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CONSTITUTIONALITY OF EDUCATIONAL LAND GRANTS AND MISSISSIPPI STATE PROPERTY INTERESTS UNDER REVIEW IN *PAPASAN v. ALLAIN*

INTRODUCTION

From the Enabling Act of Ohio in 1803 to that of Alaska in 1959, Congress conveyed to the states public land for educational purposes. The Enabling Acts provided that certain sections in each township be reserved for educational purposes. These land grants created a significant income source for the establishment and maintenance of state run public schools. The states are responsible for disbursing the revenues derived from the federal land grants to the state schools. Although Congress conveyed the lands to the states, the states' authority to distribute revenues may be limited by the language of the Enabling Act or by the Fourteenth Amendment to the Constitution.

In *Papasan v. Allain*,¹ school children and school officials of the Chickasaw Cession counties filed suit against the state of Mississippi claiming that the state and state officials were breaching the federal school land trust. The claim stated that such breaches violate the Equal Protection Clause of the Fourteenth Amendment by disproportionately allocating among school districts state resources for the support of local schools.² There is no dispute that the school districts within the Chickasaw Cession counties receive significantly less educational land grant funds per capita than other state counties. However, there is dispute over whether the disparities in funding from educational land grants detrimentally affect the schools within the Chickasaw Cession counties and whether the state has any choice in determining how to allocate such funds. The state's discretion to allocate land grant funds depends on the property interest in school land that the United States conveyed to Mississippi upon admission to the Union.

Papasan v. Allain illustrates the significance and the difficulty of inter-

1. 478 U.S., 106 S.Ct. 2932 (1986) [hereinafter *Papasan II*].

2. The petitioners also "alleged a denial of due process, unconstitutional impairment of contractual obligations, a taking without just compensation, and a Ninth Amendment Claim." *Papasan II*, 106 S.Ct. at 2938 n. 8; Joint App. at 15-23, *Papasan II* (No. 85-499). Of these additional claims, only the Contract Clause claim was pursued in the case before the United States Supreme Court. The Court held that the Contract Clause claim was "in all essential respects the same as the petitioners' trust claim" and therefore the Eleventh Amendment similarly barred that claim. *Papasan II*, 106 S.Ct. at 2938 n. 8.

preting federal land grants. This is the first case to challenge the constitutionality of the land grants themselves. Although the United States Supreme Court did not decide this issue, the Court raised the question of whether the federal grants require the state to allocate educational land grant funds to the schools in the townships in which the lands are located, and if so, whether the federal grants violate the Equal Protection Clause. The United States Supreme Court remanded this issue to the Fifth Circuit and directed the court of appeals to review the federal grants to determine the property interests transferred to Mississippi.³

On remand, the Court of Appeals for the Fifth Circuit must determine whether the disparity in benefits received by Mississippi school districts from Sixteenth Section lands is "rationally related to a legitimate state interest."⁴ This determination depends on whether the federal grant requires Mississippi to allocate the economic benefits of Sixteenth Section lands to the particular district in which those lands are located.⁵ If the federal grant requires the state to allocate monies to particular townships, then Mississippi's disbursement procedures are rationally related to a legitimate state interest.⁶ However, the federal grant itself may violate the Equal Protection Clause by requiring the state to disproportionately distribute school land grant funds among school districts.⁷ If the federal grant violates the clause, Mississippi may be enjoined from disbursing educational benefits received from Sixteenth Section lands to the particular districts in which those lands are located.⁸

This note addresses the issue of what interests in educational reserved lands the United States conveyed to Mississippi upon its admission into the Union. First, this note briefly discusses the history of educational land grants in the United States, with particular emphasis on Mississippi. Second, this note discusses various interpretations of the Mississippi land grants and the possible ramifications of each of the interpretations that may be adopted by the appellate court on remand.

SUMMARY OF THE CASE

In 1981, school officials and school children of the twenty-three northern Mississippi counties, known as the Chickasaw Cession counties, sued the state of Mississippi alleging a breach of trust by the state and a denial

3. *Papasan II*, 106 S.Ct. at 2946-48. This case was remanded to the court of appeals because the parties only disputed the legal significance of the factual allegations of the complaint. *Id.* at 2935 n. 1.

4. *Id.* at 2946.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

of equal protection. After tracing the history of the Mississippi public school lands, petitioners challenged the legality of the state's actions, which resulted in Sixteenth Section lands not being reserved in the Chickasaw Cession area.⁹ They argued that the disproportionate school lands' appropriations deprived Chickasaw Cession school children of a "minimally adequate level of education," thereby violating the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The petitioners sought four equitable remedies and money damages. They asked for (1) a declaration that the Mississippi legislation purporting to sell the Chickasaw Cession school lands was void and unenforceable; (2) a declaration that defendants were depriving plaintiffs of property and educational rights without due process of law or just compensation and that defendants were depriving them of equal protection of the law; (3) a grant of substitute lands of the same value as the original Chickasaw Cession school lands; and (4) an order directing the Mississippi legislature to establish a suitable compensating perpetual trust fund. The fund would provide annual income to the Chickasaw Cession school districts in an amount equivalent to the level of income which they could have reasonably expected to enjoy had Mississippi not sold the Sixteenth Section school lieu lands.¹⁰ The petitioners also sought damages for lost income due to the state's imprudent trust management and compensation for any future denials of their rights to due process and equal protection.¹¹

The district court dismissed the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), holding that the Eleventh Amendment and the Statute of Limitations barred petitioners' claims.¹² The Court of Appeals for the Fifth Circuit affirmed since the relief requested was compensation or restitution for past wrongs and, therefore, an impermissible monetary award against the state treasury.¹³

The court of appeals found, however, that an appropriate alternative remedy was available and therefore did not summarily dismiss the complaint. It held that the Eleventh Amendment did not bar the petitioners' claim based on the present disparity in school funding.¹⁴ Since the court

9. *Id.* at 2938.

10. *Id.*; Joint App. at 28-29.

