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Aziz, Insiya

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WHERE DO WE GO FROM HERE?: *Halal* Food Regulation and Monitoring

Insiya Aziz

ABSTRACT

As Muslims continue to settle in this country, there are a number of unique challenges that emerge in the criminal legal system, religious freedom, and much more. But one often overlooked question is that of the dietary rules and requirements that many Muslims adhere to. Many are familiar with the halal carts on street corners in major cities but are unaware of the intricacies of *ḥalāl* food doctrine and the associated regulatory and monitoring schemes in place. While it may be inconsequential to many, for Muslims, the principles of permissible and impermissible food are essential to understand and practice. However, in a secular nation like the United States, parsing what is or is not religiously compliant can be difficult and may leave room for deception and fraud. With that in mind, this Comment considers the current regulatory framework and identifies its shortcomings, proposing reforms in three distinct areas: inspection, certification, and labeling. These reforms form a quasi-public, quasi-private scheme that mirrors best practices as learned from the Kosher regulatory system, international examples, and state practices. This Comment hopes to begin conversation around halal products and how best to protect consumers through transparency and detection of fraud. As this country continues to add to its rich cultural, ethnic, and religious diversity, these questions become increasingly complex, but the basic principles of consumer protection and integrity in food production, certification, and the labeling process translate to a need for substantive reform.

ABOUT THE AUTHOR

Insiya is a recent graduate of The University of Texas School of Law. While in law school, Insiya was involved in the Texas Law Review, the Domestic Violence Clinic, and Jessup International Moot Court. She is interested in religious freedom issues and the intersection of foreign and domestic policy and issues that affect the day to day lives of Muslim Americans. After graduation, Insiya joined a litigation boutique in Houston to begin her legal career.

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INTRODUCTION

If you have ever been to Manhattan, chances are you have seen a bright yellow logo on a somewhat innocuous food truck on the corner of East 53rd Street and 6th Avenue.¹ The Halal Guys food truck is a staple of the city. A long line of customers may be found at any time of day along Avenue of the Americas waiting for the truck's famous chicken over rice, slathered with red and white sauce, often paired with a lukewarm Pepsi. Halal Bros, [an insert what type of establishment] exists as a similar icon in Austin, Texas, a favorite of college students and often the first recommendation given to out-of-town visitors.² The *halal* food craze has spread across the country.³

1. *A Visual Timeline of the Halal Guys' History Since 1990*, THE HALAL GUYS (Nov. 27, 2020), <https://thehalalguys.com/a-visual-timeline-of-the-halal-guys-history-since-1990>.

2. *Halal Bros*, THE HALAL BROS, <https://thehalalbro.com> (last visited Oct. 24, 2021).

3. *Spotlight On: NYC's Halal Cart Craze*, STORY BANK (Mar. 24, 2016), <https://www.mostresource.org/storybank/spotlight-nycs-halal-cart-craze>.

Despite that, few likely know how *halal* food is defined by religious law or the the regulation and monitoring procedures that govern *halal* production and labeling. Being unaware of these laws and procedures is inconsequential for a great many—*halal* restaurants are just another spot to grab a bite to eat. But for Muslims, the word *halal* is linked to a vast code that dictates what can and cannot be eaten.⁴ For Muslims living in the West, complying with *halal* requirements is a matter of following the Islamic code and remaining vigilant about the production and labeling process. Between 2000 and 2010, Islam was the fastest-growing religion in the country.⁵ Since 9/11, there has been a 160 percent increase in the number of Muslims living in the United States; tallied in at 2.6 million nine years ago.⁶ Some researchers estimate that as many as eight million people in the United States are Muslim today, with around 75% of these adhering to Islamic dietary restrictions.⁷

The population of Muslims in the West continues to grow. The religious-food regulatory framework will continue to be challenged with questions of how to ensure access to food that is religiously compliant for different faiths. Besides the religious angle, there is a substantial economic impact at stake. The domestic *halal* food market is currently estimated at over \$20 billion a year.⁸ Globally, the estimated value is projected to reach \$3 trillion by 2023.⁹

There are three areas of the regulatory scheme ripe for improvement: the meat inspection phase, certification bodies, and state labeling protocols. This Comment examines reforms to serve the growing population of Muslims. Collectively, these form a quasi-public, quasi-private scheme meant to take advantage of the public arm's longevity and the private sector's resources and

4. See generally ABDUL HADI AL-HAKIM, A CODE OF PRACTICE FOR MUSLIMS IN THE WEST IN ACCORDANCE WITH THE EDICTS OF AYATULLAH AL-UDMA AS-SAYYED ALI AL-HUSAINI AS-SEESTANI (Sayyed Muhammad Rizvi trans., Ansariyan Publications 2006) (an example of a handbook authored by an Ayatollah containing rules for various Islamic practices including prayer, fasting, and food and drink edicts).

5. Meghan Neal, *Number of Muslims in the U.S. Doubles Since 9/11*, N.Y. DAILY NEWS (May 3, 2012), <http://www.nydailynews.com/news/national/number-muslims-u-s-doubles-9-11-article-1.1071895> (citing to the 2010 U.S. Religion Census).

6. *Id.*

7. Rain Levy Minns, Note, *Food Fights: Redefining the Current Boundaries of the Government's Positive Obligation to Provide Halal*, 17 J.L. & POL. 713, 717 (2001).

8. See Caroline Scott-Thomas, *US Halal Market Largely Untapped*, FOOD NAVIGATOR-USA (Mar. 25, 2012), <https://www.foodnavigator-usa.com/Article/2012/03/26/US-halal-market-opportunities-largely-untapped>. The number of restaurants and establishments serving halal food has increased dramatically in the United States. See, e.g., U.S. DEP'T OF STATE, BUREAU OF INT'L INFO. PROGRAMS, *Certified Halal in the USA* (July 2012), https://static.america.gov/uploads/sites/8/2016/03/Certified-Halal-in-the-USA_English_508.pdf.

9. SALAAM GATEWAY, *State of the Global Islamic Economy Report 2018/19: Islamic Economy Marks Steady Growth* (Oct. 28, 2018), https://www.salaamgateway.com/en/story/stateoftheglobal_islamiceconomyreport_201819_islamic_economymarkssteadygrowth-SALAAM28102018080936.

innovation. This private-public partnership has been successfully employed in the Netherlands' *halal* food regulation, which provides a viable example/model for managing this relationship.¹⁰ Applying these principles here, this Comment proposes the following reforms:

As to inspection:

- Expanding the U.S. Department of Agriculture (USDA)'s mandate to have authority to examine and report on facilities engaging in ritual slaughter; and
- Establishing a commission to lay out a *halal* gold standard to be employed/used by the USDA and private certifying bodies in inspecting slaughterhouses.

As to certification:

- Adoption of an Australia-style certification statute to regulate how *halal* food is identified and represented; and
- The creation of two-tiered, centralized certification bodies to monitor and govern the certification process in the United States.

And, as to labeling:

- Implementation of state-level protections; and
- Expansion of existing protections that encourage transparency in production protocols.

This Comment aims to dissect the U.S. regulatory scheme on *halal* food. Part II begins by laying out the religious rules that define *halal*. Part III spurs a discussion on the current regulatory framework that affects *halal* food and labeling in the United States. Part IV lays out the scope of the solutions proposed in this Comment. Part V discusses reforms to the inspection, certification, and labeling protocols meant to protect consumers of *halal* products. Part VI briefly points out other areas of future research and improvement in the *halal* food industry. Finally, Part VII discusses the Establishment Clause and its relation to the proposed reforms.

I. RELIGIOUS BACKGROUND

Religious law concerning dietary edicts is common in many faiths, including Islam, Christianity, Judaism, Buddhism, and Hinduism.¹¹ In Islam, the source of these edicts derive from texts such as the Holy Qur'an (the religious text for Muslims) and sayings of the Prophet known as *hadith*, which are written sayings and practices of the Prophet passed down over time.¹² The interpretation of these sources varies wildly across schools of thought.¹³ For this Comment, I examine

10. Tetty Havinga, *Regulating Halal and Kosher Foods: Different Arrangements Between State, Industry and Religious Actors*, 3 ERASMUS L. REV. 241, 243 (2010).

11. *Id.* at 256 n.242.

12. Axl Campos Kaminski, *The "Stunning" Reality Behind Halal Meat Production*, 9 ENVTL. & EARTH L.J. 32, 33–34 (2019).

13. *Id.*

the views of contemporary Shi'ah scholars regarding what constitutes *halal*, specifically the book of law authored by Grand Ayatollah Sayyid Ali al-Sistani, entitled *Islamic Laws*.¹⁴ The Comment focuses on Shi'ah jurisprudence to define a clear scope for the discussion, but the benefit of the reforms would be translated to any school of Islam.

A verse from the Qur'an reads: "[Let the human being] think about (how We produce) his food."¹⁵ Such verses urge believers to observe and think about their food and drink carefully.¹⁶ The Islamic framework emphasizes the importance of purity in one's food.¹⁷ Another verse in the Qur'an mentions the centrality of this concept: "It is Allah who has created the earth as a place for you to live and the sky as a dome above you. He has shaped you in the best form and has provided you *pure* sustenance. That is Allah, your Lord. Blessed is Allah, the Lord of the universe."¹⁸

What one consumes beliefs, spirituality, and even personality.¹⁹ The following discussion regarding the integrity of the religious food monitoring system involves providing respect for the religious beliefs of millions of people in this the West.

Permissible foods are deemed *halal*, and impermissible foods are deemed *haram*.²⁰ The intricacies of this body of religious law are vast.²¹ For this Comment, I separate my discussion on meat (which has its own specific rules with my discussion on other food products. To begin the regulatory discussion with a common baseline, the following section will attempt to answer a few basic questions:

What does it mean for an animal's meat to be considered *halal*?

What does it mean for other food and drink to be considered *halal*?

What other factors may influence the permissibility of a particular food?

A. *What does it mean for an animal's meat to be considered halal?*

There are two preliminary inquiries regarding whether a particular animal may be permissible for consumption. The first inquiry regards the animal in

14. *Grand Ayatollah Ali al-Sistani Fast Facts*, CNN (last updated July 18, 2021), <https://www.cnn.com/2013/07/17/world/meast/grand-ayatollah-ali-al-sistani-fast-facts/index.html>.

