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RESEARCH ARTICLE

Presidential discretion under the Antiquities Act

Jordan K. Lofthouse

Mercatus Center, George Mason University, USA
Email: jlofthouse@mercatus.gmu.edu

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Abstract

This paper analyses executive discretion under the Antiquities Act of 1906, which gives the President of the United States the unilateral authority to designate national monuments on federal lands. Designations are intended to protect objects of historic or scientific interest and must be confined to the smallest area compatible with their protection. Since 1906, presidents have interpreted the law broadly, designating over 150 monuments, many of which span large areas. Congress and the courts have done little to curb presidential discretion. Using public choice economics, this paper argues that presidents use monument designations to (1) improve electoral prospects for themselves and fellow party members, (2) engage in strategic political exchanges, and (3) enhance their presidential legacy. Several case studies provide evidence that recent presidents have rationally used their broad discretion under the Antiquities Act to improve electoral outcomes, exchange with strategic entities, and bolster their legacy.

Keywords: Antiquities Act; environmental economics; executive discretion; national monument; President of the United States; public choice

Introduction

Until the early twentieth century, the United States had few laws or regulations to preserve objects of historic or scientific interest on federal lands, particularly archeological sites. Congress enacted the Antiquities Act of 1906 to protect such sites from being destroyed. The Act gives the President of the United States unilateral authority to designate 'national monuments' on federally owned or controlled land, but monuments must be confined to the smallest area compatible with the object's protection. Since 1906, presidents have designated over 150 national monuments. The courts have explicitly and implicitly granted presidents the authority to designate, enlarge, or reduce monuments to any degree, and Congress has done little to constrain the president's discretion. Although the term 'monument' implies a structure or object, the term has evolved to include landscape-sized areas.

Political disputes over Utah's Bears Ears National Monument have highlighted the broadness of presidential discretion under the Act. In December 2016, President Obama created the 1.3-million-acre monument, angering many Republican policymakers. However, many environmental groups, Indigenous groups, and Democratic policymakers saw the designation as a victory (Meyer, 2016). In December 2017, President Trump unilaterally shrank the monument significantly. The groups who praised Obama's actions saw Trump's actions as an abuse of power, while critics of Obama viewed Trump as correcting Obama's overreach (Turkewitz, 2017). Then, in October 2021, President Biden restored the monument to Obama's originally designated size, which the courts have upheld (Brown, 2023). In July 2026, Trump once again shrank the monument by 90%, at the urging of top Republicans from Utah (Joselow, 2026).

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These controversies provide an opportunity to examine the Antiquities Act using public choice theory. To date, little scholarship has explicitly applied public choice theory to explain how the institutional rules of the Antiquities Act shape the incentives and constraints facing presidents when deciding whether to create, enlarge, or reduce national monuments. Rather than treating monument designations as isolated political decisions, the paper examines how presidential behaviour is contingent on a strategic calculation of costs and benefits, depending on electoral constraints and special interest-group support.

Broad executive discretion under the Antiquities Act creates a distinct institutional environment in which presidents weigh the expected political costs and benefits of exercising their unilateral authority. By applying the assumptions of public choice theory, the paper develops three propositions regarding the strategic use of the Act. First, in certain contexts, presidents may choose to use their authority under the Act because they expect that it will increase the likelihood of their reelection or the election of fellow party members. Second, presidents can use designations as strategic political exchanges that they expect to achieve other policy-related ends. Third, presidents can use designations in ways that they expect to bolster their legacy, especially in their 'lame-duck period' after electoral constraints are relaxed. This paper uses several case studies to connect the three propositions with the uses of the Act, focusing on actions by Bill Clinton, George W. Bush, Barack Obama, Donald Trump, and Joe Biden. An appendix details all the uses of the Act since 1996, which is the year of the first monument designation under the law's current judicial interpretation.

