022 U.S. Dist. LEXIS 229053, at *4 (N.D. Ohio Dec. 22, 2022).
152. *See Ogletree*, 647 F. Supp. 3d at 610; *see also* California v. Ciraolo, 476 U.S. 207, 211-14 (1986) (finding no Fourth Amendment violation when police flew 1000 feet over a suspect's house without a warrant and saw marijuana plants because airline flights over houses are routine and the police were in a public place).

searches simply by observing things in plain view,"[153] but "[r]oom scans go where people otherwise would not, at least not without a warrant or an invitation."[154]

The University also argued based on *Kyllo v. United States* that room scans are not searches because the technology used to conduct room scans is in general public use.[155] The court insinuated that the University misinterpreted *Kyllo* as holding "that the use of a technology 'in general public use' could not be a Fourth Amendment search."[156] The district court explained that the Fourth Amendment's protections apply "even where new technologies make accessible places and information not otherwise obtainable without a physical intrusion."[157] Therefore, even if most people now carry cameras nearly all the time in the form of a phone or laptop, the government still "cannot use [these cameras] to see into an office, house, or other place not publicly visible without the owner's consent."[158] So, room scans can be searches, even when conducted with technology in general public use.[159] The University also made an argument based on *City of Ontario, California v. Quon*, but the court quickly discredited this argument because no other court had applied *Quon* outside of the employment context.[160]

The district court primarily focused on the University's argument, based on *Wyman v. James*, that room scans are not searches "because they are limited in scope, conducted for a regulatory or administrative purpose, and not coerced."[161] *Wyman* was a unique Fourth Amendment search case concerning "whether a beneficiary of the program for Aid to Families with Dependent Children (AFDC) may refuse a home visit by the caseworker without risking the termination of benefits."[162] The Supreme Court held that the caseworker visitation was not an unreasonable search.[163]

153. *Ogletree*, 647 F. Supp. 3d at 610.

154. *Id.* at 610-11.

155. *See id.* at 611; *see also* Kyllo v. United States, 533 U.S. 27, 40 (2001) (holding that when "the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant").

156. *Ogletree*, 647 F. Supp. 3d at 611.

157. *Id.* (citing Katz v. United States, 389 U.S. 347, 359 (1967)).

158. *Id.* at 611.

159. *See id.*

160. *See id.* at 611; *see also* City of Ontario v. Quon, 560 U.S. 746, 760 (2010) (holding that even if a city police officer had a reasonable expectation of privacy in text messages sent on a pager given to the officer to use for his job, the search was justified based on the special needs of the workplace because it was conducted for a non-investigatory, work-related purpose).

161. *Ogletree*, 647 F. Supp. 3d at 611; *see also* Wyman v. James, 400 U.S. 309, 326 (1971).

162. *Wyman*, 400 U.S. at 310.

163. *See id.* at 326.

Importantly, the Court noted that the visitation was not forced or compelled; denying visitation was not criminal; and if the visitation was denied, then it simply did not take place, and the aid would cease.[164] After *Wyman*, the Seventh and Ninth Circuits "held that home visits made pursuant to the administration of welfare benefits were not searches under the Fourth Amendment."[165] The University argued that *Wyman* should control for several reasons.[166] First, it argued that room scans are conducted for a regulatory purpose, not a criminal investigation purpose.[167] Also, the scans are not coerced because students can refuse to perform them, and the consequences of refusing to perform a scan are less severe than losing welfare benefits.[168] Moreover, the scans are limited in scope because they are brief and what is revealed is in the student's control.[169] Finally, the scans are less intrusive than a state officer physically entering a student's home.[170] In response, Ms. Ogletree argued "that *Wyman* did not create a Fourth Amendment exception for civil authorities."[171] To make this argument, Ms. Ogletree relied on *Andrews v. Hickman County, Tennessee*, a case in which "the Sixth Circuit held that social workers were governed by the Fourth Amendment's warrant requirement."[172]

Ultimately, the court agreed with Ms. Ogletree, first noting that the Supreme Court decided *Wyman* over 50 years ago, and Fourth Amendment jurisprudence has changed since 1971.[173] The court distinguished *Ogletree* from *Wyman* in that *Ogletree* arose in the higher education context, whereas *Wyman* arose in the welfare context.[174] The court explained that "making welfare benefits contingent, for all recipients, on a limited and consensual search to confirm expenditure of the funds for the interest of a child"[175] is "materially different" from "the privilege of college admission and attendance," which "does not involve a benefit made available to all

164. *See id.* at 317-18; *see also Ogletree*, 647 F. Supp. 3d at 612.