15. Qur'an 80:24.

16. SAYYID ALI AL-SISTANI, *ISLAMIC LAWS OF FOOD & DRINK* viii (2019).

17. Majid Nimrouzi & Manijhe Zare, *Principles of Nutrition in Islamic and Traditional Persian Medicine*, 19 J. OF EVIDENCE-BASED COMPLEMENTARY & ALT. MED. 267, 267 (2014).

18. Qur'an 40:64 (emphasis added).

19. AL-SISTANI, *supra* note 16, at xi.

20. Nur Aqilah binti Pawancheek, *Halal Certification for Eateries in Malaysia: Legal Pitfalls & Possible Solutions*, 46 J. MALAYSIAN & COMP. L. 1, 4 (2019).

21. *See generally* AS-SEESTANI, *supra* note 4.

question.²² The second inquiry regards the circumstances under which the animal was slaughtered, killed, or captured.²³

1. Which animals are permissible to eat?

Animals are classified into three groups: sea, land, or air.²⁴

Only fish with scales, shrimp, and prawns are *halal* among sea animals.²⁵ There is a lengthy list of *haram* sea animals: amphibians, reptiles, sea mammals (such as whales), and invertebrates (like lobster and crab).²⁶ The next category of animals are land animals, which fall into two main categories: domesticated and wild. *Halal* domestic animals include sheep, goats, cows, and camels.²⁷ *Haram* domesticated animals include dogs, cats, pigs, rodents, reptiles, and amphibians.²⁸ *Halal* wild animals include deer, antelope, buffalo, mountain sheep, mountain goats, and zebras.²⁹ *Haram* wild animals include predators, rabbits, reptiles, amphibians, boars, bears, apes, monkeys, and burrowing animals.³⁰ Among air animals, all birds are permissible except for raptors and scavengers.³¹ In addition, flying animals that do not have feathers are impermissible for consumption.³²

On the surface, this categorization may appear arbitrary. For example, why is shrimp *halal* why lobster is *haram*? The general belief is that these edicts are from God, and divine reasoning is behind them.³³ Shi'ah hadith narrations often provide specific details regarding permissible foods. In this case, a narration states: "Eating shrimps is allowed and that shrimps are a kind fish."³⁴ Another narration says the impermissibility of crab and lobster: "Eating jerī [type of fish], turtle, and crab is *haram*."³⁵ In addition to specific narrations, qualified scholars make rulings based on deduction after extensive study of the primary and reliable secondary sources. Overall, among Muslims, there is an understanding that divine reasoning lies behind the principles regarding permissible and impermissible foods.

22. AL-SISTANI, *supra* note 16, at 3.

23. *Id.*

24. *Id.*

25. *Id.* at 4.

26. *Id.*

27. *Id.* at 6.

28. *Id.*

29. *Id.*

30. *Id.* at 7.

31. *Id.* at 14.

32. *Id.* at 3–15.

33. Qur'an 117:85.

34. AL-HURR AL-AAMILI, WASAIL AL-SHI'AH 408 (Mansurat Dhawi I-Qurba 2008) (1671).

35. *Id.* at 146.

The second important note to this section concerns the area between that which is *halal* and that which is *haram*.³⁶ This category is known as *makruh*, a label which means that an animal is not recommended for consumption, although not explicitly prohibited either.³⁷ For the purposes of this Comment, *makruh* items will be grouped with *halal* items because both are permissible for consumption. Once an animal is considered permissible, the second inquiry looks at the means of slaughter or capture.

2. Under which circumstances does the animal need to be slaughtered, killed, or captured?

The circumstances under which an animal is slaughtered, captured, or killed is the second consideration for animals categorized as *halal*. Like the first inquiry, the circumstances are specific to the three types of animals.³⁸

Sea animals must be alive when they leave the water.³⁹ A fish, for example, would need to be caught while alive, come out of the water by some means and be captured alive, even if it dies in this process after it leaves the water and is dead when it is retrieved.⁴⁰ There are no requirements as to how the animal should be killed when caught and it is permissible to let the sea animal die on its own after being caught.⁴¹ Land and air animals, on the other hand, are subject to specific slaughtering procedures.⁴² The following are the main requirements relevant to our discussion:

- The animal should be made to face Mecca;
- The slaughterer must intend to slaughter the animal by slitting its throat;
- The slaughterer must recite the name of God;
- If available, an iron blade should be used;
- The slaughterer must completely cut the esophagus, trachea, and the two carotid arteries from below the Adam's apple; and
- Blood should exit the animal in a natural way.⁴³

The key takeaway from the second inquiry is that there are a set of conditions that must be met for meat to be considered *halal*. These conditions (and other recommended conditions not discussed here), are meant to minimize suffering, hygiene, and public health.⁴⁴ For instance, the requirement that the knife used be sharp enough to slaughter the animal in one cut is meant to minimize the

36. AL-SISTANI, *supra* note 16, at 3–15.

37. *Id.*

38. *Id.*

39. *Id.* at 4.

40. *Id.*

41. *Id.*

42. *Id.* at 7.

43. *Id.* at 8.

44. Pawancheek, *supra* note 20, at 5.

animal's pain.⁴⁵ Another recommendation mentions that other animals should not witness the slaughter.⁴⁶ This measure is meant to avoid distressing other animals.⁴⁷ These are examples of the circumstances that would need to be verified through the regulatory system and accurately conveyed via labeling procedures.

B. *What does it mean for other food and drink to be considered halal?*

The second broad category at play regards non-meat food and drink. In laying out the rules for this class, we will highlight those that are likely to impact our discussion on the government's role and regulations.

There are a few outright prohibitions (i.e., *haram* food and drink), namely clay, sand, wine, and beer.⁴⁸

Food that may otherwise be *halal* may become *haram* on the basis of two issues: purity and contamination. First, if an otherwise *halal* product has an ingredient that is *haram*, it is not permissible to eat.⁴⁹ A common example is gelatin, found in a number of food products. Gelatin is often drawn from animal sources. When one knows the animal source from which the gelatin was drawn was not slaughtered in a way that made it *halal*, the gelatin is impermissible, (Include a sentence that relays that if this is not the case, it is halal etc.).⁵⁰ The presence of this type of gelatin distorts the purity of the food and the entire food becomes *haram*.⁵¹

The second issue is contamination. If any food or drink comes in contact with something that is *haram*, the whole food or drink is impermissible to eat.⁵² For example, a slice of pizza with ham on it (a *haram* meat) cannot be eaten, even if the ham is picked off the slice. The food has already been contaminated by contact with an impermissible food.

There is a great deal of nuance to the rules surrounding food in Islam. At the very basic level, there is a multiple step inquiry that is important for our purposes, demonstrated by Figure 1:

45. *Id.* at 4.

46. Javaid Aziz Awan & Muhammad Sohaib, *Halal and Humane Slaughter; Comparison between Islamic Teachings and Modern Methods*, 26 PAK. J. FOOD SCI. 235, 235 (2016).

47. *Id.*

48. AL-SISTANI, *supra* note 16, at 17.

49. *Id.*

50. *Id.* at 23.

51. *Id.*

52. *Id.* at 17.

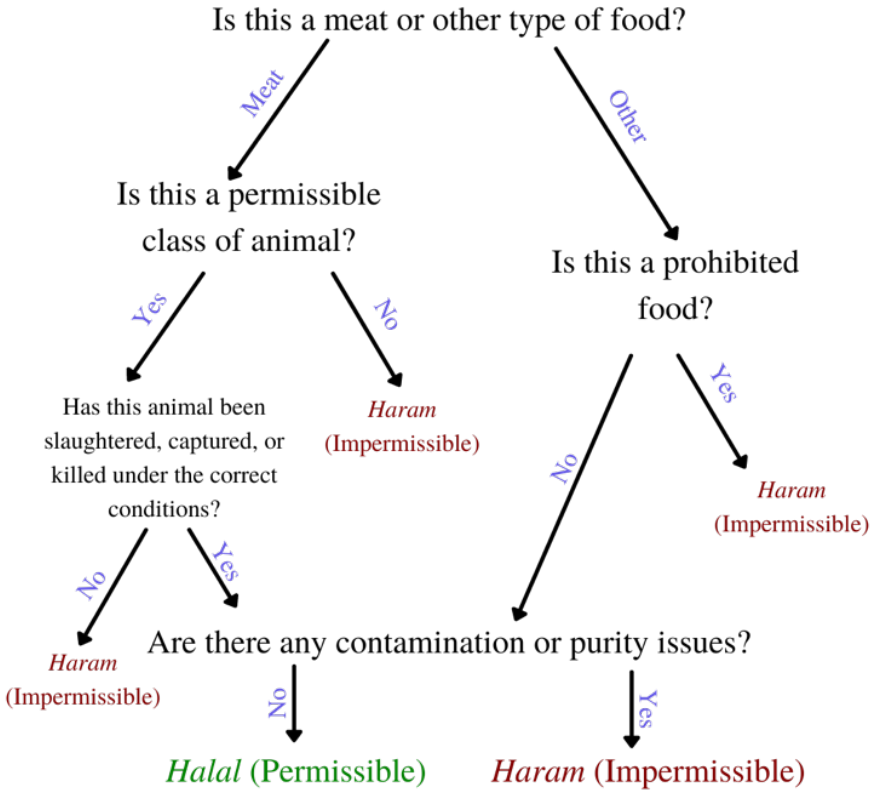


Figure 1: Halal Determination Framework

Muslims attempting to follow the principles of Islam in relation to their dietary needs are often concerned with the following questions in ensuring their food’s integrity:

- Is the animal being slaughtered in accordance with the religious edicts?
- Is the meat becoming contaminated during the production stage?
- Are other foods becoming contaminated during the production stage?
- Is the meat labeled correctly (i.e., is it actually *halal*)?
- In labeling using *halal* certifications, is the certification a genuine reflection of compliance with Islamic principles?

The current regulatory system is not sufficient to sincerely provide the answers to these questions with certainty. The next section examines the existing regulatory space in the United States.

II. THE CURRENT REGULATORY FRAMEWORK

There are three main pieces to the regulatory framework: inspection of slaughterhouses, certification of *halal* products, and labeling procedures. The current scheme is a piecemeal system that has several substantial gaps. The following section lays out the current state of affairs in these three categories and highlights the main problems in each.