Using these theoretical propositions derived from public choice assumptions, uses of the Act are expected to be concentrated in periods when electoral benefits are high (e.g., shortly before an election) or when electoral constraints are relaxed (e.g., shortly after a president's successor is elected). The empirical evidence generally comports with these predictions. Between 1996 and 2026, roughly one-third of all uses of presidential authority under the Act were in a lame-duck period after a president's successor was elected, and roughly another one-third of uses were in the months leading up to a presidential election. The case studies that follow are meant to illustrate this logic, but they are not an exhaustive explanation of each use of the Act. In other words, they were selected primarily to illustrate the propositions rather than to provide a formal test of them. They demonstrate that observed patterns of timing and magnitude are consistent with the incentives highlighted by public choice theory, but any particular use of the Act must be analysed in context to understand the full array of costs and benefits that enter into a president's calculus. This paper does not provide a falsification-oriented empirical test; instead, this paper offers a preliminary institutional analysis that identifies how public choice insights may help interpret presidential uses of the Antiquities Act and shows that several prominent cases are consistent with those mechanisms. The case studies do not resolve counterfactual questions about why presidents did not act differently in other cases. This paper's contribution is an application and extension of established public choice reasoning to the Antiquities Act, with the aim of providing a foundation for future empirical work and in-depth case-study analysis.

This paper supplements the broader literature of applied public choice economics that examines real-world governance issues, such as the allocation of public resources and electoral business cycles (see Berry *et al.*, 2010; Calcagno and Lopez, 2017; Dubois, 2016; Holcombe, 2018; Kriner and Reeves, 2015; Nordhaus, 1975). Relatedly, this paper extends the unilateral executive action literature in political science (see Howell, 2003; Mayer, 2002; Moe and Howell, 1999a, 1999b) by applying its institutional logic to one of the broadest delegations of presidential discretion: the Antiquities Act. The paper explains monument designations as instances of presidential unilateral action operating within a statutory context that delegates broad discretion. This paper complements this literature by examining one specific form of unilateral authority under the Antiquities Act by applying insights from public choice economics.

This paper also contributes to the literature on the political economy and legal analysis of the Antiquities Act by emphasizing insights from public choice economics. Existing scholarship on the Antiquities Act has largely focused on legal interpretation (see Iraola, 2004; Tenen, 2023; Wolf, 2020), executive discretion as a constitutional issue (see Shattuck, 2021), and historical patterns of monument

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designation (see Kelso, 2017). While these studies provide valuable legal and historical analyses, they devote comparatively little attention to explaining presidential behaviour using the analytical tools of public choice economics. This paper contributes to the literature by shifting the focus from what presidents are legally permitted to do under the Antiquities Act to why presidents choose to exercise that authority when they do.

This paper proceeds as follows. Section two briefly overviews the history and interpretations of the Antiquities Act. Section three advances three propositions using the assumptions and insights of public choice economics. Section four analyses several case studies that illustrate the three propositions. Section five concludes the paper with a few normative implications.

History of presidential discretion under the Antiquities Act

Theodore Roosevelt was the first president to use the Act, creating several national monuments in 1906. Nearly all subsequent presidents have used the Act to create, enlarge, or reduce national monuments. Only Nixon, Reagan, and G. H. W. Bush did not exercise authority under the Act. Many of today's most famous national parks were created, either completely or partially, as presidentially designated national monuments and were later redesignated as parks by Congress – including Grand Canyon, Zion, Acadia, and Arches, among others. Several presidents have reduced the size of existing monuments, including Taft, Wilson, Coolidge, F. D. Roosevelt, Truman, Eisenhower, Kennedy, and Trump (National Park Service, 2025).

Presidents can only designate monuments on land under federal ownership or control. Typically, designations affect land use and management, but the Act does not impose a uniform set of prohibitions. Activities such as grazing or resource extraction may continue depending on the terms of the presidential proclamation, the managing agency, and subsequent management plans. Existing use rights are typically honoured, but a designation also tends to increase the discretion of land managers to restrict future uses. Since the fundamental management goal for all monuments is protection, a variety of restrictions typically accompany a designation (Congressional Research Service, 2022).

The Antiquities Act does not define key terms or provide explicit limits on executive discretion. The Act's two most important phrases are 'objects of historic or scientific interest' and 'confined to the smallest area compatible with proper care and management of the objects to be protected.' Over the past several decades, the courts have not clarified the meaning of these phrases, deferring largely to executive discretion. Relatedly, Congress has only modified the Act as it relates to Wyoming and Alaska, leaving a broad scale and scope for discretion.