165. *Ogletree*, 647 F. Supp. 3d at 612 (referencing *S.L. v. Whitburn*, 67 F.3d 1299, 1307 (7th Cir. 1995) and *Sanchez v. City of San Diego*, 464 F.3d 916, 920-23 (9th Cir. 2006)).

166. *See id.*

167. *See id.*

168. *See id.*

169. *See id.*

170. *See id.*

171. *Id.* at 613.

172. *Id.*; *see also* Andrews v. Hickman Cnty., Tennessee, 700 F.3d 845, 859 (6th Cir. 2012) (holding that social workers are state actors governed by the Fourth Amendment and therefore may only enter and search a home without a warrant if an exception to the warrant requirement is met).

173. *See Ogletree*, 647 F. Supp. 3d at 613.

174. *See id.*

175. *Id.*

citizens as of right."[176] This conclusion did not mean that Ms. Ogletree won the case immediately, but rather that the Fourth Amendment applies to room scans.[177]

After determining that room scans are searches subject to the Fourth Amendment, the district court began its Fourth Amendment analysis by describing the reasonableness standard, the fact that a warrant is typically required, and the background for the special needs exception.[178] Then, the court articulated four factors for analyzing special needs searches: "(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."[179] The court analyzed each factor and determined that the test weighed in Ms. Ogletree's favor, making the room scan an unreasonable search.[180]

The district court then evaluated the two remedies Ms. Ogletree sought: declaratory judgment and injunction.[181] *Ogletree* was not a class action suit, meaning that other students were not parties to the suit.[182] The court consequently refused to issue a remedy that would apply to students other than Ms. Ogletree.[183] The court's use of the special needs balancing test was specific to Ms. Ogletree's situation, and no other students had complained about the room scans.[184] Therefore, the court did not find that extending relief past Ms. Ogletree individually was necessary.[185] The court granted Ms. Ogletree's request for declaratory judgment, officially declaring that the University violated her Fourth Amendment rights by conducting the room scan.[186] Despite potential incidental benefits to other students, the court formally limited this declaration to Ms. Ogletree only.[187]

176. *Id.*

177. *See id.* at 614.

178. *See id.* at 614-15.

179. *Id.* at 615.

180. *See id.* at 617 ("Based on consideration of these factors, individually and collectively, the Court concludes that M[s]. Ogletree's privacy interest in [her] home outweighs Cleveland State's interests in scanning [her] room.").

181. *See id.*

182. *See id.* at 618. However, Ms. Ogletree was not the only student who was asked to perform a room scan because any other student in her chemistry class who took the exam were asked to perform the same scan. *See id.* at 608-09.

183. *See Ogletree*, 647 F. Supp. 3d at 618 ("Therefore, the question becomes whether a remedy that extends beyond M[s]. Ogletree is necessary to provide [her] the relief to which [she] is entitled. It is not.").

184. *See id.*

185. *See id.*

186. *See id.* at 619 (declaring Ms. Ogletree "has rights under the Fourth Amendment, which apply to the room scans Cleveland State uses in the administration of remote exams and other assessments, and that M[s]. Ogletree's privacy interest in [her] home outweighs Cleveland State's interests in scanning [her] room").

187. *See id.*

The district court also granted the injunction in favor of Ms. Ogletree.[188] The University argued that the injunction was unnecessary because it intended to exempt Ms. Ogletree from all room scans for the foreseeable future.[189] However, the court did not accept this argument, reasoning that Ms. "Ogletree's constitutional rights do not depend on the grace of Cleveland State."[190] The court noted that no other adequate remedy at law existed because "the Eleventh Amendment bars an award of damages," and quantifying damages would be nearly impossible in this case regardless.[191] Therefore, the district court granted the injunction.[192]

III. ANALYSIS

Because the Sixth Circuit dismissed *Ogletree* on procedural grounds,[193] the question as to whether requiring a student to use a camera to show their surroundings before an online exam is constitutional remains open. COVID-19 showcased that predicting when another global or national crisis could occur is difficult, pushing universities to continuously improve their online testing methods.[194] So, the underlying legal question will not be going away anytime soon.

A. What the District Court Could Have Done Differently

Ogletree was vacated because of a procedural issue, meaning the Sixth Circuit made no substantive ruling about the district court's analysis.[195] Therefore, the district court's initial analysis remains the only federal court analysis on the constitutionality of room scans.[196] Although the case will likely not bind other courts examining the issue, the District Court for the Northern District of Ohio may use the same or similar analysis for future cases.[197]

188. *See id.* at 620. The district court used the typical four factor balancing test for evaluating whether an injunction is appropriate. *See id.* at 619.

189. *See id.* at 620.

190. *Id.*

191. *Id.*

192. *See id.* (enjoining the university "in connection with any exam, test, or other assessment, from subjecting M[s]. Ogletree to a room scan that is administered without offering a reasonable alternative or, alternatively, without [her] express consent").

193. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *2 (6th Cir. Dec. 4, 2023) (vacating the district court's ruling because the plaintiff passed away, making the issue moot).

194. *See* BERGER ET AL., supra note 16; *see also* CAMERON ET AL., supra note 17.

195. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, *2 (6th Cir. Dec. 4, 2023).

196. *See id.*

197. *See id* (vacating the district court's decision on procedural grounds).

1. Did Ms. Ogletree Consent to the Search?

The University failed to raise a timely consent argument, so the district court did not analyze consent.[198] However, the district court could have chosen to address the consent issue *sua sponte*. When looking at room scans through consent search analysis, it appears that Ms. Ogletree consented to the search.

Because consent can be inferred from an individual's words or conduct,[199] the court should have first examined Ms. Ogletree's words and conduct before and during the room scan. Before the scan, Ms. Ogletree emailed some concerns to her professor, discussed the concerns with one of the University's attorneys, and chose to take the chemistry course.[200] After she learned the scan would occur, Ms. Ogletree expressed her worry that she would not have time to secure all of her things prior to the scan, but ultimately complied with the scan without telling the proctor about any of her prior concerns.[201] These facts show a pattern of Ms. Ogletree's distaste for the room scan policy, but they still may show that she consented to the search.[202]

Some of Ms. Ogletree's conduct suggests that she consented to the search. First, she was informed of her right to refuse the room scan and received several other options if she wanted to refuse, none of which included failing the course or facing discipline of any kind.[203] One of the options offered to Ms. Ogletree was simply taking another section of the same course, meaning she could have taken the same chemistry course with a different professor who had different exam policies.[204] Ms. Ogletree's assertion in her email to King, an attorney of the University, that other students may not know of their right to refuse lacks legal relevance.[205] An individual does not need to be informed of their right to refuse for their subsequent consent to be valid.[206] Also, *Ogletree* was not brought as a class action suit,[207] meaning the rights of students other than Ms. Ogletree are not relevant. Even so, King expressly informed Ms.

198. *See id.* at *4.

199. *See* United States v. Jones, 254 F.3d 692, 695 (8th Cir. 2001).

200. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 608 (N.D. Ohio 2022); *see also* Notice of Filing Deposition of Aaron Ogletree at Ex. H., p.2, Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, (N.D. Ohio 2022) (No. 1:21-cv-00500).

201. *See Ogletree*, 647 F. Supp. 3d at 609.

202. *See id.* at 608 (N.D. Ohio 2022) (noting Ms. Ogletree's disputes over the room scan policy).

203. *See* Notice of Filing Deposition of Aaron Ogletree at Ex. H., p.2, Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, (N.D. Ohio 2022) (No. 1:21-cv-00500).

204. *See id.*

205. *See id.* at Defendants' Ex. C.

206. *See* Schneckloth v. Bustamonte 412 U.S. 218, 227 (1973).

207. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 618-19 (N.D. Ohio 2022).

Ogletree about her right to refuse.[208] The email exchange with King made Ms. Ogletree aware that she may be subjected to a room scan when choosing to take the course and of the other options available to her that would not have included a room scan.[209] Thus, even if Ms. Ogletree personally disagreed with the room scan,[210] an attorney had informed her that taking the course may legally be considered consenting to the scan, and she chose to take the course anyway.[211] These actions illustrate her consent to the scan.

Second, Ms. Ogletree controlled everything shown to the camera during the search because she was the one physically moving the camera.[212] Room scans necessarily work this way. The student must physically pick up and move the camera around, not the proctor, because the entire point of the scan is to deter cheating when the proctor is not physically present in the same room. Therefore, Ms. Ogletree limited the scope of her consent by choosing where to point the camera.[213] If Ms. Ogletree did not want to reveal something to the camera, she could have chosen not to point the camera at it. Also, Ms. Ogletree could have removed anything she did not want the camera to see in the hours between the warning and the scan itself. Scope of consent is analyzed objectively, not through the subjective intent of the consenter.[214] Thus, the question is whether a reasonable person asked to complete a room scan would expect the scope of their consent to cover everything at which they aimed the camera. A reasonable person would likely expect their consent to cover everything they choose to show the camera.[215] Again, if a student did not want something in view of the camera, then the student simply should not point the camera at it. However, this reasoning could be problematic if the proctor then asked to see something that was not shown by the initial scan. Such a request would likely be considered a second room scan because the student would need to complete the entire room scan a second time.

208. *See* Notice of Filing Deposition of Aaron Ogletree at Ex. H., p.2, Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, (N.D. Ohio 2022) (No. 1:21-cv-00500).