A. *Inspection of Slaughterhouses*

In the United States, Islamic slaughter is often practiced under the ritual exception under the Humane Methods of Slaughter Act (HMSA).⁵³ The USDA interprets the HMSA to leave an unregulated “ritual bubble” when it comes to slaughter of animals.⁵⁴ Initially, the HMSA did not give the USDA any enforcement mechanism when it came to ritual slaughter.⁵⁵ Over time, the mandate has expanded slightly, but the law surrounding ritual slaughter remains murky and somewhat untouched.⁵⁶ Even in attempting to clarify this confusion, the Food Safety Inspection Service (FSIS) affirmed the ritual bubble—the resulting directive was weak, requiring only that USDA inspectors be notified of the type of ritual slaughter, who is performing it, and when it is to be done.⁵⁷ This basic information does little to provide insight into the conditions of slaughter as required by Islamic doctrine. In 2014, the FSIS affirmed on this interpretation and released a manual that stated USDA inspectors were not to interfere with ritual slaughter in any way.⁵⁸ In essence, all authority has been handed over to religious authorities, without oversight by the USDA, a system that is ripe for problems to occur.⁵⁹ Notably, the USDA inspectors are still mandated to perform their legal duty to ensure meat is not adulterated during slaughter by contamination with feces or other adulterants.⁶⁰ There is a role for the USDA inspectors at slaughterhouses, but the ritual bubble prevents that role from extending into substantive monitoring of the ritual practices being performed.

The second major issue is that there is no gold standard in the United States (or even internationally for that matter).⁶¹ Kosher regulation has been successful because of this standardization and the lack of a similar standardization in

53. Kaminski, *supra* note 12, at 32.

54. *Id.* at 33.

55. *Id.* at 41.

56. *Id.* at 42.

57. *Id.*

58. *Id.* at 43.

59. *Id.*

60. *Id.*

61. Mohammed Khan, *Regulating the Sacred: Why the US Halal Food Industry Needs Better Oversight*, CONVERSATION (Nov. 21, 2014, 5:25 AM EST), <https://theconversation.com/regulating-the-sacred-why-the-us-halal-food-industry-needs-better-oversight-34108>.

the *halal* food market has caused confusion and disunity.⁶² Although Muslims generally agree about the main principles, the details can be contentious. This has stalled any movement toward creating a more standard policy.⁶³ First, there is disagreement about which sources of law qualify as reliable to establish the corpus from which specific rules about *halal* and *haram* are to be drawn. For example, the Twelver Shi'ah scholars reject the use of *hadith* transmitted by certain companions of the Prophet while other schools incorporate that corpus into their religious doctrine.⁶⁴ Even within Sunni schools (the majority sect of Islam), individual schools differ regarding the weight that should be given to certain companions and their sayings.⁶⁵ Similarly, Sunni scholars may reject the usage of narrations that inform a majority of the Shi'ah corpus.⁶⁶ The second major issue after the body of law is the method of interpretation. Shi'ah schools are more conservative about using analogy and deduction (limiting the scope of analogy in particular) while Sunni schools allow wider scope for the usage of analogy.⁶⁷

Beyond these *halal* specific issues, the problems of cost of inspections, shortage of inspectors, and lack of knowledge about the correct practices are also present.⁶⁸

In sum, not only is there little to no authority for the USDA to get involved with ritual slaughter, but there is also no standard of practice in place even if this was possible.

B. *Certification of Halal Products*

Certification in the United States also lacks efficacy. At present, there are no centralized certifying bodies; instead, there are many smaller, local groups that employ a variety of symbols to represent *halal* products.⁶⁹ Because there are so many with little oversight via a trade group or internal regulation, there are tens of certifiers with little religious or technical training.⁷⁰ While some private certifiers have attempted to oversee and manage the industry, there is no federal statute to solidify their role and internal regulation is unable to manage the fraud and deceit that is common, specifically with certification not being genuine.⁷¹ The deceit and fraud is not limited to local eateries; in fact, the problem spans

62. *Id.*

63. *Id.*

64. Ken Chitwood, *What is the Shia-Sunni Divide*, CONVERSATION (Aug. 2, 2017, 2:55 PM EDT), <https://theconversation.com/what-is-the-shia-sunni-divide-78216>.

65. *Id.*

66. *Id.*

67. AL-SYYED ABU MOHAMMAD NAQVI, SHIA DISSOCIATION FROM USULI SCHOOL 57 (2013).

68. TIMOTHY D. LYTTON, KOSHER: PRIVATE REGULATION IN THE AGE OF INDUSTRIAL FOOD 5 (2013).

69. Kaminski, *supra* note 12, at 39–40.

70. Khan, *supra* note 61.

71. *Id.*

across restaurants *and* grocery stores across the country. For example, a 2011 lawsuit alleged that McDonald's was marketing non-halal chicken it as *halal*.⁷² McDonald's settled the suit for just under a million dollars.⁷³ In another case, the Orange County District Attorney obtained more than a half million-dollar settlement against a supermarket in Anaheim, California for false advertisement of generic meat as *halal*.⁷⁴ In 2014, federal prosecutors charged the directors of an Iowa meat supplier with conspiring to use and make false statements, sell misbranded meat, and commit mail and wire fraud when they sold non-*halal* meat, marketed as *halal* to countries across the world including the United Arab Emirates, Malaysia, and Kuwait.⁷⁵ This indictment also included accusations against a meat certifier in the United States, the Islamic Services of America, that allegedly certified the meat before it was exported.⁷⁶ These cases represent high profile examples of deep-rooted fraud and deceit; however this problem is not limited to big companies or suppliers as many Muslims can point to local restaurants or supermarkets that were found to have falsely claimed to sell *halal* food. The problem is pervasive because oversight is limited.

The bottom line with certification is that it is fragmented, has ample room for unqualified certifiers, and is struggling to regulate itself internally. This situation translates to a lack of credible *halal* certification procedures.

C. Labeling Procedures

Labeling is the area of regulation where the most movement has taken place. Many states have laws aimed at *halal* food protection. Each is uniquely different, but Illinois has one of the most expansive in the country.⁷⁷ The state's statutory scheme requires a notice if a store sells both *halal* and *haram* products, non-contamination of utensils if an establishment prepares food, a requirement that a dealer of *halal* meat register with the Illinois Department of Agriculture and post that form for customers to see, maintenance of records of purchase of *halal* meat and products, disclosures with the Department, as well as a provision that makes it unlawful to falsely advertise food as *halal*.⁷⁸

Other states have laws that incorporate elements of the Illinois law. Maryland, for example, requires that a business' disclosures be publicly displayed

72. Omar Sacirbey, *Concerns Rise Over Halal Fraud*, WASH. POST (June 27, 2013), https://www.washingtonpost.com/national/on-faith/concerns-rise-over-halal-fraud/2013/06/27/a3030792-df6f-11e2-8cf3-35c1113cfcc5_story.html.

73. *Id.*

74. *Id.*

75. Ryan J. Foley, *Halal Beef Supplier Vows to Contest Fraud Charges*, ASSOCIATED PRESS (Dec. 15, 2014), <https://apnews.com/article/25503733b44b4f5588dcb9522d9fd824>.

76. *Id.*

77. Jeanne Cullen & Furqan Mohammed, *US Halal Food Regulations . . . Are You Up to Speed?*, FOOD NAVIGATOR-USA (Apr. 10, 2016), <https://www.foodnavigator-usa.com/Article/2016/04/11/GUEST-ARTICLE-US-halal-food-regulations-Are-you-up-to-speed#>.

78. *Id.*

and include information about the preparation, handling, and sale of the food.⁷⁹ New Jersey requires that establishments disclose the basis for any representation made on signage that products are *halal*.⁸⁰ New York requires that producers and distributors of *halal* food register with the Department of Agriculture & Markets with the name and contact information of any person certifying food as *halal*.⁸¹ The main thrust of these laws is to provide the consumer with information as opposed to the Government defining religious food.⁸² Australia, a notable exporter of *halal* products, also focuses on describing processes to the consumer as opposed to defining the religious edicts.⁸³ Each state is unique in its implementation, which leads to inconsistency across the regulatory space.

Despite these laws being on the books, the scope is often vague or poorly implemented.⁸⁴ Because of the shortage of inspectors mentioned earlier, the laws are also virtually toothless as they go unenforced.⁸⁵ Not only do the laws need expansion and standardization, but there is a need for enforcement mechanisms to be solidified and invested into.

Importantly for the labeling inquiry, the Government does not need to get into prescribing what are and are not appropriate *halal* practices for preventing deceit. If that were a governmental function, there would be legitimate Establishment Clause problems (these are considered further in Part VII). The labeling reforms that will be discussed below center on deception in marketing and advertising, a function the Federal Trade Commission (FTC) is already tasked with. The crux of governmental involvement (as demonstrated by the earlier examples of prosecutions and civil lawsuits brought by federal officials against supermarkets and suppliers) is to prevent labeling fraud; i.e., when a food is labeled as certified *halal* and it is in fact not, the Government would have a role.

III. SCOPE OF SOLUTIONS

Drawing from state solutions to the solutions implemented by other nations, the potential improvements to the existing system are numerous. This Comment focuses on three groups of solutions: inspection, certification, and labeling.

Another important caveat is the scope of the solutions. While international sources provide a number of unique proposals,⁸⁶ the United States is bound by

79. *Id.*

80. *Id.*

81. *Id.*

82. Minns, *supra* note 7, at 733.

83. Alexandra Whittaker, *Halal Certification: Food for Thought?*, 10 AUSTL. ANIMAL PROT. L.J. 37, 38 (2015).

84. Khan, *supra* note 61.

85. *Id.*

86. Ainul Masruroh, Thohir Luth, Masruchin Rubai & Sihabuddin, *The State's Role in Regulation of Halal Food Product Assurance (Comparative Study of West and East Paradigm)*, 66 J.L., POL'Y & GLOBALIZATION 130, 130 (2017).

certain principles when it comes to religion, namely the Establishment Clause.⁸⁷ Critics of existing laws that touch on religious dietary needs point out that such laws may be construed to advance a religion, something explicitly prohibited in the First Amendment.⁸⁸ In addition to the First Amendment, the question of *halal* food regulation also implicates the Free Exercise⁸⁹ and Equal Protection⁹⁰ clauses. While that discussion is beyond the scope of this Comment, the concern does limit the scope of solutions considered feasible. In lieu of reforms that propose Government compulsion on the industry to provide *halal* products (which could conceivably raise these constitutional concerns), the scope of the solutions will focus on transparency and the customer's right to be informed about what he or she is consuming coupled with private regulation that is not bound by such constitutional concerns.⁹¹

These reforms center on providing the consumer accurate information on how a *halal* product is produced (namely meat products) and ensuring labeling is not deceptive or misleading (applying to both meat and other types of food). The ideal (or aspirational) token would be to be able to mirror Malaysia's "farm to fork" monitoring approach.⁹² The European Union lays out objectives for its general food law that apply well to this set of proposed reforms: (1) to rebuild the confidence of consumers, and (2) develop credibility and consistency through openness and integrity. The hybrid of private and public regulation proposed in this Comment should achieve that goal.

