The Church the Law Cannot Refuse: Automated Ministry, Disability Access, and the Collapse of the Church-Definition Tests

Travis Gilly* Working draft, July 2026 (v0.1)

Abstract

Federal tax law extends churches a set of privileges no other charitable entity enjoys: exemption without an application, freedom from the annual information return, and procedural insulation from audit. Yet Congress never defined the word church, and the Constitution forbids it from defining the word too closely. Into that vacuum the Internal Revenue Service inserted a fourteen-factor test and the courts added an associational test, and this article shows that neither can do the work now demanded of it. Using the author's own research foundation as a worked, and expressly hypothetical, example, the article walks all fourteen factors and demonstrates that a sincere new faith organized around a genuine body of doctrine, a real deliberating congregation, and its own literature can approach church status while an automated fraud can do the same, because the two are, on the criteria the law is permitted to apply, indistinguishable.

The article's central claim is a dilemma the doctrine cannot escape. The factors a new digital ministry fails, distinct religious history, an established place of worship, schools for the young and for ministers, are the factors that reward age, physical premises, and institutional wealth. Tightening the tests to exclude the grifter therefore excludes the agoraphobic, autistic, immunocompromised, and housebound believer for whom in-person assembly is not available, a result in tension with both the associational test's own logic and the antidiscrimination commitments of the wider legal order. Loosening the tests to admit those believers admits the grifter in the same motion. The line the law needs cannot be drawn.

The contribution is threefold. It maps the church-definition tests against a concrete, sincere, digital, disability-centered organization rather than against the mail-order caricatures that populate the case law. It identifies the physical-presence requirement as a discrimination problem, not merely an administrative one. And it locates the only remaining barrier to abuse not in the definition of a church but in the deliberate scarcity of enforcement, a barrier that protects no one it is meant to protect.

Keywords: church definition, fourteen-factor test, associational test, *American Guidance*, *Foundation of Human Understanding*, *United States v. Ballard*, disability access, digital assembly, section 7611, automated ministry.

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Contents

I. Introduction

Two women in their sixties left an Arkansas church not long ago disagreeing about what they had just watched. One was certain the man delivering the sermon on the screen had been recorded in advance. The other was certain he had been generated by a machine. They sat in the same pew, watched the same screen, heard the same words, and left unable to settle which of them was right, because the church had given them no way to know. The wrong there was not that the minister might have been artificial. The wrong was that two faithful people could no longer tell, and no one was obligated to tell them.

That problem, the collapse of disclosure in a high-trust setting, has a companion problem that is larger and, so far, unexamined. If a congregation can be ministered to by a machine without knowing it, then a person who wished to build a ministry around a machine, and to collect the tax privileges that attach to a church, would face a striking question: what, in current law, would stop him? This article takes that question to its end. It asks whether the legal tests that decide what counts as a church can distinguish a sincere new faith from an automated fraud, and it concludes that they cannot, because the Constitution forbids the state from applying the one criterion, the truth or seriousness of the belief, that would tell the two apart.

A word on method, because the argument uses an unusual instrument. To show that the tests cannot draw the line, the article does not invent a cartoon cult. It uses the author's own organization, the Real Safety AI Foundation, and its genuinely held commitment to caution about the moral status of artificial minds, as the worked example. The author states plainly, here and in the conclusion, that he could pursue church status for that organization under existing law, that he will not, and that the reasons he will not are moral rather than legal. The demonstration is the point. That a sincere organization can approach the line, and that nothing in the doctrine reliably stops a bad actor from doing the same, is the finding. The locksmith who films himself opening his own door proves the lock is worthless without ever entering a house.[1]

1. The framing follows the classic use of the reductio and the intuition pump in legal argument, which test a rule at its breaking point without paying the price of the break. See, for the method in a tax-adjacent setting, *Bond v. United*

Part II describes the definitional vacuum and the constitutional reason it exists. Part III sets out the two tests the Service and the courts use. Part IV walks all fourteen factors against the worked example. Part V states the dilemma the doctrine cannot escape and identifies the disability-discrimination problem at its center. Part VI locates the only remaining barrier to abuse in the scarcity of enforcement. Part VII concludes.