209. *See id.*

210. *See id.* at Defendants' Ex. C.

211. *See id.* at Ex. H., p.2.

212. *See Ogletree*, 647 F. Supp. 3d at 612 (explaining that "the student chose where in the house to take the exam and where in the room to direct the camera during the scan").

213. *See* Painter v. Robertson, 185 F.3d 557, 567 (6th Cir. 1999) (explaining that the consenting party can limit the scope of their consent).

214. *See* Florida v. Jimeno, 500 U.S. 248, 251 (1991).

215. *See id.* at 250 ("The scope of a search is generally defined by its expressed object.") (citing United States v. Ross, 456 U.S. 798, 799 (1982)). The object of the room scan was to see if there was anything impermissible in the room, therefore the scope of the search Ms. Ogletree consented to would cover anything shown to the camera. *See id*.; *see also* Ogletree, 647 F. Supp. 3d at 608-09.

Therefore, the entire Fourth Amendment search inquiry would then apply to the second scan, which would entail another fact-specific inquiry.[216]

Another issue arises from Ms. Ogletree's failure to inform the proctor that she did not want to do the scan.[217] Ms. Ogletree appears to have acted exactly as the students who had no issue with the scan did: she complied with it.[218] How could the proctor be expected to know that Ms. Ogletree did not want to consent when Ms. Ogletree acted exactly like the students who clearly consented? Ms. Ogletree also clearly did not ask her professor or proctor what would happen if she refused to do the scan because "[t]he proctor testified that in the event of a refusal, she would allow the student to take the test but notify the professor that the student refused to perform the room scan."[219] If the proctor made Ms. Ogletree believe she did not have the right to say no or threatened her with failing the exam, a coercion issue might have arisen because Ms. Ogletree could have argued she felt pressure to submit to the proctor's lawful authority.[220] However, the proctor seemingly just asked Ms. Ogletree to perform the scan and Ms. Ogletree complied unquestioningly.[221] Because Ms. Ogletree did not ask about the consequences of refusal, no factfinder could ascertain what the professor would have done if she had refused. The professor could have allowed Ms. Ogletree to complete the exam as normal, or the professor could have failed her.

Consider a hypothetical in the law enforcement context, where Fourth Amendment searches are common: imagine that *X* went to the local police station and informed a police sergeant that she did not want to consent to any vehicle searches if she was pulled over in the future. A month later, *X* gets pulled over, and another police officer, who has no idea of *X*'s previous opposition to vehicle searches, asks for *X*'s permission to search her car. *X* allows the car to be searched. In this hypothetical, *X* would struggle to successfully argue that she did not consent to the vehicle search. *X* allowed the search to occur, and consent in the context of vehicle searches is typically given verbally after the police officer asks for permission to search the car.[222] The hypothetical does not perfectly match

216. *See Ogletree*, 647 F. Supp. 3d at 618 (explaining that the analysis "turns to an extent on circumstances particular to [Ms. Ogletree]").

217. *See id.* at 609.

218. *See id.*

219. *Id.* at 608.

220. *See supra* Section II.D.1. (discussing the consequences of a government agent acting as if the suspect cannot refuse to consent).

221. *See Ogletree*, 647 F. Supp. 3d at 609 ("At the start of the exam, the proctor asked M[s]. Ogletree to perform a room scan of [her] bedroom, and M[s]. Ogletree complied.").

222. *See, e.g.*, Ohio v. Robinette, 519 U.S. 33, 36 (1996) (holding that a suspect's consent to a vehicle search was valid when police did not inform him he was free to go); *see also, e.g.*, Schneckloth v. Bustamonte 412 U.S. 218, 227 (1973) (determining a warrantless vehicle search conducted pursuant to consent was valid); Almeida-Sanchez v.

the real situation in *Ogletree*, but it illustrates some of the issues with Ms. Ogletree's argument that because she objected to a room scan a month earlier, her compliance with a room scan later did not constitute consent.

Because the professor removed the room scan policy from the syllabus, Ms. Ogletree received little notice that the scan would occur.[223] Therefore, she may not have thought she would need to transfer to a different section to avoid a room scan.[224] Ms. Ogletree could use this lack of notice to argue that she agreed to take the course on the condition that the room scan policy was no longer in place. Again, the scope of consent is limited by what a reasonable person would have understood themselves as consenting to.[225] Both sides have a solid argument here because Ms. Ogletree enrolled in the class with the room scan policy still on the syllabus, meaning that when she signed up to take the course, the policy was in place.[226] The case facts do not clearly indicate whether Ms. Ogletree ever considered switching to another class that did not have a room scan policy.[227] However, a reasonable student would likely not expect to face a room scan after disputing the policy and then seeing it removed from the syllabus. Thus, Ms. Ogletree's decision to continue taking a class that she did not believe had a room scan policy would not necessarily constitute consent to the room scan. Still, her other conduct, such as not asking the professor to be exempt from the scan as per their previous discussions and not expressing any concerns to the proctor who administered the scan, illustrates Ms. Ogletree's consent.[228]

a. Was Ms. Ogletree Coerced?