A few key court cases are critical for understanding presidential discretion under the Act, starting with the 1920 decision in *Cameron v. United States*. In that decision, the Supreme Court ruled that T. Roosevelt's controversially large designation of the Grand Canyon as a national monument in 1908 qualified as an object of historic or scientific interest. Although the Grand Canyon's designation was upheld, the Supreme Court did not clarify what kinds of locations contain objects of scientific interest, which had the *de facto* effect of expanding executive discretion under the Act.

The next major test of executive discretion came in 1945 in *State of Wyoming v. Franke*. President Franklin D. Roosevelt created Wyoming's Jackson Hole National Monument in 1943, which was adjacent to the already existing Grand Teton National Park. Wyoming sued because it claimed that the monument lacked sites of historic or scientific interest, meaning the designation exceeded the scope of the Act. The U.S. District Court for Wyoming ruled that 'whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts.' In upholding the creation of Jackson Hole National Monument, the federal judiciary effectively enlarged executive discretion. Legislation was introduced to abolish the monument in 1944 and 1947, but it failed both times. In 1950, Congress passed legislation to combine Jackson Hole National Monument with Grand Teton National Park, and it also amended the Antiquities Act so that only Congress, not the president, could create national monuments in Wyoming (National Park Service, 2000).

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In December 1978, President Carter designated 15 national monuments in Alaska, with a combined area of over 55 million acres (National Park Service, 2025). In 1980, the U.S. District Court for Alaska ruled in *Anaconda Copper v. Andrus* that 'the parameters of presidential authority have not yet been fully defined. The Supreme Court has had the opportunity to do so [. . .] but did not do so.' The court held that 'there are limitations on the exercise of presidential authority on the Antiquities Act. The outer parameters have not yet been drawn by judicial decision.' Thus, the courts left the scale and scope of presidential discretion to be determined later. Due largely to the controversy surrounding President Carter's monument designations, Congress passed the Alaska National Interest Lands Conservation Act of 1980, which constrained the ability of a president to restrict the use of public lands over 5,000 acres in Alaska (National Park Service, 2025).

In 2002, the D.C. Circuit Court of Appeals found in *Mountain States v. Bush* that, 'although the Supreme Court has never expressly discussed the scope of judicial review under the Antiquities Act, the Court has directly addressed the nature of review of discretionary Presidential decision-making under other statutes.' The court affirmed the judiciary's ability to review presidential proclamations to ensure that they do not exceed statutory authority. The D.C. Circuit did not specify those limits explicitly, meaning that future questions of executive discretion would be determined on a case-by-case basis.

In March 2021, Chief Justice John Roberts wrote in *Massachusetts Lobstermen's Association v. Raimondo* that the Antiquities Act 'carries with it a unique constraint: Any land reserved under the Act must be limited to the smallest area compatible with the care and management of the objects to be protected. [. . .] Somewhere along the line, however, this restriction has ceased to pose any meaningful restraint.' He concluded that presidential discretion 'has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.' Thus, Chief Justice Roberts urged the continuation of legal fights regarding the Act's scope. As of July 2026, the Supreme Court has not ruled on presidential discretion under the Act.

Existing scholarship on the Antiquities Act has focused primarily on the original purposes of the Act, the meaning of its key provisions, and the scope of presidential discretion under the statute. One of the central debates in the literature focuses on whether presidents have interpreted the Act more expansively than Congress originally intended, particularly through broad definitions of 'objects of historic or scientific interest' and large monument designations. Related scholarship analyses the constitutional and statutory limits on presidential authority, including the extent of judicial review, the meaning of the Act's 'smallest area compatible' requirement, and whether presidents possess the authority to modify or revoke monuments created by prior administrations. There is broad agreement that important legal questions are unresolved, particularly regarding monument size and presidential authority to reduce or eliminate existing monuments (Iraola, 2004; Shattuck, 2021; Tenen, 2023; Wolf, 2020).

A second strand of scholarship examines the Antiquities Act as an instrument of environmental and public lands policy. Presidential use of the Act has evolved from protecting relatively small archaeological sites to conserving large landscapes and marine environments. This literature has proposed various reforms to the statute through greater procedural safeguards, judicial oversight, or congressional involvement (Kelso, 2017; Lofthouse and Jenkins, 2019; Ruple and Tanana, 2020; Shattuck, 2021).