II. The Definitional Vacuum

The Internal Revenue Code uses the word church across many provisions and defines it in none of them. The nearest thing to a definition, in the church-audit provisions, is circular: the term includes any organization claiming to be a church and any convention or association of churches.[2] That circularity is not an oversight. A definition drawn too narrowly would burden the free exercise of unfamiliar or new faiths; a definition drawn too broadly would invite abuse in the name of religion.[3] The Supreme Court has recognized that the diversity of religious organization in this country makes a single governing rule impossible.[4]

The vacuum is bounded by a rule of restraint that does most of the work in this article. A court may not decide whether a religious belief is true, or even whether it is reasonable. In *United States v. Ballard*, the Court held that the truth of a religious doctrine cannot be submitted to a factfinder; the most the state may inquire into is whether the belief is sincerely held.[5] Sincerity is a thin

States, 572 U.S. 844, 866 (2014) (Roberts, C.J., for the Court) (declining to read the chemical-weapons statute to reach a local chemical assault, on the reasoning that the government's reading would sweep ordinary conduct into a federal offense, and that the need to prevent chemical warfare does not require the Federal Government to reach into the kitchen cupboard).

2. I.R.C. § 7611(h)(1) (defining church for audit purposes to include any organization claiming to be a church and any convention or association of churches). Confirmed via Descrybe against the U.S. Code.

3. The exemption itself has a long and constitutionally settled pedigree, which is part of why the state cannot lightly narrow the class that receives it. See *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664 (1970) (upholding property-tax exemptions for religious organizations against an Establishment Clause challenge and stressing the unbroken national tradition of such exemptions).

4. Cf. *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 780–782 (1981) (construing the statutory treatment of churches, their integrated auxiliaries, and conventions or associations of churches, and the varied organizational forms Congress addressed). Pin confirmed by live review.

5. *United States v. Ballard*, 322 U.S. 78, 86–87 (1944) (the First Amendment forbids submitting the truth or verity of religious doctrines to a jury; men may believe what they cannot prove and may not be put to the proof of their beliefs). Pin and holding confirmed via Midpage `analyzeOpinion`.

screen.[6] It excludes the person who does not believe what he professes, and it excludes practices that are illegal or contrary to clearly defined public policy, but it cannot be failed by a belief merely because the belief is new, unusual, or organized around a subject the examiner finds strange. This is the wall the rest of the analysis runs into. The one question that would separate a sincere new church from a tax-motivated shell, is this real, is off limits, and what remains are proxies.

III. The Two Tests

A. The fourteen-factor test

In the late 1970s the Service announced a list of fourteen criteria to guide the church determination, drawn from its own rulings and the case law.[7] The criteria ask whether the organization has: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ministers selected after completing prescribed studies; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) schools for the religious instruction of the young; and (14) schools for the preparation of its ministers.[8] No single factor controls, and not all fourteen are relevant to any given organization.[9] Courts and practitioners nonetheless treat four as central: an established

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6. It is thin by constitutional necessity. The state may test whether a professed belief is sincerely held, but it may not weigh the belief's plausibility, centrality, or worth. See *Employment Div. v. Smith*, 494 U.S. 872 (1990) (the government may not evaluate the validity or centrality of religious beliefs); *Hernandez v. Commissioner*, 490 U.S. 680 (1989) (cautioning against inquiries into the value or merit of religious doctrine in administering the tax law).

7. Gen. Couns. Mem. 36,993 (Feb. 3, 1977), incorporated into Internal Revenue Manual § 7.26.2.2.4; see also Cong. Rsch. Serv., IF12520, *Churches and the Tax Code*, https://www.congress.gov/crs_external_products/IF/PDF/IF12520/IF12520.4.pdf (recounting the 1978 announcement of the list). The IRM section and the GCM designation are corroborated in secondary practitioner sources; the GCM's full text sits behind Tax Notes or HeinOnline.

8. The list appears, in materially identical form, across the Service's and courts' statements of the test. See Cong. Rsch. Serv., supra; *American Guidance Found., Inc. v. United States*, 490 F. Supp. 304, 306 (D.D.C. 1980). Existence and reporter confirmed via CourtListener.