Ms. Ogletree's conduct indicates that she consented to the room scan.[229] However, there is still a cognizable argument that Ms. Ogletree felt coerced into the scan because of the unequal power dynamics between her and her proctor and professor. If consent is coerced, it is not valid, thus making the search unreasonable.[230] Valid consent may not be acquired through the consenter's submission to lawful authority.[231] The individual's knowledge of their right to refuse is not required, but the government actor

United States, 413 U.S. 266, 273 (1973) (concluding that a vehicle search conducted without a warrant, probable cause, or consent violates the Fourth Amendment).

223. *See Ogletree*, 647 F. Supp. 3d at 609 (noting that Ms. Ogletree was given around two hours' notice that a room scan would occur).

224. *See id.* at 608.

225. *See* Florida v. Jimeno, 500 U.S. 248, 251 (1991).

226. *See Ogletree*, 647 F. Supp. 3d at 608.

227. *See id.*

228. *See Ogletree*, 647 F. Supp. 3d at 609.

229. *See supra* Section III.A.1.

230. *See supra* Section II.D.1.

231. *See supra* Section II.D.1.

conducting the search cannot act like the individual has no right to refuse the search.[232] Therefore, Ms. Ogletree could have argued that her professor used her authority over Ms. Ogletree to claim a right to search Ms. Ogletree's bedroom, and that Ms. Ogletree could not refuse. However, coercion via lawful authority has never been applied to the education context, instead focusing largely on the relationship dynamics between police officers and citizens.[233] The district court declined to apply *Quon* to room scans because *Quon* focused heavily on the employment context and had never been applied in other contexts.[234] Because coercion via lawful authority is so specific to the law enforcement context,[235] the doctrine similarly should not apply here, especially when evidence showed that Ms. Ogletree was well aware of her constitutional rights.[236]

2. *Ogletree*'s Modified Application of Special Needs Search Analysis

The district court applied a modified version of the special needs test from *Vernonia*, which split the third *Veronia* factor into two distinct factors.[237] This formulation of the test affected the outcome of the case because the district court found that one of the split factors favored the plaintiff and one favored the defendant.[238]

The district court found that the University had a legitimate interest in promoting academic integrity during exams, but that room scans do not sufficiently promote that interest.[239] Regarding the efficacy factor, the district court was not satisfied with the University's lack of statistics to back up the effectiveness of room scans, especially with alternative methods available.[240] However, the court acknowledged that the novelty of the rooms scan policy could account for the lack of statistics, as the timing did not allow for comprehensive evaluation.[241] Still, the court did

232. *See id.*; *see also* Schneckloth v. Bustamonte 412 U.S. 218, 227 (1973).

233. *See supra* Section II.D.1. (explaining that submission to lawful authority has only been recognized in the law enforcement context).

234. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 611 (N.D. Ohio 2022).

235. *See supra* Section II.D.1.

236. *See* Notice of Filing Deposition of Aaron Ogletree at Ex. H., p.2, Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, (N.D. Ohio 2022) (No. 1:21-cv-00500) (showing that Ms. Ogletree had concerns about her constitutional rights and was informed of her right to refuse to consent).

237. *See Ogletree*, 647 F. Supp. 3d at 615; *see also* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 660 (1995); Norris v. Premier Integrity Sols., Inc., 641 F.3d 695, 699 (6th Cir. 2011) (applying the traditional three factor special needs search analysis).

238. *See Ogletree*, 647 F. Supp. 3d at 616-17.

239. *See id.*

240. *See id.*

241. *See id.* at 617.

not address the efficacy of any other methods.[242] It does not make sense for the court to assume that other methods would be more effective when there is no evidence to that effect.[243]

While the court did not discuss alternative anti-cheating methods in much detail, it suggested that a final project or paper would alleviate the need for room scans.[244] Yet, this suggestion would not address the types of cheating that room scans are designed to protect against. Room scans specifically deter students from using impermissible notes, study aids, or other people to cheat.[245] A final paper would not prevent students from accessing notes or getting help from others. In fact, a final paper could cause even more cheating issues because students could hire someone else to write their papers,[246] or even use artificial intelligence tools to write their papers.[247]

Another solution the court briefly discusses is having the exam proctor watch the student via video during the exam, but this method creates the same constitutional issues as a room scan.[248] The monitoring would still likely be considered a search under the court's analysis because both methods involve video recording the student in their own home.[249] The big difference between the methods is that the search created through video proctoring would last significantly longer, lasting the entire duration of the exam rather than just a minute at the start. Moreover, the camera would remain static throughout. Like the brief room scan in *Ogletree*,[250] a proctor watching a student during an exam would still be a search, and thus similar Fourth Amendment issues would arise.

