STOP COMPLICATING RVAA
By Kelly Coghlan

As if the turf war that TASB has picked with the Texas Legislature over who will wear the pants in writing RVAA's policy were not enough, schools are now writing their own policies which not only violate RVAA but the Constitution itself. I know because my own school district just did it last night. Without permitting any public comment, Spring Branch ISD wrote its own policy which attempts to paraphrase RVAA--but does so inaccurately and fatally--and puts our district in violation of clear directives from the Supreme Court. I have reproduced a portion of the letter I wrote to the Board President upon reading our district's new local policy:

> Thank you for sending me a copy of what SBISD has apparently adopted—without any public comment—as FNA Local. I had indicated to you that I would like to be heard on this before any vote. Your communication to me yesterday led me to believe that this was only to be discussed last night, not decided.
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> With just one quick read-through, the second paragraph of the policy is likely to make the policy unconstitutional on its face under *Wallace v. Jaffree*. It is so obvious that any attorney who regularly practices in this area would have immediately seen this. Additionally, the policy neither correctly restates RVAA nor carries out the directive of what each school district is required to do before the beginning of the school year. Leaving this all up to the Superintendent and principals to develop does not comply with the "implement" requirement of RVAA. The board cannot simply pass this off. I think the policy you sent to me is going to get our district into deep trouble. The board needs to withdraw this immediately.
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> The course that our school board is taking here demonstrates the problem when school-law attorneys try to venture into delicate constitutional policy writing. That is why RVAA and the Model Policy went through years of vetting before some of the best constitutional scholars and constitutional litigators in the country and then was tested in actual school districts.
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> This further demonstrates why the Model Policy makes so much sense for our school district to adopt. It was vetted by numerous constitutional attorneys across the country and then vetted before the House State Affairs Committee, then the full House, then the Senate Education Committee, and then the full Senate, and then back to the House.
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> Why is our school district trying to re-invent the wheel and to outdo the entire Texas Legislature which passed a recommended and tested Model Policy which is already a part of the Texas Education Code? It just does not make any sense.

And other venturesome school districts aren't doing any better. Klein ISD, for instance, just adopted its own Non-Model Policy calling for an "invocation" and "benediction"—running afoul of *Santa Fe ISD v. Doe* and *Wallace v. Jaffree*.

As a Boy Scout at the tender age of fourteen growing up in Longview, Texas, I had the opportunity one summer of attending the Boy Scout Leadership Training course at Camp Tonkawa. The only thing I remember well from that week is a phrase that has stuck with me and helped me all of my life. I learned the "KISS" principle. This, of course, is the acronym for "Keep It Simple Stupid."

RVAA is not complicated. The Model Policy is not complicated. RVAA was not intended to become the financial relief act for school-law attorneys. It was not intended to become a platform for lawyer turf wars. It was intended to make it easy and inexpensive for schools to comply with the law. While a school may adopt a different policy, that district will have no assurance of being in compliance with RVAA or in compliance with the Constitution and will be on its own to defend its aberrant policy against legal challenge. The only way a school district can be assured of being in compliance with all provisions of RVAA is for the district to adopt RVAA's Model Policy. If a school district adopts and follows RVAA's Model Policy, that district is automatically deemed to be in compliance with RVAA, and, as the legislative joint-authors of RVAA have indicated, will put the Texas Attorney General on that district's side of the table in the event of a facial legal challenge to the school's policy.

Does your district really want to be the guinea pig to defend—alone—your lawyer's (or TASB's) untried, untested, and governmentally un-scrutinized experimentations in this delicate area of jurisprudence. Why would a school district take the unnecessary risk when a viable, tested, and State-approved safe harbor Model Policy is already included as part of the Texas Education Code. The Model Policy doesn't need revising. **Keep it simple**.

[This document's contents are the personal opinions of the author and are not legal advice, warranties, or representations. Kelly Coghlan is a Houston constitutional trial attorney, Life Fellow of the Texas Bar Foundation, Life Fellow of the Houston Bar Foundation, and author of *Those Dangerous Student Prayers*. He has represented 159 students and parents as *amici curiae* before the U.S. Supreme Court on faith-based issues, obtained the first federal injunction preventing censorship of a student's voluntary public prayer in *Ward v. Santa Fe I.S.D* culminating in a final judgment for the student, and is the legal author of the Texas Schoolchildren's Religious Liberties/Religious Viewpoints Antidiscrimination Act ("RVAA"). Website www.kellycoghlan.com. Please consult your attorney]