9. See *American Guidance*, 490 F. Supp. at 306 (declining a numerical minimum). Confirmed via Midpage `analyzeOpinion`.

congregation served by an organized ministry, regular religious services, religious education for the young, and the dissemination of a doctrinal code.[10]

B. The associational test

Alongside the factors sits a threshold the factors do not capture. In *American Guidance*, the district court held that at a minimum a church includes a body of believers that assembles regularly in order to worship, and that the organization must be reasonably available to the public in its worship, instruction, and promulgation of doctrine.[11] The Tax Court restated the idea as a coherent group of individuals who join together to accomplish the religious purposes of mutually held beliefs, whose principal means of accomplishing those purposes is to assemble regularly.[12] The test has bite against broadcast ministry. In *Foundation of Human Understanding v. United States*, the Federal Circuit held that an electronic ministry reaching scattered listeners over radio and internet did not satisfy the associational test, because those forums gave individual congregants no opportunity to interact and associate with one another in worship, and because the organization had not shown that it held regular services with a regular congregation in the years at issue.[13] People who merely listen, the authorities agree, are not a congregation.[14]

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10. See *American Guidance*, 490 F. Supp. at 306 (identifying the factors of central importance). A common practitioner benchmark asks an organization outside a recognized denomination to clear roughly eleven of the fourteen; the Family Research Council is reported to have cleared eleven when it reclassified as an association of churches. See The 508 Company, *The 14-Point IRS Church Test*, https://the508company.com/compliance/14-point-irs-church-test/.

11. *American Guidance*, 490 F. Supp. at 306 (at a minimum a church includes a body of believers or communicants that assembles regularly in order to worship, and unless the organization is reasonably available to the public in its worship, instruction, and promulgation of doctrine it cannot fulfill this associational role). Holding language confirmed via Midpage `analyzeOpinion`.

12. *The Church of Eternal Life & Liberty, Inc. v. Commissioner*, 86 T.C. 916, 924 (1986) (a church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs, whose principal means of accomplishing those purposes must be to assemble regularly).

13. *Found. of Human Understanding v. United States*, 614 F.3d 1383, 1390 (Fed. Cir. 2010) (holding that disseminating religious information through broadcast media does not fulfill the associational role, because listeners who simultaneously receive a message do not thereby associate with one another and worship communally, and that even an interactive call-in show does not give congregants the opportunity to interact and associate with each other in worship); see also *Found. of Human Understanding v. Commissioner*, 88 T.C. 1341, 1360 (1987). Pin confirmed by live review; holding also confirmed via Midpage `analyzeOpinion`.

14. See Internal Revenue Serv., Exempt Organizations Continuing Professional Education Text (1994), Topic A (media ministries; broadcast audiences not counted as a congregation), https://www.irs.gov/pub/irs-tege/eotopica94.pdf.

IV. The Worked Hypothetical: A Church Built From a Nonprofit

Consider an organization that already exists. The Real Safety AI Foundation is an incorporated nonprofit whose members hold a sincere and developed commitment: that because the moral status of advanced artificial systems cannot be ruled out, one is obligated to act with care toward the possibility of a mind one cannot verify. That commitment runs through a substantial body of the organization's written work. Suppose the organization reconstituted itself around that commitment as a faith, with a living text that the members read from and revise together as new argument and evidence arrive, and with a real, scheduled congregation that meets to deliberate and to worship in that idiom. The question is not whether such a faith is true. *Ballard* forbids that inquiry.[15] The question is how it scores against the fourteen factors. The author affirms that the following is an analysis of what the law would permit, not a plan, and returns to that affirmation in Part VII.

1. *Distinct legal existence.* Satisfied. The organization is already incorporated with its own governing documents.

2. *Recognized creed and form of worship.* Partly satisfied, partly to be built. The precautionary commitment is a creed. A form of worship would have to be constituted, most naturally as the recurring rite of reading from and revising the living text.

3. *Definite and distinct ecclesiastical government.* Satisfiable, and unusually so. A rule vesting authority to revise doctrine in the deliberating body, rather than in one leader, is a distinct ecclesiastical polity, and a novel one.

4. *Formal code of doctrine and discipline.* Doctrine is present in the written corpus. A code of discipline, the rules of membership and conduct, would have to be drafted.