IV. PROPOSED REFORMS

As mentioned, the proposed reforms will center on the three parts of the regulatory system: inspection, certification, and labeling protocols. The goal is to establish a quasi-private and quasi-public regulatory scheme to take advantage of the resources of the private regulatory framework and the longevity and stability of public rules.

As to inspection:

- Expanding the USDA's mandate to have authority to examine and report on facilities engaging in ritual slaughter; and
- Establishing a commission to lay out a *halal* gold standard to be used by the USDA and private certifying bodies in inspecting slaughterhouses.
- As to certification:

87. Kaminski, *supra* note 12, at 44.

88. Bruce Friedrich, *Ritual Slaughter in the "Ritual Bubble": Restoring the Wall of Separation Between Church and State*, 17 VT. J. ENVTL. L. 222, 234 (2015).

89. Kaminski, *supra* note 12, at 46.

90. Minns, *supra* note 7, at 732.

91. *Id.* at 734.

92. Pawancheek, *supra* note 20, at 7.

- Adoption of an Australia-style certification statute to regulate how *halal* food is identified and represented; and
- The creation of two-tiered, private certification bodies to monitor and govern the certification process in the United States.
- And, as to labeling:
- Implementation of state-level protections; and
- Expansion of existing protections that encourage transparency in production protocols.

A. *Reforms to the meat inspection and monitoring system*

The first set of reforms focuses on inspection protocols. This part of the reform focuses on the government's role. In considering dietary restrictions, the U.S. Supreme Court has found that the Government has some limited, positive obligations regarding religious food.⁹³ With the First Amendment limitations in mind, the first two proposed reforms are to the USDA's mandate on religious slaughter and its authority to inspect and monitor that process and the formation of a gold standard for *halal* slaughtering practices.

These are not meant to (nor should they) encourage or advance a religion. Rather, this role of the USDA is simply to inspect and monitor what is occurring in order to better facilitate transparency and information for the consumer. The enforcement mechanism is through the state labeling laws (and the proposed expansion) that we will discuss below.

1. USDA Mandate on Ritual Slaughter

As mentioned, when discussing the current regulatory scheme, the HMSA limits the USDA's authority in many ways when it comes to ritual slaughter.⁹⁴ The current scheme hampers the agency from meaningfully investigating what is happening at slaughterhouses purporting to engage in *halal* practices.⁹⁵ Namely, it is important for the USDA to be able to meaningfully look at whether the ritual slaughter complies with the religious mandate on these issues. This would follow the European model of granting the state some authority over ritual slaughter.⁹⁶

The proposed reform asks that the USDA's mandate under the HMSA be expanded so that the USDA can compare the practices in a slaughterhouse with established *halal* slaughtering practices. Importantly, this would not allow the USDA to start going after slaughterhouses that have not complied. Rather, the information would be made available to the public so the consumers can make their own judgments. For example, above, we discussed six conditions that needed to be met for a land or air animal to be slaughtered in a *halal* manner.

93. Minns, *supra* note 7, at 713.

94. Kaminski, *supra* note 12, at 41.

95. *Id.* at 41–42.

96. *Id.* at 48.

This protocol is drawn from Ayatollah Sistani's manual of rules. Other schools in Islam may find more or fewer conditions that need to be met.⁹⁷ The USDA's (improved) mandate under the HMSA would allow the agency to release information on a particular slaughterhouse and how many of the conditions were being met. If a follower of Ayatollah Sistani's rulings finds five of the six are met, he or she may choose not to consume meat from that facility. On the other hand, the follower of another school that believes only three of those six are required, may be satisfied, and choose to buy meat from that slaughterhouse.

The information would be communicated via a website that provides the criteria used in evaluation as well as the compliance of various slaughterhouses in light of that criteria. A model website for this idea is the Open Payments website set up during the Obama Administration to allow the public to investigate whether a physician has taken any benefit (mostly monetary) from pharmaceutical companies which could impact his or her judgment.⁹⁸ The website features a search bar where individuals can search for a physician, clinic, company, or teaching hospital by name and receive extensive data on funds that entity received from drug companies.⁹⁹ A website for slaughterhouses would function much the same way. The website would allow searches by name of slaughterhouse and would populate information about the compliance of that slaughterhouse with the criteria laid out by the USDA. This would allow individuals to make their own informed judgments about whether a particular slaughterhouse satisfies the *halal* doctrine that they follow. One may think that Muslims do not have the time or interest in researching this information. However, the *halal* food issue is so integral and critical to Muslim belief, especially in the West where not everything is *halal*, that Muslims would use such resources vigorously.

The benefit here is that there is no violation of the Establishment Clause in that the Government is not promoting or advancing a religion. Rather, it is providing basic information that a consumer may need in making personal religious decisions. Another benefit is that the enforcement is not taking place at this stage. With the example of kosher regulation, the initial problems faced by the system were insufficient resources to inspect and enforce.¹⁰⁰ Here, the enforcement cost is significantly reduced. The mandate's expansion is focused directly on access to information as opposed to enforcing a particular regime. The third benefit here is that this mandate provides strong grounds for those who may want to sue or seek protection under state labeling or deceptive trade practices laws. As discussed, the model laws should focus on transparency and this mandate

97. Khan, *supra* note 61.

98. *Search Open Payments*, U.S. CTRS. FOR MEDICARE & MEDICARD SERVS., <https://openpaymentsdata.cms.gov>.

99. *Id.*

100. LYTTON, *supra* note 68, at 5.

would go leaps and bounds for beginning the process of expanding access to information.

However, with its benefits come a good number of risks and disadvantages. First, there are so many schools of thought in Islam that finding a comprehensive list that would be used as the baseline for an inspector can be quite difficult. The example used of six factors is simple; the reality is that there may be schools of thought that approach the issue completely differently. Once the religious requirements become more complicated, the need for educated inspectors will grow. To educate and train the inspectors is another cost. And quite frankly, teaching the intricacies of slaughter laws is a mountain of a task both to teach and to learn. Further, this sort of mandate would require the integration of religious authorities to help guide the inspections, especially at the beginning. And if the Middle East is any example, the factions of Muslims often do not agree or cooperate well. The last major limitation of this solution is that it is confined to meat inspection. The USDA does not have authority over all food¹⁰¹ so the increase of information for the consumer would be for meat, not necessarily for all products.

Hamstringing the USDA and making it near impossible to monitor ritual slaughter is not sustainable—specifically fraud will be even more widespread and public trust in the system will deteriorate. As discussed above, high profile cases of deceit have already arisen, both domestically and internationally. Without robust regulation, this pattern will likely continue. With that, the public trust in the *halal* industry will deteriorate. Practicing Muslims are more likely to revert to eliminating meat and other food suspected of being *haram*, rather than risk eating *haram* food.¹⁰² When deceit thrives and mistrust festers, the system will have effectively collapsed and rehabilitation will require major reform and rebuilding of trust with the public.

This reform balances the constitutional concerns and the need for more authority and lets the USDA have more of a monitor role. This role ultimately plays into betterment for the consumer and for enforcement of state laws that do have the ability to exercise the force of the government to protect consumers.

2. Gold Standard of *Halal* Practices

As mentioned in the discussion of the USDA's mandate under the HMSA, part of the concern is the lack of consensus on what constitutes *halal* food. In its early days, the kosher regulatory scheme was similarly fractured.¹⁰³ After the development of a core group of kosher certification agencies, a standard was adopted and pushed across the industry.¹⁰⁴ The kosher regulatory system is

101. *About the U.S. Department of Agriculture*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/our-agency/about-usda> (last visited Oct. 24, 2021).

102. *See generally* AL-SISTANI, *supra* note 16.

103. LYTTON, *supra* note 68, at 72.

104. *Id.*

unique and over its life cycle, it has gone through stages that are valuable models for where *halal* regulation should move.¹⁰⁵ This parallel is drawn more explicitly when discussing certification below, but in looking at the Government's role, the standardization of kosher protocols is a good lesson. The next major reform pushes for the Government to establish a council as part of the USDA that is meant to define the *halal* gold standard. What factors and conditions of slaughter define what is and what is not *halal*?

This could serve a number of purposes. As we will discuss below, there is a role for the private sector in this scheme. However, facilitating a gold standard for *halal* will serve to artificially insert the natural growth the kosher industry underwent. This council would create the "checklist" that would aid the USDA with its expanded mandate under the HMSA. It would be a well-published list that would allow consumers know what sort of information they will be provided. This collaboration between industry, religious leaders, and members of regulatory agencies would get everyone on the same page about *halal* food. Specifically, the council will include religious leaders from each of the major Islamic sects: Sunni, Shi'ah, Ahmedi, Ismaili, etc. Recruiting these leaders includes reaching out to established hubs for each group. For example, the Shi'ah have a council of religious scholars from across the country (called I.M.A.M.) that works on religious issues in the United States,¹⁰⁶ as well as a project at Harvard University called the Project on Shi'ism and Global Affairs, a leader in Shi'ah studies in the country.¹⁰⁷ In addition to religious leaders sourced from these hubs, members of USDA agencies would also be seated on the council, including the Food Safety and Inspection Service (FSIS), Animal and Plant Health Inspection Service (APHIS), and the National Institute of Food and Agriculture (NIFA). The purpose of this reform is to better equip the USDA to monitor ritual slaughter; therefore, the inclusion of these agencies within the USDA is to bring together informed voices that can provide insight into food inspection, food safety, and contextualize solutions to solve the societal problems being faced.