11. Joint App. at 28-29.

12. *Id.* The District Court's order dismissing the complaint with prejudice is unpublished. Plaintiff's Brief on the Merits at 1.

13. The district court's decision is discussed in the appellate court decision, *Papasan v. United States*, 756 F.2d 1087 (5th Cir. 1985) [hereinafter *Papasan I.*].

14. *Id.* The Court of Appeals stated that the Eleventh Amendment barred a federal court from awarding retroactive "monetary relief from the state in the form of compensatory damages, punitive damages, or monetary awards in the nature of equitable restitution. . . ." *Id.* at 1093, quoting *Clay v. Texas Women's University*, 728 F.2d 714, 715 (5th Cir. 1984) (emphasis added by the *Papasan II* Court).

found no necessary connection between the amount of money expended for educational purposes and the quality of education, the state's unequal distribution of school land funds did not violate the Equal Protection Clause.¹⁵ Relying on *San Antonio Independent School District v. Rodriguez*,¹⁶ the appellate court also reasoned that the funding disparity between the Chickasaw Cession counties and other counties did not deny plaintiffs equal protection because there was a rational basis for the difference in the disbursement structure of Mississippi's school finances.¹⁷ Income differences inevitably exist among school districts because of variances in land values and desired local administration of local property taxes for educational funding. Income differences in the Chickasaw Cession school districts were caused by the state's sale of the school lands and investments of the proceeds in the Mississippi railroads that were subsequently destroyed in the Civil War. Mississippi consequently attempted to remedy its bad investment by annual appropriations to the Chickasaw Cession counties. Although the state failed to adequately remedy the consequences of its poor investments in the railroad companies by failing to adjust appropriations to keep up with inflation, the state did not violate the Equal Protection Clause. The court said the state was obligated only to attempt a remedy, not to achieve complete success.¹⁸

On certiorari,¹⁹ a divided United States Supreme Court affirmed that the Eleventh Amendment barred the petitioners' breach-of-trust claim.²⁰ The Court also affirmed that the complaint's equal protection claim was not barred by the Eleventh Amendment.²¹ The Supreme Court, however,

15. *Papasan I*, 756 F.2d at 1095.

16. 411 U.S. 1 (1973).

17. *Papasan I*, 756 F.2d at 1095. In *Rodriguez*, the Court used a rational basis test. The Court rejected use of heightened scrutiny since it found that the Texas school financing system did not discriminate against any suspect class nor violate any fundamental right. *Rodriguez*, 411 U.S. at 28, 37. The Court stated that education is "not among the rights afforded explicit protection under our Federal Constitution." *Id.* at 35. The Court also found that questions of local taxation, fiscal and educational planning, and, in this case, federalism, required the traditional standard of review, that is, that the state's system bear some rational relationship to legitimate state purposes. *Id.* at 40-44.

18. *Id.*

19. The United States Supreme Court granted certiorari in *Papasan II*, 106 S. Ct. 521 (1986).

20. *Papasan II*, 106 S. Ct. at 2934. Justice White wrote the opinion of the Court, joined by Justice O'Connor. Justices Burger, Powell, and Rehnquist concurred with the majority's holdings that the Eleventh Amendment barred the petitioners' breach-of-trust claim but did not bar the Equal Protection claim. However, they dissented from the majority's holding that petitioners' claim may violate the Equal Protection Clause under a *Rodriguez* rational basis test. Justices Brennan, Marshall, Blackmun, and Stevens concurred with the majority's holding that the complaint stated an Equal Protection claim sufficient to withstand a Fed. R. Civ. P. 12(b)(6) motion to dismiss and that the case had to be remanded to the court of appeals for further proceedings. They concurred in the result of the majority's holding that the Eleventh Amendment did not bar the Equal Protection claim but dissented to the holding that the Eleventh Amendment barred the petitioners' breach-of-trust claim.

21. *Papasan II*, 106 S.Ct. at 2947. The Court stated that the "essence of the equal protection allegation is the present disparity in the distribution of the benefits of state-held assets and not the

rejected the appellate court's understanding of the petitioners' claim. The Supreme Court found that the complaint did not challenge Mississippi's overall public school financing system, but was restricted to disparities of Sixteenth Section and lieu land funding.²² Thus, the Court distinguished *Rodriguez* and remanded the case to the court of appeals to address the equal protection issue.

HISTORICAL OVERVIEW OF EDUCATIONAL LAND GRANTS

Educational land grants have been an integral and favored policy of the American federalist system.²³ Beginning with the Land Ordinance of 1785,²⁴ the Congress of the Confederation made provisions for the reservation of Sixteenth Section lands for educational purposes.²⁵ The Northwest Ordinance of 1787 provided for the division of the Northwest Territory into states.²⁶ In the Enabling Act of the Territory of Ohio, the first territory to apply for statehood, Congress provided that section number sixteen in every township be reserved for the use of schools.²⁷ This

past actions of the State." *Id.* at 2942. The Court characterized the unequal distribution as the type of continuing violation for which a prospective injunctive remedy is permissible under *Ex Parte Young*, 209 U.S. 123 (1908).

22. *Papasan II*, 106 S.Ct. at 2945.

23. The educational land-grant policy of the federal government follows the New England colonial educational land endowment system of the seventeenth century. The colonial government started several colleges, such as Harvard, William and Mary, Yale, Dartmouth, and Princeton, with land grants or proceeds from the sale of lands. The principle of appropriating land for educational purposes was approved on the grounds of religious freedom and democracy. See H. HIBBARD, *THE HISTORY OF PUBLIC LAND POLICIES*, 305-09 (1965) [hereinafter HIBBARD].

24. 28 JOURNALS OF THE CONTINENTAL CONGRESS 375, in *DOCUMENTS OF AMERICAN HISTORY* 123-24 (H.S. Commager ed. 1942).