B. The Future of Room Scans

The future of room scans is uncertain because the Sixth Circuit ultimately vacated *Ogletree* for procedural reasons.[251] Courts need

242. *See id.*
243. *See id.*
244. See *id.*
245. *See id.* at 616.
246. *See* Tovia Smith, *Buying College Essays Is Now Easier Than Ever. But Buyer Beware*, NAT'L PUB. RADIO (Apr. 10, 2019), https://perma.cc/EZ6A-4CDU (explaining that paying others to write an essay for you has become a global industry); *see also, e.g.*, PAPERSOWL, *Pay Someone to Write My Research Paper Online* (2024), https://perma.cc/Y458-GL39 (offering students "complete confidentiality, 100% plagiarism-free papers, with a full money-back guarantee").
247. *See* Megan Henry, *Nearly a Third of College Students Used ChatGPT Last Year, According to Survey*, OHIO CAP. J., (Sept. 25, 2023) https://perma.cc/56PB-3VSY.
248. *See Ogletree*, 647 F. Supp. 3d at 616-17.
249. *See id.* at 614 (explaining why room scans are searches for purposes of the Fourth Amendment).
250. *See id.* at 609.
251. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *2 (6th Cir. Dec. 4, 2023).

guidance regarding what legal standard should apply to room scans and, universities need guidance when deciding what anti-cheat policies they want to implement.

1. What Courts Should Do in the Future

Ogletree was fact-specific, meaning that the court found the following facts important: (1) Ms. Ogletree did not have anywhere else to take the exam, (2) the scan occurred in Ms. Ogletree's bedroom, and (3) the room scan policy had been removed from the syllabus.[252] It is impossible to predict how the district court would have ruled if the plaintiff in *Ogletree* had brought a class action lawsuit because its special needs analysis followed Ms. Ogletree's situation so specifically.[253] Thus, the district court did not reason that all room scans are *per se* unreasonable searches, just that the University's room scan policy, as applied to Ms. Ogletree, was unreasonable.

Although the court did not analyze consent in *Ogletree* for procedural reasons,[254] consent could apply in the room scan context, as it does in other searches.[255] Applying a traditional consent analysis suggests that Ms. Ogletree consented,[256] which illustrates part of the problem with the consent analysis. Namely, if Ms. Ogletree, who did not like the idea of doing a room scan at all,[257] legally consented, then how would anyone *not* consent? The legal precedent that individuals do not have to be informed of their right to refuse consent for it to be valid exacerbates this problem.[258] Issues like this are partly why commentors have so often criticized consent doctrine, especially when accidentally consenting to a search could reveal incriminating evidence.[259] Some commentators have argued that the "voluntariness" requirement was never about whether the choice was voluntarily made at all, but rather served as a method to prevent police misconduct.[260] The emphasis on police misconduct highlights a problem

252. *See Ogletree*, 647 F. Supp. 3d at 608-09, 618.

253. *See id.* at 618 (declining to extend relief to other students because the "case also turns to an extent on circumstances particular to [Ms. Ogletree]").

254. *See* Ogletree v. Cleveland State Univ., No. 1:21-cv-00500, 2022 U.S. Dist. LEXIS 229053, at *4 (N.D. Ohio Dec. 22, 2022).

255. *See supra* Section III.A.1.

256. *See supra* Section III.A.1.

257. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 608 (N.D. Ohio 2022) (noting Ms. Ogletree's disputes over the room scan policy).

258. *See* Schneckloth v. Bustamonte 412 U.S. 218, 227 (1973).

259. *See, e.g.*, Sommers & Bohns, *supra* note 112, at 2019; *see also, e.g.*, Burke, *supra* note 112, at 525-31; Simmons, *supra* note 108 at 775 (calling the focus on voluntariness "irredeemably flawed" from its inception).