Neither of these strands focuses on explaining presidential behaviour itself. Rather than asking why presidents choose to designate monuments under particular political conditions, most existing work evaluates whether presidents possess the legal authority to act, how that authority has evolved over time, or whether Congress should modify the statute.

Applying public choice economics to the Antiquities Act

A substantial political science literature argues that modern presidents exercise significant policy-making authority through unilateral action rather than persuasion alone. By using executive orders, proclamations, or executive agreements, presidents often shape policy without prior congressional

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approval. This literature explains unilateral action as a product of institutional incentives. Congress often reacts more slowly than the president because of collective action problems and high transaction costs, and as a result, executive action has increasingly become the predominant form of policymaking under separated powers (see Howell, 2003; Mayer, 2002; Moe and Howell, 1999a, 1999b).

Similar to the unilateral executive action literature, public choice economics assumes that human action, particularly action in the political sphere, is predicated on variance in institutional incentives and constraints, which channels rational self-interest in predictable ways (Brennan and Lomasky, 1993; Buchanan, 1999; Calcagno and Lopez, 2017; Holcombe, 2018; Tollison and Willett, 1973; Tollison *et al*., 1975). Public choice economics is a broad research programme that applies rational choice and methodological individualism to political decision-making. Rather than developing a new formal model, this paper applies established public choice assumptions regarding institutional incentives and constraints to presidential discretion.

A public choice analysis begins with a few foundational assumptions. The first is behavioural symmetry, meaning that political actors are purposive and rationally self-interested, just like market actors. Then, institutional rules structure the incentives and constraints that individuals face. Changes in institutional rules or other exogenous factors generate systematic, predictable changes in political behaviour (Buchanan, 1999). The Antiquities Act creates an institutional environment characterised by broad discretion, low transaction costs, and unilateral authority. Therefore, presidents are expected to use their discretion under the Antiquities Act purposively and strategically to achieve their various ends, depending on the institutionally contingent incentives and constraints. These incentives and constraints may change depending on the context, such as the proximity to an election. In the real world, presidents engage in a multifaceted calculus when determining if and how to use the Antiquities Act. Presidents balance many considerations simultaneously, such as maximizing the chances of reelection or the election of co-partisans, engaging in strategic political exchanges, and building a favourable legacy. These actions may take many different forms and occur on a variety of margins.

Below are three propositions that emerge from these foundational public choice assumptions. The propositions advanced below are not an exhaustive account of all motivations underlying monument designations. Instead, they emphasize how electoral incentives, political exchange, and intertemporal considerations shape executive behaviour within a particular institutional context.

Proposition 1. *Presidents strategically use the Antiquities Act when they perceive doing so as electorally advantageous for themselves or their co-partisans, given other relevant constraints.*

Like all politicians, presidents are primarily concerned about their election or reelection because they cannot achieve their goals without being in office (see Downs, 1957). This strong incentive implies that presidential candidates will need to cater strategically to certain groups of voters in certain locations to win elections, due to the nature of the Electoral College, a first-past-the-post voting system, and swing states. Additionally, presidential candidates will engage in strategic exchanges with certain special interest groups to maximize the chance of winning elections (Charnock *et al*., 2009; Doherty, 2007, 2012).

For presidents to accomplish their policy goals, they are concerned with the election of fellow party members, including members of Congress, state-level officials, and their successor to the presidency. Presidents need a critical threshold of Congress to be of the same party to pass preferred legislation. Presidents also need a critical threshold of co-partisan state-level officials to make sure that preferred federal policies are not eroded or undermined at a lower level. Since presidents are constitutionally limited to only two terms, second-term presidents before an election will strategically maximize the chances that their successor is a co-partisan.

In terms of the Antiquities Act, Democratic presidents may perceive monument designations or enlargements as a way to signal commitment to environmental protection, in the expectation that doing so could sway votes in key states or demographics. Republican presidents may choose to use the same authority to shrink national monuments, expecting such actions to curry favour with more right-

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leaning groups. Presidents of either party can use their broad discretion in politically significant regions, which they perceive will increase votes in swing states or pivotal congressional districts, thus maximizing the chances of electoral victory.