25. The Land Ordinance of 1785 has made an enduring contribution to public land law. It created a system whereby lands were divided into square townships of 36 numbered sections, each section containing 640 acres. *Id.* The ordinance provided for sale of land at public auction for a minimum of one dollar an acre and for the reservation of Sixteenth Section lands within each township for public education. 28 JOURNALS OF THE CONTINENTAL CONGRESS 298 (1933). See G. COGGINS AND C. WILKINSON, *FEDERAL PUBLIC LAND AND RESOURCES LAWS* 43-45 (1st ed. 1981).

26. The Northwest Ordinance of 1787 also defined the process whereby territories could become co-equal states. The Northwest Territory included the land south of Canada, north of the Ohio River, east of the Mississippi River, and west of the original thirteen states. 2 *FEDERAL AND STATE CONSTITUTIONS* 957 in *DOCUMENTS OF AMERICAN HISTORY* 128-32 (H.S. Commager ed. 1942). See COGGINS & G. WILKINSON, *supra* note 25, at 43.

27. Ohio applied for admission in 1802 and was admitted in 1803. The Ohio enabling act provided that "the section, number sixteen, in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools." Ohio Enabling Act, 2 Stat. 173, 175, ch. XL, § 7 (1802).

Ohio originally refused to accept Congress's terms which required Ohio to exempt taxation on all property sold by the government for five years after the date of sale, unless Congress consented to reserving school lands in Connecticut, Virginia, the United States military reserves, and Indian territory. H. HIBBARD, *supra* note 23, at 310. In 1803, Congress modified the Ohio grant providing that the school land endowments "'be vested in the legislature of that state' and not in the particular township." *Id.* The proceeds, however, were still to be appropriated to the particular township.

practice was generally followed in the admission of every other state to the Union, although specific provisions have varied.²⁸

The language of educational land grants from 1803 to 1910, when New Mexico and Arizona were admitted into the Union, illustrates a subtle change in federal school endowment policy.²⁹ The first land grants, including grants to Ohio and Mississippi, were to the states for educational purposes. The economic benefits of the grants were to be used in the townships where such Sixteenth Section lands were located. After 1844, Congress vested title to the reserved school lands in the state without any provision that the proceeds be used in any particular township.³⁰ It was not until Colorado was admitted as a state in 1875 that Congress restricted the sale of school reservations.³¹ Finally, the 1910 Enabling Acts of New Mexico and Arizona provided for Congress' continuing oversight role in the disposition of school land grants.³²

HISTORY OF THE MISSISSIPPI EDUCATIONAL LAND GRANTS

Mississippi became a state in 1817.³³ While Mississippi was still a territory, Congress provided that Sixteenth Section lands be reserved from the sale and survey of her territorial lands.³⁴ Thus, when Mississippi became a state, lands had already been reserved for educational purposes. The 1817 Land Sales Act for Mississippi covered land not included in the 1803 Act.³⁵ It specifically required that "the section No. 16, in each township . . . shall be reserved for the support of schools therein. . . ."³⁶

28. The Ohio statehood grant provisions were generally followed in the admission of Mississippi, Louisiana, Indiana, Illinois, Alabama, Missouri, Michigan, Arkansas, Florida, and Iowa. G. COGGINS & C. WILKINSON, *supra* note 25, at 45.

29. See generally, H. HIBBARD, *supra* note 23, at 305-46.

30. *Id.* at 314-315. Until Mar. 3, 1845, when Florida was admitted into the union, Congress granted to all the states, except Michigan, Indiana, and Alabama, school lands for the use of the townships. Congress also vested the state legislatures with the power to appropriate to each township monies raised from the townships. *Id.* at 315. In Indiana and Alabama, Congress granted the school lands directly to the inhabitants of the townships. Indiana Enabling Act, ch. LVII, § 6, 3 Stat. 289, 290 (1816) and Alabama Enabling Act, ch. XLVII, § 6, 3 Stat. 489, 491 (1819). In Michigan, Congress granted Sixteenth Section lands to the state for the use of schools. *Id.* See *Papasan II*, 106 S.Ct. at 2936.

31. The Colorado Enabling Act required that school property be sold for at least \$2.50 per acre. All states admitted into the Union after 1875, except Utah, have some restrictions on the sale of school allotments. H. HIBBARD, *supra* note 23, at 317.

32. New Mexico-Arizona Enabling Act, ch. 310, §§ 10, 28; 36 Stat. 557, 563-65, 574-75 (1910).

33. Mississippi Enabling Act, ch. XXIII, 3 Stat. 348 (1817).

34. In 1798 Congress created the Mississippi Territory. Act of April 7, 1798, ch. XXVIII, 1 Stat. 549 (1798). Six years later, Congress provided for the sale and survey of Mississippi Territory lands. The 1803 Land Sales Act excepted from sale "section number sixteen, which shall be reserved in each township for the support of schools within the same . . ." 1803 Land Sales Act for Mississippi, ch. XXVII, § 12; 2 Stat. 229, 233-34 (1803).

35. *Papasan II* at 2936.

36. 1817 Land Sales Act of Mississippi, ch. LXII, § 3; 3 Stat. 375 (1817).

The history of the Chickasaw Cession begins in 1832 when the United States and the Chickasaw Nation entered into the Treaty of Pontotock Creek.³⁷ The Chickasaw Nation ceded the northern 23 counties³⁸ of Mississippi pursuant to an agreement that the lands be surveyed and sold at an agreed upon "Government minimum price."³⁹ The state was to retain the proceeds of such sales for the use and benefit of the Chickasaw Indian Tribe.⁴⁰ Soon after the Treaty's ratification on March 1, 1833, the land was advertised and quickly sold as buyers took advantage of the inexpensive land.⁴¹ Apparently as a result of the rapidity of the land sales, no Sixteenth Section lands were reserved in the Chickasaw Cession area as required by the terms of the Treaty.⁴² In order to correct this deficiency, the United States gave land to the state in lieu of the Sixteenth Section lands sold in the Chickasaw Cession lands.⁴³ Congress vested title to these lieu lands "in the State of Mississippi, for the use of schools within [Chickasaw Cession counties] in said State. . . ."⁴⁴

Mississippi accepted the Chickasaw Cession lieu lands in 1844⁴⁵ and authorized their 99-year lease, renewable forever, at a price not less than six dollars per acre.⁴⁶ The proceeds from the lease were "to be held in trust by said state for the use of schools in the Chickasaw cession. . . ."⁴⁷

37. The Treaty provided that land be sold "in the same manner and on the same terms . . . as other public lands. . . ." Treaty with the Chickasaws (commonly referred to as Treaty at Pontotock Creek), art. VIII, 7 Stat. 381, 382 (1832).