260. *See* Simmons, *supra* note 108, at 779 (arguing that "the voluntariness requirement is meant to prevent police misconduct, not to ensure that the defendant is making a subjectively free choice").

central to this issue: although any government agent, even a college professor, can violate the Fourth Amendment, courts have developed nearly all Fourth Amendment precedent specifically for the law enforcement context.[261] This jurisprudential gap demonstrates why the special needs doctrine is so important; it acknowledges the need to protect peoples' Fourth Amendment rights when the government performs a search without law enforcement justification.[262] However, absent a valid special needs search, an individual still may have consented to the search,[263] but traditional consent analysis does not consider any of the unique qualities of the school environment. Therefore, this Comment proposes that the courts carve out yet another exception to the Fourth Amendment warrant requirement to address the unique situation in which a student consents to a search at school. Teachers and professors have an unequal power dynamic with their students.[264] Students look to their teachers for guidance and education, sometimes on matters outside of the classroom.[265] The very nature of the student-teacher relationship implies that the teacher knows more than the student, at least regarding the teacher's academic specialty. To account for this power imbalance, teachers and professors should be required to inform students of their right to refuse to consent, and they should clarify that they will take no adverse action against the student for exercising said right. This notice would mitigate the unequal power between the student and teacher and could turn the situation into a teaching moment.

2. What Universities Should Do in the Future

How far a university can pry into students' lives in the name of academic integrity remains an unresolved question.[266] However, universities must continue administering exams, and they must prevent students from cheating on these exams. The most straightforward solution would be to ban all online testing, which would avoid the complex

261. *See, e.g.*, United States v. Jones, 565 U.S. 400, 402-403 (2012) (concerning cocaine trafficking); Katz v. United States, 389 U.S. 347, 348 (1967) (concerning illegal gambling); Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (concerning criminal fraud); *see also* New Jersey v. T. L. O., 469 U.S. 325, 337-43 (1985) (creating the special needs doctrine specifically to address searches outside of the law enforcement context).

262. *See supra* Section II.E.1.

263. *See supra* Section III.A.1.

264. *See, e.g.*, *Eloise Symonds*, *An 'Unavoidable' Dynamic? Understanding the 'Traditional' Learner-Teacher Power Relationship Within a Higher Education Context*, 47 BRIT. J. SOCIO. EDUC. 1070, 1075-76 (2021) (discussing the unequal power between students and professors in the higher education context).

265. *See id.*

266. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *3 (6th Cir. Dec. 4, 2023).

constitutional issue by eliminating the need for room scans entirely.[267] If universities only allowed in-person exams, online testing policies would no longer be required, and thus the policies' constitutionality would no longer matter. However, this solution ignores why universities use remote testing and would obviously not work if another national emergency, like a pandemic, arose in the future. Rather than eliminating online testing altogether, the better approach would be to develop a method that both preserves academic integrity and respects students' constitutional rights.

One simple solution is to require that students sign express consent forms at the beginning of any courses that will require room scans.[268] Ideally, the form would thoroughly explain what the room scan is, how proctors conduct the scan, why they use the scan, and who may access the scan. To guard against coercion, the consent form should inform students of their right to refuse and explain that they would experience no negative consequences for refusal. This provision would preclude students from claiming their university used its lawful authority to pressure them into consenting.[269] Students who sign the form would expressly consent to the search, which would allow courts to go directly to consent analysis. Thus, universities would not need to worry about the fact-specific, unpredictable special needs search analysis.[270] The two main concerns with a consent form approach are (1) what to do with students who do not want to consent and (2) how to ensure the consent is not coercive. For example, a university could state that any student who does not consent to a room scan must take a different course, but this requirement could be problematic if the online exam course is required for graduation. The student could argue that the forced choice between not graduating or subjecting themselves to the room scan is coercive.[271] A fairer solution would be to give the students the choice between consenting to a room scan for online exams or taking the same exam in-person with a proctor, which would ensure that they could take the same course with a similar testing experience. However, offering in-person alternatives would not be a perfect solution long-term because it does not address the health concerns underlying the widespread use of online exams during the COVID-19 pandemic.[272]

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267. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 607-08 (N.D. Ohio 2022) (noting that the University's exam policy only includes room scans for online exams).

268. *See* HONORLOCK, *Best Practices for Online Test Room Scans* (Sept. 29, 2022), https://perma.cc/ZYH3-CPCZ (recommending that universities that want to use room scans to get written consent from students beforehand).

269. *See supra* Section II.D.1.

270. *See Ogletree*, 647 F. Supp. 3d at 607-08 (using a fact-specific analysis and modifying the special needs test).

271. *See supra* Section II.D.1. (discussing that coercion can be accomplished implicitly).

272. *See* BERGER ET AL., *supra* note 16; *see also* CAMERON ET AL., *supra* note 17.