Further, the council will not require unanimity. Notably, the goal of the council is not to establish a list of criteria that establish a product as *halal* or *haram*. This sort of inquiry would require unanimity and would invite more disagreement. Instead, the goal of the council is to put together a list of factors that are associated with *halal* food. For example, sect A's scholar may say that criteria one through six are necessary for food to be considered *halal*. Sect B's scholar may disagree saying criteria one, four, five, and additional criteria seven and eight are necessary. If the goal was to have the council definitively establish

105. See generally *id.*

106. *About Us*, THE COUNCIL OF SHIA MUSLIM SCHOLARS OF N. AM., <https://www.imams.us/> about (last visited Apr. 25, 2022).

107. *About the Project*, PROJECT ON SHI'ISM & GLOB. AFFS., <https://shiism.wcfia.harvard.edu/about> (last visited Apr. 25, 2022).

what it means for something to be *halal*, these two scholars would need to reach an agreement on which criteria should be on the list. However, with this proposed reform, the goal is to put criteria one through six *and* criteria seven and eight on the list. When the USDA performs its inspection and notes which of the criteria are being satisfied, that information is passed onto the public. A member of the public from sect B, for example, will look at the information provided to make sure the criteria laid out in his or her sect (one, four, five, seven, and eight) are met while a member of the public from sect A will look at the same information to see if the criteria from his or her sect (one through six) is met. This method does not necessitate that the scholars all agree on the criteria, but that a semi-comprehensive list is put together that allows each person receiving the information to make his or her own judgements about whether they are satisfied with the food being deemed *halal*.

This method also alleviates the USDA from having to arbitrate and get entangled in an Establishment Clause problem. The USDA role is broadly administrative to information gather on how these criteria can be viewed at the slaughterhouse at inspection and to facilitate the creation of this master list. Unanimity is inherently not required because the USDA is not labeling food as *halal* and *haram*; it is simply providing the information for individuals (and independent certifying bodies) to make those judgments themselves. The council's role is similarly not to decide what it means to be *halal* or *haram* but rather put together a comprehensive list of information that would enable others to make that judgement (i.e., to inform the USDA what it needs to provide information-wise).

The controlling statute to put together this council should not specify that the religious leaders come from particular legal schools. Instead, the statute should task the USDA to research and determine which sects are significantly represented in the U.S. population and invite those sects to join the council through the intellectual hubs for those groups in the country. A robust discussion of the Establishment clause follows in Part VII as it relates to this council as a reform.

The major benefit to this, as stated, is artificially creating the same circumstances that allowed the kosher regulatory scheme to thrive. The Government's role is to facilitate that dialogue, to seek out the widest possible swath of stakeholders who can contribute with the goal to bring together religious leaders from multiple sects, industry leaders, and regulators to make a sensible plan.

With the kosher regulation, a notable factor was that kosher was sold to the industry as an untapped market that could increase its revenue.¹⁰⁸ The religious-minded parties sold kosher certification as a marketing tool as the

108. LYTTON, *supra* note 68, at 37.

importance of kosher food grew.¹⁰⁹ *Halal* food is seeing a similar growth.¹¹⁰ The global revenue is expected to be in the trillions and domestically, in the billions.¹¹¹ Locally, we see *halal* plastered on businesses across town.¹¹² This point in time features a perfect storm to move in and solidify a workable set of regulations for *halal* food.

However, there are drawbacks in working to put together a gold standard for *halal* food. Primarily, getting folks to agree. Perhaps part of the reason the kosher industry was able to make it happen was because it happened naturally.¹¹³ The industry that is focused on the bottom line, regulators that are cautious of the scope of their allowance to work on these issues, and religious leaders that may be unable to agree internally on what should be part of a gold standard. Not to mention, the key distinction between kosher and *halal* is that *halal* is associated with Muslims; it's very possible the industry doesn't want to associate itself with *halal* as it did with kosher because of the intense and deep-rooted stigma around Islam in this country. The disadvantages could be summarized as such: it's possible no one wants this and if they do, it's possible they'll be unable to agree on how to make it happen.

Despite the difficulties, this is a necessary process. Whether it happen through a USDA council or an outside group rallying these different actors together, it is important that there be a move towards standardizing what is means for food to be *halal*. Notably, a strong animus against the Jewish faith also existed in this country at various times,¹¹⁴ but this animus did not stop the kosher regulatory system from growing and thriving; demonstrating that potential backlash from anti-Muslim sentiment is not insurmountable and can be overcome. The Government, unlike governments in Muslim countries, does not have a positive obligation to provide *halal* food.¹¹⁵ But it can be argued that is has an obligation to provide transparency in food.¹¹⁶ The first step to doing that is understanding what it is you are being are being transparent about—i.e., what is the standard?

109. *Id.*

110. See generally Stephen Wilkins, Muhammad Mohsin Butt, Farshid Shams & Andrea Pérez, *The Acceptance of Halal Food in Non-Muslim Countries*, 10 J. ISLAMIC MARKETING 1308 (2019).

111. See *supra* note 8–9 and accompanying text.

112. See *supra* note 1–2 and accompanying text.

113. See generally LYTTON, *supra* note 68.

114. Daniel Miller, *Anti-Semitism is on the rise, 75 years after the end of the Holocaust and Second World War*, CONVERSATION (Aug. 3, 2020, 7:58 AM EDT), <https://theconversation.com/anti-semitism-is-on-the-rise-75-years-after-the-end-of-the-holocaust-and-second-world-war-132141>.

115. Masruroh et al., *supra* note 86, at 133.

116. See *supra* note 92–93 and accompanying text.

B. *Reforms to Certification Bodies*

Across the world, certification bodies play a role in regulating *halal* food.¹¹⁷ In some countries, the bodies are managed by the government and in others, the bodies are private.¹¹⁸ Notably, the nations that have public certification bodies are often Muslim majority and nations assert they have an obligation to provide *halal* food to the general population.¹¹⁹ In contrast, the nations with private bodies (i.e., the United States, Australia, New Zealand, etc.) are secular.¹²⁰ In the case of the United States, there are preexisting parameters on the relationship between the Government and religion.¹²¹

This next proposed reform builds on two examples: international application and the successful example of private regulation from the kosher industry in the United States. The general idea is that a small core of certification bodies should exist to certify *halal* food. In addition to those bodies, there should be an industry trade group that acts as a watchdog among the bodies to ensure accountability and limit fraud. The Government should pass a bill laying out the requirements for religious certification bodies in the United States, modeled after a similar, successful statute in Australia. This would allow the system to take advantage of market competition (leading to more robust and quality certification) and a level of centralized standardization from the Government.

In addition, this two-tiered system would interact with the public arm of the regulation (discussed above) in a few distinct ways. First, it would be a part of the creation of the gold standard. As discussed in the case of kosher regulation, one of the reasons it was so successful was because there were parties involved that were motivated by the religious aspects of creating a robust kosher monitoring system.¹²² Allowing this certification system (led by religious leaders) to similarly be a part of making these decisions would hopefully lead to better outcomes. Secondly, the transparency that would be promoted through the USDA's new mandate would serve to encourage accountability from the certification bodies and a means to check their work. This system would take advantage of monitoring by the Government and resources invested by the private sector.

The following sections break down this certification scheme beginning with the statute that would help to standardize the system and followed with a discussion on creation of the two-tiered system, drawing on international examples and the domestic example of kosher food regulation in the industrial age.

117. Masruroh et al., *supra* note 86, at 131.

118. *Id.* at 135.

119. Pawancheek, *supra* note 20, at 2.

120. Masruroh et al., *supra* note 86, at 131.

121. *See supra* note 87–90 and accompanying text.

122. LYTTON, *supra* note 68, at 99.

1. New Certification Statute

The proposed certification statute is drawn from Australia's example. Australia is a notable exporter of *halal* meat (as is New Zealand, which has similar regulations in place).¹²³ Despite having a small percentage of the population identify as Muslim (only 1.8 percent of the total population), the country exports Islamically slaughtered food across the globe, including to the United States.¹²⁴ In 1983, Australia introduced an official *halal* program that was codified to control the production of *halal* meat and maintain the integrity of the products throughout the process.¹²⁵ A few key provisions included (1) ensuring that meat was identified with an official *halal* stamp, (2) providing an official certificate with meat delivery, and (3) making sure *halal* meat for export came with a certificate signed by government officials as well as representatives of a recognized Islamic organization.¹²⁶ These conditions ensure that *halal* products (especially meat) are being marked, that the process is being verified, and that the verification comes from a certifying body (in this case, a collaboration between government and Islamic organizations). This has proven to be highly successful in Australia because it has written accountability requirements into the law.¹²⁷

A similar statute, with some modifications, would be well-suited to the United States as well. Firstly, it would bring standardization back to the system. One major concern is that there is no standard *halal* marker/logo that Muslims can rely on.¹²⁸ The current landscape of markings is confusing and vast/diverse in a way that creates uncertainty. Such a statute would create a standard logo and need for a certifying body to implement and ensure the logo was used appropriately. The United States could even regulate the certifiers themselves by creating a minimum set of standards including qualifications and avoidance of conflict of interest.¹²⁹ Secondly, as mentioned, a large part of this discussion has centered around transparency. The Australian law calls for a certificate to be provided upon meat delivery (to a distributor).¹³⁰ Such certificates can be appropriately provided by certifying bodies. Notably, having the law in place will create a set of standards that a certifying body needs to adhere to. Lastly, the signature portion is a good model for a U.S. version to mimic. As we will discuss in a moment, the certifying bodies are led by religious leaders. Having a signature of the certifying body (in lieu of just an Islamic organization as mentioned in the Australian statute), will provide that sense of legitimacy and surety to a consumer.

123. Masruroh et al., *supra* note 86, at 133.

124. *Id.*

125. *Id.* at 132.

126. *Id.*

127. *Id.*

128. Khan, *supra* note 61.

129. *Id.*

130. Masruroh et al., *supra* note 86, at 132.

This reform, more so than the others, treads closer to the line in violating constitutional limits. Perhaps this is its biggest drawback in that it could be viewed as an attempt to establish a particular religion. There is also the general concern of getting such a thing passed. Besides the general politics going into sponsorship of any such bill, the anti-Muslim rhetoric that continues to build momentum is certain not to make it any easier. The last major concern with this reform is its potential to limit the market of bodies who are able to certify. Such requirements may create barriers to entry that would squeeze out smaller certifiers. An additional unanswered question regards the penalty for violation of these requirements. Is there a private right of action? Criminal penalties? Civil fines? The nuance of this is very much up part of the debate. It is a balancing act between ensuring compliance and facilitating an environment where *halal* food is accessible and secure. Once you introduce the element of labeling and advertising, this also implicates the Federal Trade Commission (FTC) which can continue to complicate the issue and the relevant stakeholders.¹³¹

Despite these potential difficulties, there is nonetheless sufficient benefit to attempt to pass such a law. The law provides standardization in a way that also promotes transparency. When a consumer knows what a particular label means, there is a sense of security in purchasing the product. When a consumer has access to a certificate signed by a certifying body led by religious leaders, there are additional protections in place.