38. *Id.* at art. I, 382. The 23 Mississippi counties include: Alcorn, Benton, Calhoun, Chickasaw, Clay, Coahoma, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, Union, Webster and Yalobusha counties. *Papasan I*, 756 F.2d at 1090 n. 7. Both the Appellate Court and the U.S. Supreme Court cite 23 Chickasaw Cession counties. A special report prepared by Mississippi's Secretary of State Dick Molpus and State Auditor Ray Mabius cites 24 counties. The additional county is Tallahatchie. STATE AUDITOR AND SECRETARY OF STATE OF MISSISSIPPI, SPECIAL REPORT ON CHICKASAW CESSION SCHOOL DISTRICTS (Nov. 1984) in Joint App. at 35 [hereinafter SPECIAL REPORT].

39. Treaty with the Chickasaws (commonly referred to as Treaty at Pontotock Creek), art. VIII, 7 Stat. 381, 384 (1932). The total amount of land ceded from the Chickasaw Nation was 6,283,804 acres. The amount of Section Sixteen lands totaled 174,555 acres. SPECIAL REPORT, *supra* note 38, at 36.

40. Treaty at Pontotock Creek, art. XI, 7 Stat. 381, 385 (1832).

41. SPECIAL REPORT, *supra* note 38, at 36.

42. *Id.*

43. Chickasaw Lieu Lands Act, ch. CCCLV, 5 Stat. 116 (1836); see *Lambert v. State*, 211 Miss. 129, 137, 51 So.2d 201, 203 (1951). Congress authorized the Secretary of the Treasury to select lands in lieu of Sixteenth Section lands that were subject to prior claims. Act of April 21, 1806, ch. XLVI, § 6; 2 Stat. 400, 401: *Papasan I*, 756 F.2d at 1090, n 5; see generally *Andrus v. Utah*, 446 U.S. 500, 524-28 (1980) (Powell, J., dissenting) (providing a historical overview of school indemnity or lieu land selections).

44. Chickasaw Lieu Lands Act, ch. CCCLV, § 2, 5 Stat. 116 (1836). This Act also provides that lieu lands "shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as [Mississippi] now holds the lands heretofore reserved for the use of schools in [Mississippi]." *Id.*

45. 1844 Miss. Laws 238, ch. LXVII.

46. 1848 Miss. Laws 62, ch. III, §§ 2, 3.

47. *Id.* at § 5.

With congressional authority,⁴⁸ Mississippi sold these lands for approximately \$1,047,330 in 1856.⁴⁹ Mississippi then invested the monies received from the sale at an eight percent interest rate in the railroad companies, with investment proceeds to be paid to the counties in the Chickasaw Cession on a per acre basis.⁵⁰ Seven years later the Mississippi legislature authorized railroads to pay their indebtedness directly into the state treasury. As a result, the state treasury was obligated to disburse monies to the Chickasaw Cession counties.⁵¹ During the Civil War the railroads were destroyed, and the railroad companies subsequently defaulted on their payments. Nevertheless, the Chickasaw Cession counties continued to receive eight percent interest from the state treasury until 1890 when the legislature unilaterally reduced the interest to six percent.⁵² This interest is still appropriated annually.⁵³ The amount received today by the Chickasaw Cession counties averages 63 cents per pupil per year.⁵⁴ The average amount received from the revenues of Sixteenth Section lands in the rest of the state is about \$75.34 per pupil.⁵⁵ Thus, the disparity of revenues received by the Chickasaw Cession counties from Sixteenth Section lands compared to the rest of the state is substantial.⁵⁶

48. Authorization of Sale of Lieu Lands, ch. XXXV, 10 Stat. 6 (1852). This Act required that all proceeds from the sales of land within a particular township be appropriated to the use of schools within that township.

49. *Papasan II*, 106 S.Ct. at 2937.

50. 1856 Miss. 141, ch. LV1, §§ 14, 15.

51. SPECIAL REPORT, *supra* note 38, at 37.

52. MISS. CONST. art. VIII, § 212 (1890).

53. The amount of interest totals \$62,191 and is disbursed semi-annually. SPECIAL REPORT, *supra* note 38, at 37; 1984 Miss. Laws, ch. LXXXVII.

54. *Papasan II*, 106 S. Ct. at 2938.

55. *Id.* Powell's dissenting opinion refutes that the disparity is \$75.34 versus \$.63, claiming that the Court of Appeals and the Petition for Certiorari cite the disparity as \$31.25 versus \$.80. Since there is no published district court opinion it is difficult to determine how the Court of Appeals arrived at its figures. *Papasan I*, 756 F.2d at 1091. The U.S. Supreme Court majority opinion relied on the calculations in the SPECIAL REPORT, *supra* note 38, at 44.

56. On a per acre basis, the Chickasaw Cession counties averaged 36 cents per acre compared to the Sixteenth Section counties average of \$42.00 per acre. SPECIAL REPORT, *supra* note 38, at 38. The annual proceeds from the Chickasaw Session lands from 1922 remain unchanged at \$62,191. The other Section Sixteen lands have increased 467 percent from the fiscal year 1977 to 1983. The 1983 fiscal year estimate of those lands totalled \$27,811,604. *Id.* at 37. The report states that \$7,022,502 in additional funding is required to raise the level of monies available to the Chickasaw counties to the average available to non-Chickasaw counties. *Id.* at 38. This estimation is in addition to the appropriations made by the Mississippi State Legislature while this case was pending in the Court of Appeals in 1985. The legislature appropriated \$1 million per year from 1985 to 1991. 1985 Miss. Laws 7, ch. XXIII.