However, presidents do not have to use the Antiquities Act in the region where they want electoral benefits. For example, Utah is a very Republican-leaning state, so a Democratic president may strategically use a monument designation in Utah in the expectation of garnering favour with environmentally conscious swing voters in more critical states. Since a Democratic president has little chance of winning Utah, the electoral punishment of losing Utah is small when compared with the potential to pick up swing states. However, presidents must also balance the political ire that might arise in other swing states from a designation. If a critical threshold of marginal voters in a swing state perceives that using the Antiquities Act is an abuse of executive power, then the electoral benefit of creating a monument will be undermined. Thus, presidents will rationally attempt to balance the expected electoral benefits against the expected electoral costs. This logic holds true for the reverse when presidents choose to shrink national monuments.

This logic does not assume uniform opposition among populations living near national monuments. Local communities are composed of individuals with heterogeneous preferences, and monument designations may generate both benefits and costs for different groups within the same region. From a public choice perspective, the relevant margin of analysis is not local opposition per se; instead, presidents respond to electoral incentives shaped by the median voter and/or organized interest groups. In the Downsian understanding of electoral competition, candidates are incentivized to converge toward the preferences of the median voter rather than an abstract 'majority' (Downs, 1957). To the extent that monument designations are politically salient, presidents will consider how such actions affect support among pivotal voters in electorally important constituencies. At the same time, organized interest groups can exert disproportionate influence relative to diffuse voters because interest groups can provide campaign support, mobilization, or other political resources. Thus, presidential action under the Act becomes politically viable when the expected electoral gains generated among voters in one set of jurisdictions outweigh the electoral losses incurred among voters in affected localities. Opposition from a majority of voters near a monument does not constrain unilateral action so long as the president can offset such opposition by securing electoral support elsewhere.

Proposition 2. *Presidents may use the Antiquities Act as a tool for quid pro quo political exchanges when they expect such exchanges to facilitate other policy goals.*

Politicians often choose to cater to special interest groups and strategically build coalitions when they expect doing so to increase the chances of enacting their preferred policies. Special interest groups and politicians create symbiotic relationships. Special interest groups provide campaign contributions, votes, and other forms of political support for the politicians, while politicians provide government-granted privileges that concentrate benefits on the special interest groups while dispersing the costs on taxpayers. Politicians can make decisions that benefit society at large, but such decisions are incidental to the self-interest of the policymakers. In many cases, policymakers harm social welfare through self-interested action, such as through the processes of rent seeking and the granting of government privileges to small, well-connected groups (Holcombe, 2018; Niskanen, 1971; Wagner, 2016).

Presidents can use their broad discretion to engage in non-monetary exchange (e.g., support, favours, or policy concessions) with various individuals, such as legislators, to accomplish their policy ends. Executive orders or the threat of a veto allow presidents to negotiate with members of Congress, which can secure legislative support for a president's priorities. When presidents have discretion over the allocations of budgets, they can gain support from strategically opportune members of Congress by funnelling resources to certain projects or legislative districts (see Berry *et al.*, 2010; Dubois, 2016; Kriner and Reeves, 2015; Nordhaus, 1975).

Many powerful special interest groups desire to capture the president's discretion to create/enlarge national monuments, as well as reduce them. Thus, monument designations can become a form of

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political exchange for financial and electoral support. Some presidents may find it in their interest to create or enlarge monuments because such actions may be perceived as likely to garner financial and electoral support from environmental organizations and recreational businesses. Alternatively, some presidents may find it in their interest to shrink national monuments because doing so may be expected to yield support from groups who want less restrictive public-land policies, such as ranching associations, fossil fuel companies, and state government officials who depend on severance taxes from resource extraction. The broad discretion under the Act allows presidents to strengthen their political coalitions, depending on which special interest groups are most strategic to accommodate. This phenomenon has two sides. Special interest groups may *seek* economic rents by exchanging with the president to use his or her discretion in favourable ways. Alternatively, presidents can *extract* rents by threatening to impose costs or regulations via the Antiquities Act (see McChesney, 1997).

Since the Act allows presidents to act without congressional approval, they can circumvent a hostile or gridlocked Congress. If key members of Congress or influential state officials want a monument to be created, enlarged, or reduced for their own purposes, or if a president needs the support of these other officials, executive authority under the Act can be used as a bargaining chip for negotiations. Thus, presidents can use their legal discretion to gain political support for their broader policy agenda by offering to protect or threatening to not protect certain areas.