2. Centralized and Standardized Certification Bodies

This reform is modeled largely off the success of the private kosher regulation in United States.¹³² In the early days of kosher regulation, the certification was very local through a rabbi or synagogue in the community.¹³³ As the industry grew, there was increased incidence of fraud and deception.¹³⁴ In response to that (and inadequate response from the government), prominent rabbis started certifying bodies that sold their services to corporations in order to certify their products as kosher.¹³⁵ Along the way, these reforms faced growing pains, namely factions of the Jewish community that turned on each other during the process.¹³⁶ But over time, five major certifying agencies emerged that, among other things, promulgated a standard for kosher food in the United States.¹³⁷ Part of the success was attributed to the bodies selling this certification as a marketing tool for corporations as well as a means to access the segment of the market

131. *Advertising and Marketing*, FED. TRADE COMM’N, <https://www.ftc.gov/tips-advice/business-center/advertising-and-marketing> (last visited Oct. 24, 2021).

132. See generally LYTTON, *supra* note 68.

133. *Id.* at 13.

134. *Id.* at 11.

135. *Id.* at 36.

136. *Id.* at 21.

137. *Id.* at 72.

interested in kosher food.¹³⁸ The bodies realized there was an interdependency that existed—in order to build the kosher market and remain credible and viable, each had to make sure they were complying with the standards and providing the best service possible.¹³⁹ Notably, these bodies (and the rabbis that ran them) were motivated by a religious sense of duty which overrode the urge to give into cutting corners and focusing solely on profits.¹⁴⁰ The bodies also promoted disclosure and transparency to the consumer and integrated new technology while promoting expertise and accountability.¹⁴¹ Lastly, these bodies eventually helped to develop a trade organization to coordinate between them in the overall goal of providing kosher food to the masses.¹⁴²

This success story is a model for the Muslim community. The key difference is that this reform will not play out with primarily private like the kosher regulation which took a century and a half to lead to fruition. Rather, this proposal integrates the successes of the Jewish community and builds off of them.

The certification bodies essentially sell a service to producers of food products (whether it be meat or other products). The bodies have a religious expert on staff that provides a certification to the company that their product is religiously compliant. In the kosher case, there is a brand value associated with different certifying agencies.¹⁴³ The certification then goes on to be part of the marketing of the product.

Currently, there are multiple independent *halal* certification agencies in the United States.¹⁴⁴ While a higher number of bodies creates market competition (which is beneficial to foster innovation and quality), it leads to a great deal of inconsistency and confusion. The first step to this proposal is to centralize and concentrate the certifying bodies to a handful rather than a barrel full. This will be a gradual process to be sure. The first step will be to establish and build out the trade group for *halal* certifiers that will begin the process of weeding out certifiers that are unwilling to buy into the standardization process. Of course, one of the difficulties that arises is how to sanction or flag a certifier that refuses to buy into the standardization process. This trade group will operate independently of the USDA so that agency will not have the ability to decide which certifiers are allowed into the trade group's umbrella. Instead, the trade group itself will make that decision based on private auditing of the certifiers. This process will begin to weed out certifiers that are not up to standard on their certification. Importantly, the eventual goal with the trade group is that it provides a

138. *Id.* at 47.

139. *Id.* at 98.

140. *Id.*

141. *Id.* at 55, 81.

142. *Id.* at 95.

143. *Id.* at 63.

144. Masruroh et al., *supra* note 86, at 131.

stamp of approval to the certifiers that can be communicated to consumers who are evaluating the credibility of the certification bodies. While there is not a legal mechanism to force a rogue certification body from certifying products, the trade group's approval and transparency of information provided to the public should make consumers aware that such certifiers are not approved by the trade group. Because of the sensitive nature of *halal* food consumption, this sort of doubt cast on these certifiers will likely decrease business and run them out anyway. In addition, there is potential for such certifiers to be sued under deceptive trade practices laws (discussed below) which is another method to curb the potential for fraud. This process will help consolidate and help the industry consolidate the certification process.

Consolidation makes it more feasible to rely on each other internally and create (and adhere to) some standards of *halal* production. Because the process generates revenue and there is market incentive for both the bodies and the companies purchasing the services, it circumvents the problem of lack of government resources and enforcement. In fact, market studies indicate that companies who sell *halal* food in non-Muslim countries have seen increased revenue and success, partially because there is an assumption (like kosher) that the food will be fresher and healthier.¹⁴⁵ The research shows that the *halal* food market is promising for retailers in non-Muslim countries.¹⁴⁶

There can be a vast network that buy into the main standards set by the industry (and the government). In addition to this tier of certification that is standardized by the set gold standard, similar logos, and brand name value, there should be an industry trade group specifically for the *halal* certifiers that manages the coordination. Malaysia, a successful example of *halal* regulation, also employs a two-tier structure to provide an auditor for the certifiers.¹⁴⁷ While such government action likely wouldn't stick in America, the idea of using a third party (in this case, the trade group) to police the certifiers is a smart reform. Each should be headed by a religious leader (a leader that is disclosed to the public) that can bring the religious centering to prevent the tendency to bow to the bottom line.

The benefits of this approach are numerous. Firstly, it will interact well with the transparency reforms aimed at the Government. Certifiers are providing assurance and government is checking their work on the background with the USDA's expanded mandate. The parties are working together to create a gold standard that is further solidified by a statute that focuses on the process and bare minimum requirements of certification. All of this is buttressed by the private sector resources to enforce and implement the measures. In addition, it creates

145. Wilkins et al., *supra* note 110.

146. *Id.*

147. Pawancheek, *supra* note 20, at 20.

positive outcomes for certifiers so there is a level of useful uniformity in the certification industry and so that corporations can start to take advantage of the *halal* marker in marketing and reaching out to that swath of the population (a relatively untapped market). Adopting the principles of disclosure, accountability, and credibility that have made the kosher regulations succeed will make these bodies succeed as well as give much-needed assurance to the Muslim community. The private sector also remains nimble enough to employ new technologies and innovations, in a way the Government is not able to.

In examining cons to this approach, one that comes to the forefront is the idea of unifying these bodies and how difficult a task it is. As already demonstrated, there are a great deal of certifying bodies in the United States. Couple that with the religious sectarianism that exists and it seems more impossible to unify the industry enough to work towards the ideal of coordination demonstrated by the kosher regulatory scheme. Second, bringing in the private sector always carries a risk of the bottom line eclipsing religious concerns. If a concern for profit takes over, a certifying body may certify products that should not be certified. A third concern is that the trade association watching over these bodies will be the driver of a focus on profits and will abandon the religious motivation that should drive this work. It could also be argued that competition may turn into a “race to the bottom” with each certification body competing for business and cutting corners in proper *halal* certification. While that is a legitimate concern, the example of kosher regulation provides a more realistic model for how it may play out. When the certifying bodies operating for kosher certification began competing with one another, the force that tempered the “race to the bottom” was the role of religion in the process.¹⁴⁸ Rabbis led these bodies (or at the very least were involved) and they were motivated by a greater power than money/business: the responsibility of providing kosher food to the community and any cutting of corners or otherwise deceptive practice in this process didn’t come with just the risk of losing business but also the risk of sin and punishment.¹⁴⁹ The presence of this stronger motivator protected the kosher industry from falling into the trap that would drive the competitors to cut corners. In addition to the accountability to God, there was also community buy in and trust that the Rabbis had built and there was significant threat that if deception occurred, the community distrust would damage the Rabbis reputation as a Godly man and their status in that community.¹⁵⁰

Islam has a similar community and religious dynamic, especially in the United States. This reform proposes that a religious leader be involved in the certification body. This enforces the accountability to God which is a mechanism

148. See generally LYTTON, *supra* note 68.

149. *Id.*

150. *Id.*

to prevent the bottom line from overtaking the religious purpose. And second, the community buy-in and trust element is very similar to the Jewish community. Forsaking that and losing reputation and goodwill is a heavy burden. These factors should prevent a race to the bottom situation. They will, instead, create positive factors encouraging robust and quality certification. As in the kosher certification example, the religious factors make it such that quality certification will not only be value-added but considered an obligation. Similarly, the community's investment in this process will create external accountability and encourage strong processes to ensure integrity.

These are all valid concerns. But in analyzing the current state of affairs with a disjointed certifying system, steps towards unity are necessary. Perhaps the undiscussed angle of community buy-in is the key; the community needs to support and monitor this project as a stakeholder to the reform. Community buy-in, especially in immigrant swaths of the Muslim population, will rely heavily on community leaders that already have credibility with the community members to lead the charge. As discussed above, community is central to Muslim practice and disseminating information and collecting buy-in will happen at that level. In addition, as discussed in the creation of the council to advise the USDA, the process will have contact and collaboration with a number of hubs and central organizations for the various sects of Islam. Collecting buy-in at that level will trickle down to local community mosques where leaders will bring the community in to understand the certification process and the benefits it provides. Religious leaders are not only driven by a higher sense of purpose but there is a broader religious motivation that will lend credibility to the project and the pre-existing relationship of leaders with their communities will bolster this work.

Choosing credible religious leaders, staying informed, and taking advantage of the access to information is essential to making such an endeavor meaningful and worthwhile.

C. *Reforms to Labeling Protocols*

The reforms discussed so far have not touched on the problem of what happens when something has gone wrong. To that end, there is a reform to the labeling protocols that will assist in mitigating damage, namely, to implement state laws to protect consumers where they do not already exist and to expand existing laws to include a registration provision, modeled after existing *halal* food statutes.

As laid out earlier, state statutes have begun to pop up across the country. There are a few critical changes that need to occur: (1) where there is not a statute, we need one; (2) where there is already a statute, funds must be allocated for enforcement; and (3) where there is a statute, it should be expanded to ensure

it includes a registration provision, a disclosure provision, and a deceptive trade practice act provision.