In their dissenting opinion, Justices Powell, Burger, and Rehnquist refuted the petitioners' equal protection claims that these disparities detrimentally affect the Chickasaw Cession counties. First, the Justices note that the Chickasaw Cession counties are "scattered widely" in a statewide ranking of school districts in terms of expenditures per pupil. Second, the Justices argue that the total receipts for education from Sixteenth Section funds are insignificant. Sixteenth Section lands account for only 1 1/2 percent of the overall school funding. *Papasan II*, 106 S.Ct. at 2950. The total amount of receipts for Sixteenth Section lands totalled \$16,272,925 in 1984-85. This amount was "dwarfed" by income from state and federal funds of over \$752 million. *Id.* at 2952.

ANALYSIS

The federal grant to Mississippi requires that the state reserve the Sixteenth Section in each township for the support of schools within that township.⁵⁷ The language of the federal grant may be interpreted in two ways. The federal grant either transferred an absolute fee interest or it created a fee simple interest in trust.⁵⁸ Mississippi's legal obligations to the school children and school officials of the Chickasaw Cession counties will differ according to the interpretation adopted by the appellate court on remand.

The Equal Protection Clause of the Fourteenth Amendment may prohibit a state from disproportionately distributing the benefits of state-held assets. In *Papasan v. Allain*, petitioners claim that the present disparity in the distribution of the benefits from the state's Sixteenth Section lands denies petitioners the equal protection of the laws in violation of their Fourteenth Amendment rights. Petitioners further claim that these actions deny them "their rights to and interest in a minimally adequate level of education, or reasonable opportunity therefore."⁵⁹ Thus, the petitioners' claim challenges the constitutionality of the state's unequal distribution of funds from Sixteenth Section lands.⁶⁰

The United States Supreme Court established the constitutional standard under the Equal Protection Clause for such actions in *San Antonio Independent School District v. Rodriguez*.⁶¹ The constitutional standard is "whether the state action rationally furthers a legitimate state purpose or interest."⁶² Under *Rodriguez*, disparities in school financing among school districts constitute an equal protection violation only if they are not rationally related to a legitimate state interest.⁶³

In *Rodriguez*, the Court found that the funding variations among school districts in San Antonio, Texas, resulted from local control over local property taxation.⁶⁴ Texas maintains a dual approach to financing its schools. Texas schools receive financing from ad valorem taxes levied by local school districts and from the state's Permanent and Available School Funds Program.⁶⁵ The court found that the state had a legitimate state interest in maintaining a system which permitted and encouraged local participation and control of each district's educational programs.⁶⁶ Thus, the Court held that the state's interest in local control over local

57. 1817 Land Sales Act of Miss., ch. LXII, 3 Stat. 375.

58. *Papasan II*, 106 S.Ct. at 2946 n. 18.

59. Joint App. at 21, *Papasan II*.

60. *Papasan II*, 106 S.Ct. at 2945.

61. 411 U.S. 1 (1973).

62. *Id.* at 56.

63. See *Papasan II*, 106 S. Ct. at 2945.

64. *Rodriguez*, 411 U.S. at 47-49. See discussion *supra* note 17.

65. *Rodriguez*, 411 U.S. at 7.

66. *Id.* at 49.

educational programs justified school funding variations among school districts. The Texas school funding program, therefore, did not violate the Constitution.⁶⁷

The Supreme Court objected to the appellate court's application of *Rodriguez* in this case because unlike Texas law, Mississippi law requires that the "property held in trust" be allocated to the "school districts of the township in which such sixteenth section lands may be located or to which any sixteenth section lieu lands may belong."⁶⁸ It is Mississippi state law, rather than local control, that results in unequal expenditures of state resources among school districts.⁶⁹ The issue, therefore, is not whether Mississippi's public school financing program is rationally related to a legitimate state interest, but whether Mississippi's Sixteenth Section and lieu land funding program is rationally related to a legitimate state interest.⁷⁰

Whether Mississippi's Sixteenth Section and lieu land funding program is rationally related to a legitimate state interest depends on the property interest conveyed to the state upon admission to the Union. If the federal grant conveyed an absolute fee interest, the lands are owned by Mississippi. Mississippi is not legally bound by the language of the grant to disburse the proceeds of land grant money to any particular township or school district. Mississippi, therefore, may not be able to justify the disparate allocation of the economic benefits generated from Sixteenth Section lands on the basis of a mandating and legitimate state interest.

On the other hand, if the federal grant created a trust and the state, as trustee, is bound by the terms of that trust, the state has no choice but to disburse all the proceeds received from any township to that particular township.⁷¹ Under this interpretation of the grant, Mississippi is required by federal law to allocate the economic benefits of the school lands to particular townships. If the state is bound by the terms of the grant, then there is a rational basis for the funding disparity. However, the land grant may violate the Equal Protection Clause by requiring the state to disproportionately allocate school funds among the school districts.

FEE SIMPLE ANALYSIS

The first interpretation of the federal land grants is that the state holds

67. *Id.* at 55.

68. MISS. CODE. ANN. § 29-3-109 (Supp. 1986).

69. *Papasan II*, 106 S. Ct. at 2946.

70. The majority opinion distinguished *Rodriguez* stating that "*Rodriguez* did not . . . purport to validate all funding variations that might result from a State's public school funding decisions."

Id. at 2945.

71. *See id.* at 2946 n. 18.

a fee simple interest in Sixteenth Section lands. Many of the earlier cases support this conclusion. These cases are important because they interpret land grants that are contemporaneous and similar in wording to Mississippi's land grant.

