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[Sen-Lee-PLF-AEI-Antiquities-Act-Event-Flyer.pdf](#)

Did anyone see this?

This looks very interesting. Maybe we should attend? Attached is the flyer info.

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AN E&E NEWS PUBLICATION

**NATIONAL MONUMENTS**

**Grijalva baits Bishop on Antiquities Act**

**Jennifer Yachnin, E&E News reporter**

*Published: Wednesday, March 29, 2017*

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is challenging Chairman Rob Bishop to introduce legislation to reform the Antiquities Act, accusing the Utah Republican of attempting to dismantle national monuments via "a behind-the-scenes legal strategy."

In a statement issued yesterday, Grijalva took aim at his counterpart, who has been a vocal critic of the 1906 law that allows presidents to designate land as monuments to protect objects of historic or scientific interest.

Along with other members of Utah's all-GOP delegation, Bishop has argued that the Antiquities Act can be used both to create and dismantle such sites, including the recently created 1.35-million-acre Bears Ears National Monument in southeast Utah.

Both Bishop and Sen. Mike Lee (R-Utah) are set to speak at an event in Washington, D.C., tonight hosted by the Pacific Legal Foundation and American Enterprise Institute on that subject.

The event, titled "Presidential Authority to Revoke or Reduce National Monument Designations," will focus on a new paper by AEI legal scholar John Yoo and PLF's Todd Gaziano.

In his statement, Grijalva criticized the GOP-aligned briefing and noted that the Natural Resources Committee has not held a hearing on the status of any monuments since Bishop became chairman in 2015.

"We can disagree about whether our federal lands should be protected or turned over to extraction industries, but let's do our jobs and have that debate with our colleagues about real legislation," Grijalva said.

Although Bishop has previously sponsored or co-sponsored measures that would prevent new national monuments in Utah or require congressional approval for such monuments, he has yet to do so in this session. Bishop did, however, author a change to the House rules this year that designates federal land transfers as cost-free (*E&E Daily*, Jan. 6).

"Chairman Bishop has the power to introduce a bill that puts his ideas into practice, discuss its merits and hold a vote whenever he chooses," Grijalva continued. "Rather than trying to convince a small handful of people to support a behind-the-scenes legal strategy, let's see what happens when he asks our colleagues to vote against our country's public lands when the cameras are rolling."

A committee spokesman declined to comment on Grijalva's statements.

Although Congress may opt to abolish monuments via legislation, it has done so fewer than a dozen times. It has, however, converted about 50 national monuments to national parks or preserves (*Greenwire*, Feb. 8).

While both state and federal GOP lawmakers from Utah have criticized the Bears Ears monument — as well as the older Grand Staircase-Escalante

National Monument created by President Clinton — their aim has largely been to urge President Trump to rescind the designations for those sites or reduce their size.

A handful of monuments have been reduced by previous commanders in chief, but to date, no president has sought to undo a monument's status. Conservationists also suggest that any move by Trump to reduce a monument's boundaries would spark a legal challenge, asserting that the president does not have authority to amend monuments, but only to create them.

But in a December op-ed in *The Wall Street Journal*, published shortly after President Obama designated the Bears Ears site, Yoo and Gaziano argued that because Congress has granted power to presidents to create monuments, that means a commander in chief can undo those designations.

"After studying the president's legal authority, we conclude that he can rescind monument designations — despite the cursory but contrary view of Attorney General Homer Cummings in 1938," Yoo and Gaziano wrote. "While Congress could limit it further, the law's text and original purposes strongly support a president's ability to unilaterally correct his predecessors' abuses."

The duo point to Congress' ability to rescind regulations issued by the executive branch, as well as a president's ability to remove appointed officials even after they have been approved by the Senate.

"Similarly, presidents have the constitutional authority to terminate a treaty, even though they need Senate advice and consent to make it," Yoo and Gaziano wrote.

The pair's new paper on whether Trump can amend or rescind monuments is under embargo until this evening's event.

But Grijalva pointed to an analysis published earlier this month by law firm Arnold & Porter that argues presidents have not been given authority to undo monuments.

"The Antiquities Act and subsequent legislation reserved to Congress, which has Constitutional authority over public lands, the sole power to revoke such a designation," the analysis states.

The analysis highlights the Federal Land Policy and Management Act, enacted in 1976, which reserved for Congress "the authority to modify and

revoke withdrawals for national monuments," while also arguing that removing monuments included in the National Park System would violate federal laws that prohibit derogation of the park system.

The firm also criticized Yoo and Gaziano's interpretation of the Antiquities Act, writing that allowing a president to rescind a monument would be equivalent to "a usurpation of congressional powers by the Executive Branch."

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*Senator Mike Lee Cordially Invites You to Attend a Program on*

## **Presidential Authority to Revoke or Reduce National Monument Designations**

**Wednesday, March 29, 2017**

4:00 – 5:00 p.m.

Dirksen Senate Office Building, Room 366

Reception to follow sponsored by the Pacific Legal Foundation  
and American Enterprise Institute with Honorary Co-host Sen. Lee

*This is a widely attended event*

*Opening Remarks:*

**U.S. Senator Mike Lee (R-UT)**  
**House Natural Resources Committee Chair Rob Bishop (R-UT)**

*Panel Discussion on the Release of their New AEI Paper:*

**John Yoo**

Emanuel S. Heller Professor, University of California Berkeley School of Law  
Visiting Scholar, American Enterprise Institute

**Todd Gaziano**

Senior Fellow in Constitutional Law & Executive Director of Pacific Legal Foundation's DC Center  
PLF Counsel for NE fishing associations in *Massachusetts Lobstermen's Association v. Ross*

*With Critical Commentary by:*

**Robert Rosenbaum**

Retired Partner, Arnold & Porter Kaye Scholer  
Chairman, Mid-Atlantic Regional Council of National Parks Conservation Association

President Obama set the record for the number of national monument proclamations he issued and the millions of acres of public lands he designated for such monuments. A few weeks before he left office, President Obama used the Antiquities Act of 1906 again to proclaim 1.35 million acres in Utah and 300,000 acres in Nevada to be new national monuments. White House officials claimed that both actions were "permanent" because there was no express authority to reverse them. In a new AEI paper to be released on March 29, Yoo and Gaziano argue that such claims of permanence get the constitutional principles and legal presumptions exactly backwards. The text, history, and executive practice under the Antiquities Act, as well as foundational constitutional principles, provides for presidential discretion in the creation and revocation of national monuments. Moreover, his discretion to significantly change monument boundaries, including substantial reductions in a monument's size, is strongly supported by the text of the Act, its legislative history and purposes, and unbroken presidential practice going back to the early years of the act's history. In support of these conclusions, the new AEI paper makes news by questioning a 1938 Attorney General opinion with new insights into an 1862 AG opinion and by revealing new historical research not covered in prior scholarship on the Antiquities Act. Please join us to ask your questions.

**RSVP to Collin Callahan at [CBC@pacificlegal.org](mailto:CBC@pacificlegal.org) or call (703) 647-2112.**

Following the event, please join us for a reception to continue a dialogue