The first (and most obvious) change, is that in the states where no law is on the books, state legislatures need to begin work on drafting it. Even for non-Muslims who are ambivalent (or at times, even hostile) to these measures, there is an obvious financial need to regulate this growing industry. In the states that lack any sort of law, steps need to be taken to implement it. Below, there follows a discussion of the three essential elements to a statute; new state statutes that are written and implemented should include those three prongs. It is possible that Muslim advocacy groups, like the Muslim Consumer Group based out of Chicago, Illinois,¹⁵¹ can help lead the charge on crafting model legislation to be passed. Of course, a hurdle here is that state legislatures are reluctant to spend money, although that issue can be resolved by a fee structure discussed below. In addition, the anti-Muslim animus makes some of these statutes difficult to pass (and often, difficult to find a sponsor in the legislature to carry the bill). Nonetheless, despite these cons, the benefit is that there will be more robust protections for deceptive practices and increased transparency protocols to reach the ultimate goal of providing the consumer with all the information needed to make informed decisions.

The second proposal is to allocate money for enforcement. Even in the states that have well thought out laws, enforcement is lacking.¹⁵² This makes any statute essentially pointless. Allocating funds for enforcement of the provisions seems like the first step to giving any of these statutes some teeth. While allocation of funds seems obvious, the reality is that state legislatures are reluctant to do so, especially when it necessitates raising taxes. To that end, one suggestion to allow for increased funding for enforcement is to implement a fee system. This would allow state agencies tasked with enforcement to charge producers, sellers, and marketers of *halal*-certified products a fee to support the certification process and related oversight. This would help self-fund the process and create a sustainable means to ensure that these laws are being enforced.

The final (and more important) change, is to make sure three elements are included in any bill governing *halal* food labeling. First, there needs to be a registration provision. New York is a great example of this.¹⁵³ The state requires anyone who distributes or produces *halal* food to register with the Department of Agriculture & Markets the name and contact information of the certifier that certified the product as *halal*.¹⁵⁴ It also requires that those that sell *halal* food maintain records of all the purchases from a manufacturer/producer, specifically

151. Sacirbey, *supra* note 72.

152. See generally LYTTON, *supra* note 68.

153. Cullen & Mohammed, *supra* note 77.

154. *Id.*

including the origin of any meat products (for a period of two years).¹⁵⁵ These regulations tie back to the root of transparency in these operations and sales. Providing that information to a regulator reinforces the need for a certifier and imposes accountability on the regulator, the seller, the producer, and the certifier. These records would be made available to the relevant state agency and to the public. The core principle behind these reforms is that the consumer should be able to make informed decisions and the provision of this information along with the other transparency-based reforms discussed earlier will help bolster that principle. Some may argue that this provision is too broad and the transparency will not aid the public; however, taking a lesson from the Malaysian principle of farm-to-fork, the requirement of record-keeping and registration encourages accountability and transparency.

The second provision that must be included is a disclosure provision. This is in practice in New Jersey where any seller of *halal* food has to disclose the basis upon which the representation of products being *halal* is made.¹⁵⁶ This section is a bit more public facing because it requires that disclosure be made to the public in order to provide transparency. An example of this information could be the name of the certifier that has certified a product as *halal* or the name of the slaughterhouse that represented to a distributor that a product was *halal*. This allows the public to trace where that assertion is coming from. If a seller discloses that basis, a consumer can more easily employ the other tools it has available, namely the website from the USDA with the criteria for slaughterhouses or the information about the certification bodies and their membership (or non-membership) in an industry trade group. The disclosure provision, as applied in New Jersey, is focused on giving the consumer the information he or she needs to decide to their satisfaction.

The final essential piece is the protection against deceptive practices. This is generally included in most of the statutes, but it bears mentioning as an essential element to a comprehensive statute.¹⁵⁷ Often, it can be encompassed in existing statutes on the books for consumer protection that protect against false advertising. In Illinois, for example, the Illinois Consumer Fraud and Deceptive Business Practices Act includes a provision that makes it unlawful to falsely advertise food as *halal*.¹⁵⁸ Some states include the element of intent in their consumer fraud statutes. Maryland prohibits “willful mark[ing]” of a food product as *halal* if it is not *halal*,¹⁵⁹ while Michigan includes that provision and additionally prohibits a person who, “with intent to defraud,” does any of the following: (a) sells food by falsely representing it to be *halal*; (b) falsely inscribes the word

155. *Id.*

156. *Id.*

157. *Id.*

158. 815 ILL. COMP. STAT. 505/2LL (2007).

159. MD. CODE ANN., COM. LAW, § 14-3603 (West 2008).

halal on food packaging; or (c) falsely represents any food in any show window to be *halal* or, where both *halal* and non-*halal* meats are sold, fails to specify which food items are *halal*.¹⁶⁰ Texas also prohibits knowingly or intentionally selling non-*halal* products marketed as *halal* and holds individuals liable for being reckless in determining *halal* status.¹⁶¹

Generally, the violation of such deceptive labeling laws is hinged on intent (except for Texas, which includes reckless determination as a violation of the statute). Each state statute should include this provision for civil liability. It functions much like any other act meant to protect consumers but including *halal* protection provisions in those statutes will create an enforcement regime to lean back on when problems arise. A concern that often arises with new avenues to pursue liability is a flood of litigation. To mitigate that, the statutes should include an intent element to help limit lawsuits. The element of intent helps to limit the scope of liability and does not punish distributors for misrepresentations made by suppliers or slaughterhouses.

These reforms to the existing state infrastructure on labeling and transparency are important to create a back stop to prevent pervasive fraud and deceit in the industry. The central principles are consumer protection and transparency for regulators and for consumers.

V. OTHER ISSUES WARRANTING FURTHER RESEARCH

The scope of this piece was limited to a regulatory scheme and the proposed reforms to fix it. However, a number of peripheral issues are implicated in this as well. While these issues land outside the intended scope of this piece, they are nonetheless worth mention to demonstrate the breadth and implications of the regulatory scheme.

First, the issue of (say something along the lines of: these regulations extending to prisons etc. in place of “the issue of Muslim prisoners”) Muslim prisoners. As the plethora of lawsuits demonstrate, the right to religious practice is often limited inside prison.¹⁶² While statutes like the Religious Land Use and Institutionalized Persons Act (RLUIPA) have made modest headway in providing protection, there is still a great deal to be desired.¹⁶³ Not only are there multiple incidences of Muslims being denied *halal* meals while incarcerated, but there are also instances where they were forced to have meals with pork, in violation of Islamic dietary restrictions. The immigration system is implicated here as well—for several years, Immigrations and Customs Enforcement (ICE)

160. MICH. COMP. LAWS § 750.297(f) (2002).

161. TEX. BUS. & COM. CODE ANN. § 17.883 (West 2003).

162. Laura Follansbee, *The Right to Eat Halal Often Stops at the Prison Gate*, HARV. CIV. RTS.—CIV. LIBERTIES L. REV. (Oct. 10, 2019), <https://harvardcrcl.org/the-right-to-eat-halal-often-stops-at-the-prison-gate>.

163. *Id.*

has been plagued with lawsuits alleging Muslims were forced to eat meals with pork or were forced to choose between years-old, expired *halal* meals that made them ill and meals that were not halal/haram.¹⁶⁴ Beyond the need for reform in this area to prevent these incidents, academics have begun discussing whether the test applied after a violation has already occurred is proper and fair under the Constitution.¹⁶⁵

The second major issue is addressing the anti-Islam rhetoric that plagues the discussion of *halal* (and frankly, a great deal else as well). While this is a major topic that goes well beyond access to and expansion of *halal* food, the rhetoric has held back reform and in some countries, is causing an active backslide.¹⁶⁶ The concern is that these accommodations and measures will force Islam into Western society.¹⁶⁷ The United States is not immune to such discrimination—many an ignorant politician has tried to scare his or her base with the threat of “Sharia-law” without actually understanding what it is (and becoming quite the laughingstock among those who do).¹⁶⁸

The final area for further exploration is the animal welfare aspect of this system. Scholars claim (and the understanding of many Muslims) is that the *halal* method is more humane and healthy than other traditional methods of slaughter.¹⁶⁹ Some back that up and dive into the real nuance of the Islamic slaughter process (something we have not done here) to show the humanity and justification in it, pulling from Islamic and non-Islamic sources alike.¹⁷⁰ Others raise concern over the fact that the animals is not stunned (in most schools of thought) prior to the slaughter.¹⁷¹ The Netherlands in particular has had a lengthy, contentious debate on this issue which has hindered reforms on *halal* food from being implemented.¹⁷² Further study into the nuance and depth of the animal welfare angle would also yield interesting discussion.

164. See, e.g., Geneva Sands, *Muslim ICE Detainees Forced to Choose Between Expired Meals or Eating Pork, Advocate Groups Say*, CNN (Aug. 24, 2020, 2:32 PM EST), <https://www.cnn.com/2020/08/24/politics/muslim-ice-detainees-pork-meals/index.html>.

165. See generally D. Evan Pack, *Substantially Burdened, Substantially in Conflict, or Substantially Unneeded? A Discussion of Abdulhaseeb v. Calbone*, 2011 BYU L. REV. 189 (2011).

166. John R. Bowen, *What Does Europe Have Against Halal?*, BOS. REV. (June 11, 2021), <https://bostonreview.net/global-justice/john-r-bowen-what-does-europe-have-against-halal>.

167. *Id.*

168. Philip Bump, *How Sharia Law Became Embedded in Our Political Debate*, WASH. POST (July 15, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/01/08/how-sharia-law-became-embedded-in-our-politics>.

169. Pawancheek, *supra* note 20, at 5.

170. See generally Kaminski, *supra* note 12.

171. See generally Havinga, *supra* note 10.

172. *Id.*

These issues represent peripheral issues that are not only of importance for future research but may also come up through the process of implementing the reforms recommended.

VI. THE ESTABLISHMENT CLAUSE

Throughout this discussion, there has been an underlying issue of the Establishment Clause. It is important to recognize this issue and address it head-on to ensure that the problems that are posed by this regime's interaction with the Establishment Clause are well understood and discussed. There are a few specific reforms that run close to the constitutional constraints imposed by the First Amendment: the establishment of the council to advise the USDA, the creation of a gold standard to be used in USDA inspections, and the usage of a statute to standardize certifying bodies in the United States. As noted earlier, the First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."¹⁷³ The Supreme Court has often considered and applied this Amendment, and in relation to the Establishment Clause, the *Lemon* test from the Court is important to analyze. This test will be discussed below with analysis of the three reforms that may cause constitutional concerns.