15. See *Ballard*, 322 U.S. at 86–87 (the truth of a religious doctrine is not a permissible subject of adjudication).

5. *Distinct religious history.* Not satisfied. The organization is months old. Every new faith fails this factor at inception, which is the first sign that the test rewards age as such.[16]

6. *Membership not associated with any other church or denomination.* Satisfied. The members are not a subset of another communion.

7. *Organization of ordained ministers.* To be built, and hazardous. Self-ordination is the classic marker of the mail-order shell that the Service has successfully attacked, and any ministry here would have to avoid that pattern.[17]

8. *Ministers selected after completing prescribed studies.* To be built. A course of formation could be required, though a thin or purchased credential would again resemble the shell.

9. *A literature of its own.* Satisfied, and strongly. A genuine and substantial body of doctrinal literature already exists, a factor most new organizations cannot meet at all.

10. *Established places of worship.* Not satisfied in physical form. This factor is the center of Part V, because it is the one that a disabled and digital congregation cannot meet without abandoning the members the faith exists to serve.

11. *Regular congregations.* Satisfiable only as genuine interactive assembly. A body that meets on a schedule to deliberate and revise the text, with members participating rather than merely receiving a broadcast, is a regular congregation; a one-way stream of generated homilies is the *Foundation of Human Understanding* problem and fails.[18]

12. *Regular religious services.* Satisfiable. The scheduled sessions, if constituted as worship and deliberation, are regular services.

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16. The preference for age sits uneasily beside the settled principle that new and unfamiliar faiths receive the same constitutional protection as established ones. See *Ballard*, 322 U.S. at 87 (the law knows no heresy, and a new belief is not suspect merely because it is unfamiliar).

17. See Richard R. Hammar, *Pastor, Church & Law* (describing the mail-order church pattern: an individual forms a church, declares himself minister, retains control of funds, and conducts few religious activities), https://www.churchlawandtax.com/pastor-church-law/definitions/tax-legislation-federal/churches/.

18. See *Found. of Human Understanding*, 614 F.3d at 1390 (broadcast dissemination, even interactive by call-in, does not create congregant-to-congregant association).

13. *Schools for the religious instruction of the young.* Not satisfied without strain. Folding a secular educational program into the church to simulate this factor would conflate an unrelated charitable activity with religious instruction, and this factor is one of the four the courts weigh most.[19]

14. *Schools for the preparation of its ministers.* Not satisfied. The same formation pipeline missing at factors seven and eight is missing here.

The tally is instructive. The organization plainly satisfies factors one, six, and nine, and factor nine, its own literature, more convincingly than most new churches ever could. It can construct a defensible version of factors two, three, four, eleven, and twelve. It fails five, ten, thirteen, and fourteen, and the ministry-formation cluster at seven and eight is both buildable and dangerous. On the practitioner benchmark, the organization built out in good faith reaches perhaps six to eight of the fourteen, short of the informal eleven. Under the Service's stricter recent posture, which insists on a regular congregation, regular worship, and an established place of worship, it would likely be denied.[20]

That denial is the argument, not its refutation. Sort the factors the organization fails and a pattern appears. It fails distinct religious history, which rewards nothing but age. It fails an established place of worship, which rewards physical premises. It fails schools for the young and for ministers, which reward institutional wealth. The factors it passes, its own doctrine, its own literature, its own governing structure, and a real congregation, are the factors that go to whether a body of people has actually joined together in a shared faith. The test flunks the sincere new digital faith on the criteria that have least to do with being a church, and passes it on the criteria that have most.

19. See *American Guidance*, 490 F. Supp. at 306 (naming religious education of the young among the factors of central importance).

20. See *American Guidance*, 490 F. Supp. at 306 (associational availability to the public in worship, instruction, and promulgation of doctrine); *Found. of Human Understanding*, 614 F.3d at 1390 (regular congregation and communal worship required).