Additionally, federal land management agencies are an important interest group. From a public choice perspective, individuals in these agencies are stakeholders that can benefit from monument designation through expanded jurisdiction, increased budgets, and enhanced institutional prestige (see Niskanen, 1971). Agencies also play a key role because they supply boundary recommendations and policy justifications that shape a monument's management decisions. Thus, presidents balance and negotiate multilateral exchanges among a wide variety of political entities when deciding how to use authority under the Act.

Proposition 3. *When electoral constraints are relaxed after a successor has been elected, presidents are more likely to pursue legacy-building uses of the Antiquities Act because the expected political costs of controversial designations decline substantially.*

Presidents near the end or after their time in office attempt to bolster their long-term legacy, including going on a farewell tour, creating presidential libraries, building memorials, writing memoirs, engaging in diplomatic visits, participating in commercial sponsorships, etc. (Cullinane and Ellis, 2018; Updegrove, 2006). The desire for legacy-building is an aspect of affective or symbolic politics, which influences political action when costs of indulging that desire are sufficiently low (Cowen, 2000; Novak, 2024). After a successor has been elected, the reduction of electoral constraints lowers the perceived relative cost of using executive power unilaterally, including executive orders, memoranda, administrative rulemaking, recess appointments, and monument proclamations – all of which can be used to bolster a post-presidency legacy (Tseng, 2003). Relatedly, the reduction of electoral costs gives rise to several pathologies in a president's lame-duck period, such as 'midnight' rule changes, sabotaging the other party's incoming administration, last-minute court nominations, bureaucratic shuffling, and a decline in the quality of public services (Crockett, 2008; Rubin, 2021; Toral, 2024).

Despite the widespread popularity of national parks and monuments, many of these areas are controversial when they are first designated, meaning that there are potentially large political costs. Thus, after a successor is elected, presidents face minimal costs in designating a monument. Any initial controversy over a designation has minimal electoral repercussions, and nearly all additions to the National Park System become popular over time. One of the most strategic ways for presidents to build a legacy, especially a positive environmental legacy, is to create large-scale national monuments during their lame-duck period in which there are minimal costs to themselves and their fellow party members.

At first glance, Propositions 1 and 3 may appear to be in tension because presidents sometimes designate monuments for electoral benefits, yet at other times, they wait until after a successor is elected to avoid electoral costs. The distinction between Propositions 1 and 3 is not that presidents suddenly

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acquire different objectives after an election. Instead, over the presidential cycle, the relative magnitudes of those costs and benefits change. Before an election, electoral considerations remain highly salient, meaning that presidents are more likely to pursue monument designations when they expect net electoral gains. After a successor has been elected, electoral constraints are relaxed, reducing the expected political costs of controversial actions and increasing the relative attractiveness of legacy-building opportunities. Thus, both propositions derive from the same underlying cost–benefit logic but apply under different institutional conditions. In other words, the relevant question is how changes in the institutional environment alter the relative costs and benefits of pursuing each objective.

To elaborate further, when a designation is expected to yield net electoral benefits from supportive constituencies or interest groups, presidents may act during election seasons. When a monument is expected to generate concentrated opposition or backlash that would harm co-partisans or successors, presidents may rationally defer action until the lame-duck period. Presidents face a tradeoff between securing long-run legacy benefits and avoiding short-run political costs that could undermine electoral prospects or the fortunes of co-partisans.

Thus, the lame-duck period relaxes electoral constraints, allowing presidents to pursue higher-risk, lower-electoral-return actions oriented towards legacy building than immediate political gain. In other words, the lame-duck period provides a uniquely low-cost window in which presidents may perceive an opportunity to capture legacy benefits while largely externalizing immediate political costs, helping to explain why many large or controversial monument designations are deferred until after electoral constraints have been removed. Accordingly, public choice logic leads us to expect a disproportionately large number and size of monument designations during the lame-duck period precisely because the costs of such actions are lowered.