The *Lemon* test is named for *Lemon v. Kurtzman*, a 1971 Supreme Court case that laid out a three-prong test for determining violations of the Establishment Clause.¹⁷⁴ If a government action failed any one of the prongs, that action was considered a violation of the Establishment Clause.¹⁷⁵ The test stated that a law or government action was a violation of the Establishment Clause unless it: (1) has a "secular purpose," (2) its principal or primary effect neither advances or inhibits religion, and (3) it does not foster excessive entanglement with religion.¹⁷⁶

The first prong of the test requires that government action have a secular purpose. State action is seen to be nonsecular only when there is "no question that the statute or activity was motivated wholly by religious considerations."¹⁷⁷ This means that so long as a secular purpose can be articulated, the prong is satisfied. There is a secular purpose to the three reforms mentioned above. The creation of a council is meant to inform the USDA about ritual slaughter, not to promote or encourage it. The creation of a gold standard is not meant to support ritual slaughter, but rather help standardize USDA inspection protocols in relation to ritual slaughter, and the certification statute is meant to standardize certification protocols across religious food industries, not just *halal* products.

173. U.S. CONST. amend. I.

174. 403 U.S. 602 (1971).

175. *Id.* at 612–13.

176. *Id.*

177. *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984).

Any of these reforms can (and in fact, should) be extended to other faith groups; in doing so, the positive impact grows as does the secular purpose. For example, the council reform can be written into law expansively to allow the USDA to form these councils for any faith group that is relevant in order to better enforce the ritual slaughter provisions in the HMSA. The gold standard is simply the “report” of that council/committee which can be applied to any faith group’s dietary needs. The statute mandating this process to the USDA can be written broadly to allow for a non-secular element to be worked in.

There is a counterargument under this prong that there are less intrusive, alternative means to achieving the same goals.¹⁷⁸ Some of the *Lemon* jurisprudence discusses this concept, articulating that where there are other means to achieve the secular purpose, government action may still fail the first prong of the *Lemon* test.¹⁷⁹ However, even though that is a legitimate concern, there is no explicit bar or requirement that alternative means be used in lieu of more intrusive methods to keep actions in compliance with the Establishment Clause. In fact, in considering state purpose, the Supreme Court ruled that a legislature’s “stated reason will generally get deference” so long as the reason is genuine and “not a sham.”¹⁸⁰ In this case, the reasons posited are not shams and are legitimate reasons for government action: standardization and information gathering.

The second prong of the *Lemon* test requires that a government action not have the primary effect of advancing or inhibiting a certain religion.¹⁸¹ Notably, the Establishment Clause “does not always bar a state from regulating conduct simply because it ‘harmonizes with religious canons.’”¹⁸² Here, the nuance of the reform is important to recall. Where a statute would have required that manufacturers comply with Islamic principles or laid down a gold standard that was declared by the USDA as the definition of *halal*, there may have been an Establishment Clause issue.¹⁸³ In that case, the state is explicitly endorsing religion and supporting its establishment.

The details of these reforms do not extend into the territory of violating this principle. As discussed, these reforms do not ask the Government to endorse a version of Islam. Rather, the reforms ask the Government to gather information through the council, gather data on that “gold standard” list, and disseminate that information to the public. At no stage of the process is the Government proclaiming what is or is not *halal*, nor does the reform ask it to. In fact, the council is also limited in that the religious leaders involved are not to make judgments on

178. See *Lemon*, 403 U.S. at 612–13.

179. *Id.*

180. *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 864 (2005).

181. See *Lemon*, 403 U.S. at 612–13.

182. *Marsh v. Chambers*, 463 U.S. 783, 792 (1983).

183. Elijah L. Milne, *Protecting Islam’s Garden from the Wilderness: Halal Fraud Statutes and The First Amendment*, 2 J. FOOD L. & POL’Y 61, 76 (2006).

what is or is not *halal*. Rather, the task is to compile information for the USDA to then use as a framework for the information to be communicated to the public. The reform does not task the USDA with enforcing the checklist or imposing criminal or civil sanctions on slaughterhouses not following the checklist. These reforms do not establish religion; instead, they harmonize with religious cannons in a permissible manner. The certification statute, similarly, does not endorse or advance a particular religion. It simply standardizes an existing set of bodies that affect religious adherents across the population including Jewish, Hindu, and Muslim individuals. Because the standardization is widely applicable, its primary effect or impact is not to advance a particular religion. The creation of the council and gold standard are slightly trickier, but the distinction that these measures simply gather and provide information without enforcement or endorsement makes it clear that the primary effect is not to endorse Islam.

The third and final prong of the *Lemon* test looks at whether there is excessive entanglement between government and religion.¹⁸⁴ The Supreme Court, in analyzing this question, held that this concern is raised when the Government is called on to resolve “underlying controversies over religious doctrine” or from using Government organs for “essentially religious purposes.”¹⁸⁵ Notably, this inquiry is not black and white; instead, it is one of degree, because some governmental involvement with religion is unavoidable.¹⁸⁶ Specifically, the inquiry is trying to ascertain if the entanglement is “excessive.” In considering this question, the Second Circuit Court of Appeals highlighted in dicta that where a state statutorily imposes interpretation of inherently religious terms and is required to take an official position on religious doctrine, there is likely excessive entanglement.¹⁸⁷

In considering the question of excessive entanglement and the three reforms discussed here, these reforms specifically do not ask that the Government take a position on officially defining what is or is not *halal* through the gold standard or the council. That determination is left up to private certifying bodies or the public’s own analysis of the information being provided. The council is not to lay down the law on what is or is not *halal*; nor is the USDA endorsing a definition through the gold standard (which is just a framework to gather information) or through enforcement of the gold standard. The Government is not being called on to resolve underlying disputes of religious doctrine nor is a state organ being used for religious purposes. The USDA is already tasked with inspecting slaughterhouses and monitoring methods of slaughter. This reform simply adds an

184. See *Lemon*, 403 U.S. at 612–13.

185. *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 447, 449 (1969).

186. *Walz v. Tax Comm’n of New York*, 397 U.S. 664, 674 (1970).

187. *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 425 (2d Cir. 2002).

information gathering element. The Government isn't being used for religious resolution but rather transparency so individuals can make their own judgments.

The Court recognized that some involvement is unavoidable and the methods proposed in this Comment explicitly omit endorsement or official definition by the Government of religious principle. The Government is not asked to interpret anything. Instead, it provides the information to the consumer that can then take up the mantle to interpret the information received. The certification statute is even more separated from any religious inquiry. The statute is meant to standardize certification registration and processes to eliminate fraud. Consumer protection is an established function of the state and a statute standardizing and monitoring the bodies doing that work is not establishing a religion, although it could be interpreted that way. That characterization fails to recognize the broad applicability of this statute and the lack of any mandate forcing interpretation of religious doctrine or taking an official stance on religious definitions.

This analysis demonstrates that the *Lemon* test is not violated by the three reforms that seem to tow closer to that constitutional line. Each of the three reforms has an articulated secular purpose, their primary effect is not to advance religion, and they do not cause excessive entanglement between religion and government. Instead, these reforms call on the Government to provide information and allow the public to make its own judgments and put in place some regulations and monitoring for the certification process.

In addition, there is an argument that there is an Establishment Clause problem with a statute specifying that the religious leaders come from particular Islamic legal schools. As mentioned above, the statute establishing this council should not be limited to one school of thought. The Supreme Court has considered this question and laid down a second Establishment Clause test—the denominational preference test. This test articulates that “one religious denomination cannot be officially preferred over another” without first satisfying strict scrutiny.¹⁸⁸ Denominational neutrality is preferred. This essentially means that the government action cannot officially discriminate against the various sects of Islam. This Comment focuses on Shi’ah jurisprudence to limit the discussion and provide an ease of reference for the reforms, but official positions will have to consider a wider scope of sects in Islam. This is an important point to note because this reinforces the need for the statute to enable the creation of the council and adoption of the gold standard checklist to avoid that discrimination. As discussed above, the statute should task the USDA to well-represent sects and try to include as many relevant sects as possible. Also important to remember is that the gold standard is not a definition of what is *halal* but rather a comprehensive list that includes the various factors that sects look at. The information is then disseminated to the public and individuals make that ultimate determination

188. *Larson v. Valente*, 456 U.S. 228, 244–45 (1982).

on what satisfies the criteria they subscribe to. While on the surface, there may seem like there is an Establishment Clause problem, the effort to include sects (i.e., the lack of an enumeration of which sects are to be included in the enabling statute) and the inclusivity of the gold standard should alleviate this concern.

Overall, this discussion of the Establishment Clause tests and the three reforms that tow that line demonstrate that there is no violation that would hinder reform. While some may see it in that light, the jurisprudence supports these reforms and compliant with the Establishment Clause.

VII. CONCLUSION

With the growth of the *halal* food industry and the concurrent explosion in the Muslim population, it is high time this country examine (and reform) the structure of regulation of this sector of the food industry. Already, several problems have made themselves apparent from lack of enforcement to an uncertain set of standards that makes meaningful and reliable access to *halal* products dubious. It is important that the United States carefully consider how to integrate private sector resources with public sector visibility and longevity to produce a system that best serves this population. The solution proposed in this Comment adopts that principle and keeps in mind constitutional constraints. Namely, the proposed reforms to the system would create a public arm charged with providing access to information about *halal* meat production (through the USDA's expanded mandate and the creation of a *halal* gold standard) and a private arm which would utilize certification bodies like the kosher food regulation scheme. (governed by a certification statute modeled after the successful statute in Australia and with a two tier system mean to promote accountability and use of resources). All of this would be buttressed with protections from state statutes that are similarly focused on preventing deceptive trade practices and promoting transparency.

This broad framework is an integration of successful practices in this country and abroad. The hope is that it will allow the *halal* food market to flourish and grow, without compromising on the religious integrity that underlies this need. It is high time something changed; this proposed scheme is one attempt to move the needle on an issue that is incredibly important to the average Muslim today, and for years to come.