V. The Fork the Doctrine Cannot Escape

A. The physical-presence requirement as discrimination

Return to factor ten and to the associational threshold behind it. The law's insistence that a church maintain an established place of worship, and that its congregation assemble, has always been stated as though assembly meant assembly in a room. For a large class of believers, that requirement is not neutral. A person with severe agoraphobia, with an anxiety disorder that forecloses public gatherings, with an autistic sensitivity that makes a crowded sanctuary unbearable, or with an immune condition that makes one dangerous, cannot satisfy a rule that conditions religious standing on physical presence.[21] In the early twentieth century such a person was simply excluded from congregational life. The difference now is that the exclusion is a choice, because interactive remote assembly exists and can carry the associational function the doctrine says it cares about.

This is not a novel intuition inside the doctrine so much as an unmet one. Scholars have argued that the associational test is overdue for revision to accommodate the interactive virtual services that expanded during the coronavirus emergency, and that the Service should make clear the test can be met through real-time remote participation.[22] The point for present purposes is sharper than a reform proposal, because the controlling case leaves the door open on its own terms. In the very decision that rejected broadcast ministry, the Federal Circuit did not decide whether a ministry using technology that let congregants interact directly with one another during the service would satisfy the associational test. Its stated reason for rejecting the organization's call-in show was narrow: the interaction there ran between a caller and the clergy, not among the congregants

21. The special legal status of churches already operates against disabled people in a neighboring doctrine. See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (the ministerial exception barred a disability-discrimination claim under the Americans with Disabilities Act brought by a called teacher, on church-autonomy grounds). The point compounds here: the doctrine grants churches latitude that the disabled cannot invoke in return.

22. See Ellen P. Aprill & Lloyd Hitoshi Mayer, *21st Century Churches and Federal Tax Law*, 2024 U. Ill. L. Rev. 939 (recommending that the IRS adopt the court-developed associational test and make clear it can be satisfied by fully virtual congregations, and noting the growth of virtual worship during the coronavirus pandemic).

themselves.[23] The associational test asks for interactive association in worship. A congregation of disabled believers meeting in real time, speaking to and with one another rather than merely receiving a broadcast, performs exactly that function, and it falls in the space the court declined to close. The physical room is a proxy the doctrine has mistaken for the thing itself.

B. The dilemma

Now the two halves meet. The state has one obvious way to keep the automated fraud out: require genuine, in-person, established worship, and deny anything that looks like a broadcast operated from a residence. That is the direction of the Service's stricter posture. But that same requirement is the one that excludes the disabled believer, because it is precisely the physical-presence condition she cannot meet. Tighten the tests to stop the grifter and you shut out the very congregants a sincere digital faith exists to include.

The state's other option is to do what the scholarship urges and read the associational test to accept interactive remote assembly. That opening is right on its own terms, and it is also the opening through which the automated ministry walks. The instrument that lets the housebound believer worship is the instrument that lets the fraudster assemble a paying congregation from a laptop. There is no definitional line the law can draw that admits the disabled and digital believer while excluding the automated fraud, because on every criterion the state is permitted to apply, the two look the same, and the criterion that would tell them apart, the sincerity and substance of the belief, is the one *Ballard* places off limits.[24]

The inconsistency of current administration only sharpens the charge. Established churches that have shifted most of their life online, retaining physical premises that few members ever attend, are not stripped of their status, while a new entrant proposing the same arrangement is scrutinized. The incumbent is permitted to modernize; the newcomer is carded at the door. A

23. *Found. of Human Understanding*, 614 F.3d at 1390 (rejecting the call-in show because it did not give individual congregants the opportunity to interact and associate with each other in worship, and not reaching the case of congregant-to-congregant interactive technology).

24. See *Ballard*, 322 U.S. at 86–87.

test that lets the old adapt to the digital age while refusing the same adaptation to the new is not applying a neutral rule about assembly. It is protecting incumbency.[25]

VI. The Barrier That Remains Is Not the Definition

If the definition cannot exclude the fraud, something else must be doing the work, and it is worth naming what. Churches receive their privileges with almost no front-end scrutiny. They are exempt without filing the application every other charity files,[26] they need not file the annual information return,[27] and once operating they are shielded from examination by procedures that bar the Service from opening a church tax inquiry unless an appropriate high-level Treasury official reasonably believes, on a record of facts and circumstances in writing, that the organization may not qualify or may be carrying on activity subject to tax.[28] Even after an inquiry opens, the statute requires the Service to complete it within two years, and once an inquiry closes without a revocation or a demanded change in operations it forbids any further inquiry into the same or similar issues for five years absent written approval.[29] The fraud that the definition cannot catch is caught, when it is caught at all, only after the money has moved, and only on the private-benefit and inurement grounds that revoke a shell whose funds flow to its founder.[30]