Universities have a legitimate interest in preserving academic integrity, and allowing students who do not consent to a room scan to take the online exam without any anti-cheat methods would defeat that interest.[273] Then, students wanting to cheat could just refuse to consent and then cheat without their university having any way to detect the cheating. Room scans are seemingly most effective when used in conjunction with other anti-cheat methods. The court in *Ogletree* even noted that under the University's policy, students could cheat after the room scan anyway because the camera was not required to stay on throughout the exam.[274] So, universities could allow students to refuse to do the room scan, but still require the student to otherwise prove that they are not cheating.[275]

Universities that want to use room scans could alternatively allow students who do not want a room scan in their homes or bedrooms to take the exam remotely in a special test-taking room or facility. This requirement would not stop a court from deeming room scans as searches,[276] but the requirement would change a court's underlying reasonableness inquiry, which considers the individual's expectation of privacy where the search occurred. In *Ogletree,* the court emphasized that the search occurred in Ms. Ogletree's bedroom because individuals have a long-recognized strong expectation of privacy in their homes.[277] By moving the room scan to a special test-taking room, the university could inform the student that they have a diminished expectation of privacy in said room, making the room scan a reasonable search.

Overall, universities have many ways to address this issue going forward that should both preserve their interest in promoting academic integrity and respect their students' constitutional rights. Still, universities continuing to use room scan policies without any changes could be liable for violating the Fourth Amendment if courts use a similar analysis as the district court in *Ogletree*.[278]

273. *See Ogletree*, 647 F. Supp. 3d at 616 (recognizing that the University "has a legitimate purpose in preserving the integrity of its tests").

274. *See id.* 616-17.

275. *See id.* at 607 (explaining the University's other existing online exam anti-cheat methods).

276. *See* Ogletree v. Cleveland State Univ., No. 1:21-cv-00500, 2022 U.S. Dist. LEXIS 229053, at *6 (N.D. Ohio Dec. 22, 2022) (explaining that having the option to take the exam in another location does not change the underlying analysis as to whether a room scan conducted in the student's bedroom was a search).

277. *See supra* Section II.C.3.

278. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 617 (N.D. Ohio 2022).

C. *Do Room Scans as Searches have Implications in the Law Enforcement Context?*

Room scans are a type of special needs search, meaning that they fall outside of the typical law enforcement context.[279] However, law enforcement practices constantly evolve, so room scans could have implications even in the law enforcement context. For example, what if a police officer knocked on someone's front door, handed the person a camera, and then asked the person to record the inside of the home? This tactic would likely not be considered a special needs search because police typically investigate homes for evidence of a crime. Consequently, the police would either need a warrant or another exception to the warrant requirement to conduct the video search.[280] One such exception is consent.[281] If the person took the camera and complied, the police could then argue that the person impliedly consented to the search by filming the video, even if the person was not aware that they could have refused. Hypotheticals like this one illustrate why courts should not create loopholes when analyzing Fourth Amendment search precedent. Any expansion of warrantless searches must be treated especially carefully.

VI. CONCLUSION

Education changes constantly, and COVID-19 spurred a massive spike in online teaching.[282] New teaching methods bring new challenges, and one such challenge is how to prevent students from cheating during online exams taken outside of the classroom. Room scans help to solve this problem.[283] However, room scans might clash with the traditional right to privacy in the home, a right that initially inspired the United States to seek independence from England in the first place.[284]

Is it reasonable for a university, as a government entity, to ask a student to reveal the contents of their own bedroom? In *Ogletree*, the District Court for the Northern District of Ohio answered this question in the negative, ultimately ruling for the student and reasoning that the privacy interests in the student's bedroom outweighed the University's legitimate interest in preserving academic integrity.[285] However,

279. *See* New Jersey v. T. L. O., 469 U.S. 325, 337-43 (1985); *see also* Griffin v. Wisconsin, 483 U.S. 868, 873 (1987).

280. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (explaining that warrantless searches are *per se* unreasonable).

281. *See supra* Section II.D.

282. *See* BERGER ET AL., *supra* note 16; *see also* M. CAMERON ET AL., *supra* note 17.

283. *See* Ogletree v. Cleveland State Univ., 647 F. Supp. 3d 602, 606 (N.D. Ohio 2022).

284. *See supra* Section II.C.3; *see also* Riley v. California, 573 U.S. 373, 403 (2014).

285. *See Ogletree*, 647 F. Supp. 3d at 617.

procedural issues prevented the Sixth Circuit from answering critical questions regarding the case.[286] Now, universities do not know how far they can go to protect academic integrity, and students do not know whether their universities can constitutionally ask to peer into their bedrooms.

Given the uncertainty of the law on this issue, universities will likely approach room scans in the future with caution. Universities have several options to mitigate the risk of future liability, such as using an express consent form or offering separate test-taking facilities.[287] Regardless of how universities choose to handle this issue going forward, universities who continue using room scans should take care not violate their students' constitutional rights.

286. *See* Ogletree v. Bloomberg, Nos. 22-3795/23-3043/23-3081, 2023 U.S. App. LEXIS 32000, at *2 (6th Cir. Dec. 4, 2023).

287. *See supra* Section III.B.2.