In *Cooper v. Roberts*⁷² (1856), the United States Supreme Court addressed the issue of the nature of Michigan's right to Sixteenth Section lands. Michigan's Enabling Act is similar to the Enabling Act of Mississippi. It provided that "every section No. 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."⁷³ Michigan's interest in these Sixteenth Section lands vested in the state at the time of the state's admission into the Union.⁷⁴ The Court held that the compact between the United States and Michigan created for Michigan an interest in Sixteenth Section lands that is plenary and exclusive. The Court stated, "[i]n the present instance, the grant is to the State directly, without limitation of its power, though there is a sacred obligation imposed on its public faith."⁷⁵ In other words, the state has an honorary obligation to act consistently with the terms of the grant, but the state is not legally bound. Neither Congress nor the inhabitants of the state have any legal remedies against the state if the state fails to act accordingly. Thus, the Court held that the federal law granted a fee simple interest to the state in the Sixteenth Section lands.

In 1914, the United States Supreme Court in *Alabama v. Schmidt* also held that the Sixteenth Section land grants to Alabama vested a fee simple interest in Alabama with a sacred, not legal, obligation imposed on its public faith.⁷⁶ Alabama's Enabling Act provided that Sixteenth Section lands in every township "shall be granted to the inhabitants of such township for the use of schools."⁷⁷ Justice Holmes, delivering the opinion of the Court, held that "these words vested the legal title in [Alabama]. . . ."⁷⁸ The Federal Enabling Act conveyed a "gift" to the state.⁷⁹ In turn, the state has an honorary obligation to the inhabitants of the township.⁸⁰ But since the state's honorary obligation does not affect the legal title, the state's control over the land is not legally limited by the terms of the grant.

72. 59 U.S. (18 How.) 173 (1856).

73. Act of Congress of June 23, 1836, cited in *Cooper* 59 U.S. at 179.

74. *Cooper*, 59 U.S. at 179.

75. *Id.*

76. *Alabama v. Schmidt*, 232 U.S. 168, 173 (1914).

77. Act of March 2, 1819, ch. 47 § 6, 3 Stat. 489, 491, cited in *Alabama*, 232 U.S. at 172.

78. *Alabama*, 232 U.S. at 172.

79. *Id.* at 173.

80. *Id.* at 173-74.

Similarly, in *Sloan v. Blytheville Special School District No. 5*, the Supreme Court of Arkansas interpreted the Enabling Act of Arkansas to convey an absolute fee interest in Sixteenth Section lands to the state.⁸¹ The court held that the title to the land vested absolutely in the state under the compact between the United States and Arkansas.⁸² The court stated that the trust reposed by the United States is a personal trust in the public faith of Arkansas, and not a property trust fastened by the terms of the grant upon the land itself.⁸³ Thus, no limitations attach to the state's power by the grant and, therefore, the legislature has exclusive control over the funds. The only limitations upon the legislature would be state, and not federal, constitutional provisions and laws.

Because of the similarities in the language of these grants to the Mississippi grant, the court of appeals may adopt the holding of these cases and find that Mississippi's interest in the Sixteenth Section lands is plenary. If the court of appeals adopts this holding, then the grant may not provide Mississippi a rational basis for disproportionately disbursing school funds. Mississippi would have no legal obligation to disburse the revenues generated from a particular township to that township. Thus, although Mississippi allocates the revenues generated from the districts in non-Chickasaw Cession counties to those particular districts as provided in the grant, Mississippi may not be required by federal law to do so. Mississippi would be fulfilling its "honorary obligation" to the inhabitants of that township, but there would be no legal requirement.

In fact, by allocating benefits according to township lines, Mississippi may violate the Equal Protection Clause. The court may find that the variations between the benefits received by the Chickasaw Cession school districts and non-Chickasaw Cession school districts are not rationally related to a legitimate state interest. Mississippi, therefore, may violate the Equal Protection Clause because the Sixteenth Section school funding program which requires such distribution is not rationally related to a legitimate state interest.

The court still could find that fulfilling an "honorary obligation" is rationally related to a legitimate state interest. Courts which hold that the federal grants conveyed a fee simple interest assert that the state's obligation is "sacred" or "honorary." Both terms impose a duty upon the state to act according to the provisions of the grant even though the state has no legal duty to act accordingly. If this reasoning is adopted, then the court may find that Mississippi's school disbursement structure is rationally related to a legitimate state interest. Under this analysis, the

81. *Sloan v. Blytheville Special School Dist. No. 5*, 169 Ark. 77, 273 S.W. 397, 400 (1925).

82. *Id.*

83. *Id.* at 399.

state of Mississippi would not have violated the Equal Protection Clause of the Fourteenth Amendment.

TRUST ANALYSIS

The second interpretation of the federal land grant is that the grant conveyed to the state a fee simple interest in trust designating the state as trustee. A review of more recent land grants shows that the cases interpreted those grants as conveying a trust in the state. For example, the courts interpreted the land grants to Arizona and New Mexico to convey a trust with Congress maintaining a continuing oversight role to ensure that the states abide by the provisions of the grants.⁸⁴ Similarly, Mississippi courts have interpreted the Mississippi Enabling Act to convey a trust.

However, Mississippi's interests in Sixteenth Section lands derives from the federal grants.⁸⁵ Therefore, the validity and the extent of the state's interests is a federal question.⁸⁶ Even though resolution of this issue is a federal question, the appellate court may look to Mississippi law and Mississippi's interpretation of the school land grant.⁸⁷

A review of Mississippi's interpretation is significant because the Enabling Act of 1817 is a compact between the United States and Mississippi.⁸⁸ Before Mississippi became a state, it had to pass legislation accepting the terms of the Enabling Act.⁸⁹ The Enabling Act of Mississippi authorized the inhabitants of the western part of the Mississippi territory to form a constitution and state government provided that it was "not repugnant" to the principles of the Northwest Ordinance of 1787,⁹⁰ which provided for the reservation of Sixteenth Section lands in each township for the use of schools.⁹¹ The principles of the Northwest Ordinance were extended to the Mississippi territory in the Act of Cession by the state of Georgia in 1802.⁹² Therefore, a court may place significant weight on how the state interpreted the compact.

84. *Alamo Land and Cattle v. Arizona*, 424 U.S. 295, 301 (1976); *Lassen v. Arizona Highway Dep't.*, 385 U.S. 458, 460 (1966); *Ervien, Comm'r of Public Lands of the State of New Mexico v. United States*, 251 U.S. 41, 48 (1919).