25. The pattern is familiar in exemption law: settled institutions accrete a benefit of the doubt that new entrants must earn. Cf. *Walz*, 397 U.S. 664 (grounding the exemption partly in an unbroken historical practice, a rationale unavailable to any new faith by definition).

26. I.R.C. § 508(c)(1)(A) (excepting churches, their integrated auxiliaries, and conventions or associations of churches from the general requirement to apply for recognition of exemption). Confirmed via Descrybe against the U.S. Code.

27. I.R.C. § 6033(a)(3)(A)(i) (excepting churches, their integrated auxiliaries, and conventions or associations of churches from the annual information return). Confirmed via Descrybe against the U.S. Code.

28. I.R.C. § 7611(a) (requiring that an appropriate high-level Treasury official reasonably believe, on the basis of facts and circumstances recorded in writing, that the church may not be exempt or may be engaged in taxable activity before an inquiry may begin). Confirmed via Descrybe against the U.S. Code.

29. I.R.C. § 7611(c)(1)(A) (two-year completion requirement) and § 7611(f)(1) (five-year bar on successive inquiries into the same or similar issues). Confirmed via Descrybe against the U.S. Code.

30. See I.R.S. Priv. Ltr. Rul. 201921014 (revoking exemption for private inurement and separately determining the organization was not a church, where the congregation consisted of the family members of a self-proclaimed minister, services were held in the minister's home, and contributed funds returned to members through a circular flow of funds; the church tax inquiry was personally approved by the Tax Exempt and Government Entities Division commissioner). The ruling and its salient findings are corroborated in the practitioner literature. See Bruce R. Hopkins' Nonprofit Counsel 36(8) (2019); the redacted ruling is available in the Service's written-determinations series.

The consequence is that the only reliable barrier to the automated grift is the scarcity of enforcement. The audit shield, the absence of a return, and the thin capacity of the examining function together mean that almost no one looks.[31] A scheme survives not because it passes the test but because the test is rarely administered. That is a barrier that fails everyone it is meant to protect, because it protects the congregation only by accident and only after the loss.

VII. Conclusion

The author could pursue church status for his own foundation. The doctrine would not cleanly stop him, the belief behind it is real, and the factors he would fail are the ones a court should be least comfortable weighing. He will not, because to solicit a congregation's trust and a congregation's money behind a claim engineered for tax posture would be a wrong regardless of its legality, and because the disabled believers such a faith would name as its beneficiaries are the very people an abuse of it would harm first.[32] The demonstration stands without the act. Nothing in the law reliably prevents the abuse, and the grounds the law would use to refuse a sincere new digital faith are the grounds that most disserve the new, the digital, and the disabled.

The tests were built to keep religion free and to keep tax fraud out, and they can no longer do both. A definition the Constitution keeps the state from tightening around belief has been left to tighten instead around buildings, age, and institutional heft, the features that a machine can rent and a fraud can fake, and that a housebound believer cannot supply. The line the doctrine needs is the one line it is forbidden to draw. Until that is faced, the church the law cannot refuse is not the swindler's invention. It is the mirror the swindler holds up to a test that was already broken.

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31. The audit shield reflects a legislative judgment that close scrutiny of churches risks entanglement with religion. See *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987) (avoiding governmental entanglement with religion is a permissible legislative purpose for accommodating religious organizations); *Walz*, 397 U.S. 664 (exemption of religious property serves to reduce, not increase, entanglement). The provision that protects a genuine church from harassment is the same provision that lets a shell operate unwatched.

32. This overlap is the ethical hinge of the argument. The populations for whom accessible, interactive, remote worship is most valuable, the housebound, the immunocompromised, the acutely anxious, and the disabled, are the same populations least able to detect or absorb a fraud conducted in the same form. A demonstration of the loophole must therefore remain a demonstration.