

# Congressional Amicus to Protect National Monuments

## BACKGROUND

On December 4, 2017, President Trump issued proclamations diminishing the Bears Ears and Grand Staircase-Escalante National Monuments. If upheld, the size of Bears Ears would be reduced by 85% (from 1.35 million acres to approximately 200,000 acres), while Grand Staircase-Escalante would be reduced by nearly half (from nearly 1.9 million acres to approximately 1 million acres).

Regarding Bears Ears, three cases were filed immediately challenging that reduction in the U.S. District Court in DC (17-cv-2590; 17-cv-2605; 17-cv-2606). For Grand Staircase, two cases were filed challenging that reduction in the U.S. District Court in DC (17-cv-2587; 17-cv-2591). These cases were assigned to Judge Tanya S. Chutkan, who has placed them under a common litigation schedule and consolidated the cases into two groups. The Congressional amicus was filed with the court on November 19, 2018.

## WHAT DOES THIS AMICUS ARGUE?

This Amicus makes three major points about Congressional power and prerogative. First, within the Constitution's framework of divided powers, **Congress has plenary control over the federal lands**. In the Antiquities Act, Congress delegated to the President the power to establish national monuments, but not to abolish or diminish the size of existing monuments. The amicus has a strong focus on the constitutional framework in which the Antiquities Act operates, highlighting the Act's status as a limited delegation of the plenary power that Congress alone possesses.

Second, **interpreting the Antiquities Act to prohibit presidents from reducing the size of national monuments serves the Act's purpose**, which is to safeguard vulnerable national treasures. Giving presidents a discretionary power to prevent those treasures from being damaged, without waiting for the passage of legislation, helps ensure that important landmarks and objects will not be destroyed before Congress has an opportunity to act. By contrast, the decision to reduce or eliminate an existing monument does not involve the same urgency, so it was equally sensible for Congress to reserve that power to the slower and more deliberative legislative process. This interpretation is supported by the circumstances that led to the Act's passage—a concern that newly discovered American archeological sites and artifacts were being looted.

Third, **Congress's lack of objection to previous diminishment of national monuments**, made by presidents in the twentieth century, **does not mean that Congress has implicitly granted presidents the power to make such diminishment**. The brief makes a clear distinction between where there is legislative granting of authority versus where the court must interpret Constitutional authority. The Administration relies on a case, *Midwest Oil*, (*United States v. Midwest Oil Co.*, 236 U.S. 45 (1915)), which addressed a power that Congress had never legislated on, whereas Congress in the Antiquities Act has spoken precisely to the President's power regarding national monuments—limiting that power to the designation of new monuments.

## WHY FILE AN AMICUS?

Senator Udall and Representative Grijalva are leading this amicus because they believe that the executive branch's overreach in this case has significant impacts on the Constitutional authority designated to Congress and the future management of our federal estate. This amicus is about good government and assuring the proper constitutional checks and balances. They believe it is critical to file an amicus to show that Members of Congress take the roles delegated in the constitution to Congress seriously and want to protect congressional prerogative.