85. *Papasan II*, 106 S.Ct. at 2946 n. 18.

86. "The question as to the extent of this federal grant, that is, as to the limit of the land conveyed . . . is necessarily a federal question. It is a question which concerns the validity and effect of an act done by the United States; it involves the ascertainment of the essential basis of a right asserted under federal law." *California ex rel. State Lands Comm'n v. United States*, 457 U.S. 273, 279 (1982), *quoting Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10, 22 (1935).

87. *Id.*

88. *See United States v. Morrison*, 240 U.S. 192, 201-2 (1915); *Cooper*, 59 U.S. at 177-179.

89. *See Ervien*, 251 U.S. at 46.

90. Mississippi Enabling Act, ch. XXIII, § 4, 3 Stat. 348, 349 (1817).

91. 2 FEDERAL AND STATE CONSTITUTION, *supra* note 26.

92. 3 Stat. 348, 349.

Mississippi courts and the Mississippi legislature consistently interpret the Sixteenth Section land grants to be reserved for the inhabitants of the township in which those lands are located. A Mississippi statute provides that "Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such."⁹³ Mississippi courts, however, initially debated over the interpretation of the land grants. Two important Mississippi Supreme Court decisions discussing the property interests conveyed to Mississippi are *Hester v. Crisler*,⁹⁴ which was decided in 1859, and *Jones v. Madison County*,⁹⁵ which overruled *Hester* in 1895.

In *Hester v. Crisler*, the court addressed the issue of whether a lease of Sixteenth Section lands was void because the trustees failed to obtain the consent of the inhabitants of that township. The court held that Mississippi had no property interests in Sixteenth Section lands until the Act of May 19, 1852 was passed by the United States Congress.⁹⁶ The 1852 Congressional Act authorized Mississippi to sell or lease lands reserved for educational purposes, provided that such lands were not conveyed without the consent of the inhabitants of the township.⁹⁷

The court interpreted the 1852 statute as ratifying and approving all sales of educational reserved lands previously made by the state notwithstanding the state's failure to obtain consent of the inhabitants of the township. Because the 1852 Act ratified all state approved sales, the court reasoned that the Act could not have intended that the inhabitants' assent be prerequisite to sales before implementation of the statute.⁹⁸ Thus, the court found that the United States government retained legal title to Sixteenth Sections Lands until the passage of the Act of 1852.⁹⁹

The *Hester* court stated that whatever may have been Congress's intent in passing the Land Sales Act of 1803, which reserved Sixteenth Section lands from sale in Mississippi Territory,¹⁰⁰ no power was conferred upon either the state, the township, or the trustees to carry into effect the purposes of that Act until the Act of May 19, 1852.¹⁰¹ Further, the court concluded that a trust could not have been created by the Act of 1803 because neither a trustee nor the *cestui que trust* were in existence.¹⁰²

In 1895, the Mississippi Supreme Court overruled the *Hester* case. The

93. MISS. CODE ANN. § 29-3-1 (Supp. 1986).

94. 36 Miss. 681 (1859).

95. 72 Miss. 777, 18 So. 87, 90 (1895).

96. *Hester*, 36 Miss. at 683.

97. Act of May 19, 1852, ch. XXXV, 10 Stat. 6.

98. *Hester*, 36 Miss. at 683.

99. See *Jones*, 18 So. at 90.

100. See *supra* note 36.

101. *Id.* at 90.

102. *Id.* The trustee did not exist because Mississippi did not become a state until 1817. *Id.*

court in *Jones v. Madison Co.* held that title to Sixteenth Section land passed to Mississippi by virtue of the Act of Cession by the state of Georgia in 1802.¹⁰³ In reviewing *Hester*, the *Jones* court first held that *Hester* misinterpreted the 1852 Act. It stated that *Hester* ignored the express language of the act which required the consent of the inhabitants before the state could dispose of any Sixteenth Section lands.¹⁰⁴ Second, the *Jones* court held that the right of the inhabitants of the townships to Sixteenth Section lands arose not from the 1852 Act, but from the Act of Cession by the state of Georgia in 1802.¹⁰⁵ Thus, it was by virtue of the compact between Mississippi and the United States that title passed to the state when the lands were surveyed.¹⁰⁶

The *Jones* court did not address the issue of whether title to educational lands passed to Mississippi in fee simple or in trust. However, it stated that because of the Act of Cession by the state of Georgia in 1802, the state, and not the United States, was the donor of Sixteenth Section lands. The court stated that "the United States never had any shadow of a right to these lands, save as trustee for the inhabitants of the prospective states which the act itself stipulated should be created."¹⁰⁷

The court also favorably quoted *Long & Long v. Brown*¹⁰⁸ to support its holding that title passed when Mississippi became a state. In interpreting the Alabama Enabling Act of March 2, 1819, the *Long* court held that "the grant of sixteenth sections is in perpetuity to the inhabitants of the respective townships—that the legal title to the land is in the State, in trust for the inhabitants of the respective townships in which the land is situated. . . ."¹⁰⁹

Later Mississippi court decisions specifically hold that the lands are owned by the state in trust for the inhabitants of the townships in which the Sixteenth Section lands are located. For example, in *Keys v. Carter*¹¹⁰

103. *Jones*, 18 So. at 90. The Mississippi lands in question formed part of the territory included in the cession made by the state of Georgia to the United States in 1802. Article V of the compact provided that the territory ceded would form a state and be admitted on equal footing into the Union as soon as it contained sixty thousand free inhabitants or when Congress thought expedient. *Id.*

104. *Id.* at 89.

105. *Id.* at 90.

106. *Id.* at 92. On Apr. 24, 1802, the state of Georgia was ceded from the United States certain land out of which the state of Mississippi was later formed. The Act provided that the territory would form a state and be admitted into the union when it could claim 60,000 free inhabitants and that it would be admitted with the same privileges, and in the same manner, as provided in the 1787 ordinance of Congress. *Id.* at 88. By the Congressional Act of Mar. 3, 1803, providing for the survey and sale of public lands in the territory, all Sixteen Sections were "reserved in each township for the support of schools within the same. . . ." 1803 Land Sales Act for Mississippi, ch. XXVII, § 12, 2 Stat. 229.

