United States Senate
WASHINGTON, DC 20510

December 3, 2020

Mr. Sebastian Vos
Chief Executive Officer, ExamSoft
5001 LBJ Freeway
Suite 700
Dallas, Texas 75244

Dear Mr. Vos,

We write regarding the privacy, accessibility, and equity of students and professionals using your testing software, ExamSoft. As education has shifted online in response to COVID-19, schools and professional licensing programs have turned to software solutions for tests and professional exams. However, according to recent media reports and personal stories, students – particularly students of color and with disabilities – have faced alarming issues in using the software, been locked out of tests, or wrongly accused of cheating. We write to request information on the steps that your company has taken to protect the civil rights of students and ensure that ExamSoft is not creating barriers for students' futures.

ExamSoft and similar remote testing products have filled gaps in distance learning and have been used by colleges, universities, and state boards of examiners to conduct online test sessions, such as midterms or professional certifications. Importantly, such products offer teachers and administrators features that claim to protect against cheating and to monitor the testing environment. For example, many products use facial recognition through the test-taker's webcam to determine whether they are paying attention, leaving the computer area, or looking elsewhere. For those suspected of cheating, the ramifications can be consequential, such as receiving failing grades or being forced to retake the test in person.

As we have seen far too often, students have run head on into the shortcomings of these technologies—shortcomings that fall heavily on vulnerable communities and perpetuate discriminatory biases. Students of color, and students wearing religious dress, like headscarves, have reported issues with the software's inability to recognize their facial features, temporarily barring them from accessing the software. Three students taking the bar exam, one using Proctorio to take a university exam, and two using ExamSoftpublicly shared their frustrating

experiences struggling with facial identification.[1,2] It is critical that bias, including racial and gender disparities, be addressed expeditiously to ensure that our students of color are not facing additional barriers in their fields.

Just as alarmingly, students have reported egregious situations in which monitoring features have flagged individuals with disabilities or physical conditions, such as tic disorders or muscle reflexes, as suspicious, and in which virtual "proctors" failed to accommodate students' disabilities.[3] One student using Proctorio was concerned that her tic disorder would be flagged by the software as cheating, since it happens frequently in high stress situations, like testing.[4] In addition, one student using ProctorU described a scenario in which the virtual proctor failed to recognize that the student was eligible for accommodations based on their disability, an ADHD diagnosis, forcing the student to present their documentation, not once, but twice: once at the beginning of the exam period and a second time when the exam system glitched.[5]

These instances expose three issues plaguing individuals with disabilities: software that incorrectly flags their disability as cheating, software glitches that may impede or interrupt their performance, and unprepared or ill-trained proctors who are not familiar with students' accommodations. We are concerned that the software has not been designed to be inclusive and mindful of all students' needs and proctors are not getting the training or information they need to adequately work with and oversee students taking the exams.

Finally, there remain concerns with student safety and privacy. Students are not only expected to sit for exams that are being recorded or observed by an unknown virtual proctor, but also install intrusive software and provide extensive personal information – such as images of their home, photos of their identification, and personal information regarding their disabilities. While all this information can be useful for maintaining integrity in testing and ensuring that student needs are being met, questions remain about where and how this data is being used before, during, and after tests, by both your company, the virtual proctors, and testing administrators. Students relying on your software to further their education have put a great deal of trust in you to reserve their privacy. You must be able to demonstrate that you are respecting students' privacy.

We all know that midterms, finals, and board exams are stressful for students, even more so during a pandemic that has upended lives and taken a significant toll on young adults' mental health. Faulty testing and false accusations are not only an added source of stress for test takers

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[1] Swauger, Shea. "Software That Monitors Students during Tests Perpetuates Inequality and Violates Their Privacy." MIT Technology Review, August 7, 2020. https://www.technologyreview.com/2020/08/07/1006132/software-algorithms-proctoring-online-tests-ai-ethics/.
[2] Patil, Anushka, and Jonah Engel Bromwich. "How It Feels When Software Watches You Take Tests." New York Times, September 29, 2020. https://www.nytimes.com/2020/09/29/style/testing-schools-proctorio.html.
[3] Patil, Anushka, and Jonah Engel Bromwich. "How It Feels When Software Watches You Take Tests." New York Times, September 29, 2020. https://www.nytimes.com/2020/09/29/style/testing-schools-proctorio.html.
[4] Patil, Anushka, and Jonah Engel Bromwich. "How It Feels When Software Watches You Take Tests." New York Times, September 29, 2020. https://www.nytimes.com/2020/09/29/style/testing-schools-proctorio.html.
[5] Patil, Anushka, and Jonah Engel Bromwich. "How It Feels When Software Watches You Take Tests." New York Times, September 29, 2020. https://www.nytimes.com/2020/09/29/style/testing-schools-proctorio.html.

during this time, but also can be a barrier to success that can have real-life economic and social consequences, including unemployment and failure to graduate on time.

As schools continue to find options to keep students and teachers safe during this pandemic, virtual learning and remote testing will remain a predominant choice for schools. In fact, remote testing could remain with us well beyond this global emergency. However, Congress has recognized this profound responsibility to protect privacy and equity in education through the Family Educational Rights and Privacy Act (FERPA), the Higher Education Act, Title II of the Americans with Disabilities Act, and it is critical that virtual testing systems and other education software platforms abide by these laws. We must ensure that testing protocols are not leaving students behind, particularly students of color and those learning with disabilities. We ask that you respond to the following questions:

1. What features and technologies does your product offer to schools and test administrations to detect student's attention, identify possible cheating, and otherwise monitor the test environment?

2. What steps have you taken to ensure that any features related to test monitoring is accurate for all students regardless of any religious dress, like headscarves, they may be wearing, skin tone, gender, hairstyle, and other physical characteristics? How do you measure and review this accuracy?

3. What steps have you taken to ensure that any features related to test monitoring is accurate for individuals with disabilities, muscle conditions, or other traits? How do you measure and review this accuracy?

4. What processes, policies, or information are in place or provided to administrators to accommodate test takers whose physical characteristics could create problems with the testing software?

5. What steps do you take to ensure your virtual proctors are adequately trained and informed of students' needs?

6. What steps have you taken to ensure adherence and compliance with federal and state laws governing student privacy and accessibility for individuals with disabilities, such as FERPA, the ADA, and HEA, which the institutions you may have contracts with are required to abide by?
    a. How have you communicated and coordinated with institutions of higher education to ensure that your software is in compliance?

7. How many complaints have you received from students and test takers in regards to facial recognition tied to either their race or gender identification? How can a student lodge such a complaint and what is the process for addressing potential problems?

8. How long do you keep students' personal information, including video recordings, which you collect during the exam? Are you using or sharing this data for any purpose beyond

the authorization and proctoring of the test, including to train your machine learning algorithms?

Given that finals at colleges and universities are fast approaching, I would ask that you respond to this letter no later than December 17th, 2020.

Thank you,

RICHARD BLUMENTHAL
United States Senate

RON WYDEN
United States Senate

CHRIS VAN HOLLEN
United States Senate

TINA SMITH
United States Senate

ELIZABETH WARREN
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