107. *Jones*, 18 So. at 90.

108. 4 Ala. 622 (1843).

109. *Id.* at 631 (emphasis added).

110. 318 So.2d 862 (Miss. 1875).

in 1975, the Mississippi Supreme Court held that Sixteenth Section lands "constitute property held in trust for the public schools. . . ." ¹¹¹ Similarly, the Mississippi Supreme Court in *Holmes v. Jones* ¹¹² and *Tally v. Carter* ¹¹³ held that Sixteenth Section school lands are trust lands to be administered by the state for the support of the public schools therein. ¹¹⁴

Mississippi's interpretation of the land grants creating a trust in the state is supported by recent United States Supreme Court decisions, which find that the states hold the lands in trust for the beneficiaries for which the lands were granted. This interpretation assumes that the United States has a continuing interest in the administration of the funds from the land grants; the states do not have a choice in how they allocate such funds. Thus, a grant to Mississippi creating a trust would require the state as trustee to reserve the Sixteenth Section in each township for the support of schools within that township.

An important United States Supreme Court case which holds that the state is a trustee for the school lands is *Ervien v. United States*. ¹¹⁵ The New Mexico Enabling Act provided that the lands granted:

[S]hall be by the said State held in trust, to be disposed of in whole or in part only in a manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. ¹¹⁶

The court interpreted the Enabling Act to enumerate specific purposes for which the lands were granted. The state, therefore, is limited by the terms of the grant in administering funds to the beneficiaries. Further, the United States, as the grantor of the lands, has the right to exact the performance of the conditions of the grant.

In *Ervien*, the court held that the state of New Mexico could not use funds from Sixteenth Section lands to advertise these lands for sale. The Court specifically denied New Mexico's right as a private proprietor of the lands to advertise even if the advertisements might be to the trust's advantage. Such advertisements were too speculative and not within the enumerated purposes of the trust. ¹¹⁷

111. *Id.* at 864.

112. 318 So.2d 865 (Miss. 1975).

113. 318 So.2d 835 (Miss. 1975).

114. *Holmes*, 318 So.2d at 868; *Tally*, 318 So.2d at 838. See also *City of Corinth v. Robertson*, 87 So. 464 (1921).

115. *Ervien*, 251 U.S. at 41.

116. Enabling Act of New Mexico, ch. 310, 36 Stat. 557, 563 (1912).

117. Under this analysis, Mississippi's investments into the railroad company may be viewed as an act beyond the scope of the purposes of the trust. However, Mississippi cannot be held to have breached the trust because the United States Supreme Court held in *Papasan II* that the petitioner's breach of trust claim is barred by the Eleventh Amendment.

In 1967, the United States Supreme Court again interpreted the New Mexico and Arizona Enabling Acts with respect to federal grants to the states in *Lassen v. Arizona*.¹¹⁸ The court held that the purpose of the grants was to produce a fund with which the state could support its public schools.¹¹⁹ Both Acts placed restrictions on the states to prevent abuses by the states and to insure that the trust received appropriate compensation for the trust lands.¹²⁰ The court stated, "[t]he Enabling Act unequivocally demands both that the trust receive the full value of any lands transferred from it and that any funds received be employed only for the purposes for which the land was given."¹²¹ Because the states must act according to the terms of the trust, the states must create separate trust accounts for each of the designated beneficiaries. Monies cannot be transferred between accounts.

If the Court of Appeals finds that the Mississippi Enabling Act created a trust, then Mississippi is bound by the terms of the trust. Mississippi is required by the terms of the trust to disburse the proceeds raised from Sixteenth Section or lieu lands to the public schools where those lands are located. Under this analysis, Mississippi has a rational basis for disproportionately distributing Sixteenth Section land grant funds among its school districts. Thus, Mississippi's disbursement structure would not violate the Fourteenth Amendment Equal Protection Clause.¹²²

It is possible, however, that the federal grant violate the Equal Protection Clause under the Fifth Amendment. Assuming that the Court of Appeals finds that Mississippi is a trustee, and that decision is upheld by the Supreme Court, petitioners may file a new claim challenging the constitutionality of the federal land grants. The claim might state that the federal land grants violate the Fifth Amendment to the Constitution because they require the state as trustee to allot to the Chickasaw Cession counties disproportionate school appropriations. However, in *Rodriguez*, inherent differences in land values coupled with the differences in local control mechanisms provided a permissible rational basis for the variances in educational funding. If the court applies this reasoning to the Sixteenth Section federal land grant, the differences in land values may justify the federal allotments despite the unequal funding results. Therefore, if the court applies the *Rodriguez* rational basis standard of review to a Fifth Amendment challenge, the federal grant would be found constitutional.

CONCLUSION

Papasan v. Allain illustrates that the terms of federal land grants are

118. *Lassen*, 385 U.S. at 458.

119. *Id.* at 463.

120. *Id.* at 464.

121. *Id.* at 466.

122. Under this analysis, Mississippi would not be held liable for any breach-of-trust claim in federal court because of the Eleventh Amendment.

still unsettled. On remand, the court of appeals must interpret a federal educational land grant enacted by Congress over one hundred and fifty years ago. The court's findings will affect the school children in Mississippi. If the court finds that the grant vested a fee simple interest in Mississippi, then Mississippi may be required to restructure its school financing. The children of the Chickasaw Cession then should be guaranteed an equal distribution of revenues generated from Sixteenth Section lands. That should increase overall the monies they receive for education. Such a holding may also instigate further litigation in other states with similar land grants. However, if the court finds that the grant conveyed a trust or otherwise finds that the state had a rational basis for the funding disparity, the state's actions would not violate the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs may still have a claim against the Federal government for violating the Equal Protection Clause of the Fifth Amendment.

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