Public choice logic not only explains why presidents use discretionary authority, but also why they may strategically refrain from doing so. When the expected electoral or legacy benefits are outweighed by anticipated political costs, such as opposition from key constituencies or ideological allies, a president may choose not to exercise the authority. The fact that Presidents Nixon, Reagan, and George H. W. Bush did not use the Act is fully compatible with the propositions advanced here. For these administrations, political returns to unilateral monument designation were likely perceived as low relative to the potential costs, and alternative policy instruments or priorities dominated. Thus, their non-use likely reflects strategic restraint, especially in the aftermath of Jimmy Carter's controversial designations in the late 1970s.

Case studies applying the propositions to the Antiquities Act

This section focuses on several case studies that illustrate the three propositions. Case studies are an appropriate methodology to illustrate the propositions because they provide time- and context-dependent information relevant to a president's incentives, constraints, and cost–benefit calculus. However, these case studies are not intended to provide definitive tests of the propositions, and they do not establish causal motivation in a strict sense. Rather, the cases focus on politically salient episodes in which the strategic use of discretion was most plausible, but the explanatory limits of narrative evidence are fully acknowledged.

The case studies begin in 1996, not because earlier cases are irrelevant, but because 1996 marks the first use of the Act under the law's current judicial interpretation. After the 1980 decision in *Anaconda Copper v. Andrus*, several federal courts have said they could limit a president's discretion under the Act. In 1996, Clinton was the first president to use the Act since Jimmy Carter, but no courts have meaningfully constrained discretion since. The post-1996 period provides an appropriate setting for analysing discretion because the courts have allowed large-scale monument designations to become politically routinized.

From January 1996 to January 2026, presidents have used their authority under the Antiquities Act 85 times. Of those 85 actions, 27 of them (approx. 32%) were during a lame-duck period, defined here as the time between a presidential election and a new president's inauguration. Public-choice logic leads

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us to expect a disproportionate number of actions to occur during lame-duck periods, and we observe roughly one-third of such actions took place during a period that makes up roughly 5% of a single presidential term. Additionally, 26 of the 85 actions (approx. 31%) were during a presidential election season, defined as the one-year period before a presidential election. 8 of the 85 actions (approx. 9%) were within a one-year period before a midterm election. The remaining 24 actions (approx. 28%) were in an otherwise 'normal' time for a president – neither an election season nor a lame-duck period. Many of the largest designations that span hundreds of thousands, if not millions, of acres occurred during lame-duck periods, and other large designations were done during presidential election seasons. The appendix provides more information on these designations, such as the date of the action, the president, the timing during the presidential cycle, and the amount of land affected.

The case studies below are organized in (roughly) chronological order. First, Clinton's monument designations shortly before the elections of 1996 and 2000 suggest how presidents may use their discretion under the Act when they perceive it as improving the chances of electoral victory. Second, several of the most recent presidents, including Clinton, G. W. Bush, and Obama, designated 'midnight' monuments during their respective lame-duck periods, suggesting that monument designations can be used to build a favourable legacy when electoral constraints are weakest. Third, Trump and Biden exercised authority early in their terms to 'grease the wheels' with Congressmembers to further each president's political agenda. While the present paper relies on qualitative institutional analysis, future quantitative work could examine whether designations cluster systematically around election cycles or lame-duck periods, or whether the magnitude of designations varies with political constraints. Such empirical extensions would complement the institutional logic developed here.

Maximizing election chances: Clinton's pre-election designations in 1996 and 2000

The election of 1996 pitted incumbent Democrat Bill Clinton against Republican Senator Bob Dole. Throughout the campaign, Clinton attempted to show his commitment to environmental issues, contrasting himself with Dole (Jones, 1996; Knickerbocker, 1996; Resources for the Future, 1996). However, many high-profile environmentalists were hesitant to support Clinton. Senior Editor at Sierra Magazine Paul Rauber (1996) wrote, 'Why then does the Clinton administration seem like such a disappointment? Part of the problem has to do with the enormous expectations the environmental community held for it, especially after 12 years of more or less hostile Republican administrations.' Clinton had to strategically assuage the disappointment that major environmental organizations felt about his lackluster first term. By appealing to environmental voters and contrasting his policies with Dole's, Clinton strengthened his support among key constituencies and secured endorsements from influential environmental groups.

Less than two months before the election, on September 18, 1996, Clinton designated Grand Staircase-Escalante (hereafter, GSE) National Monument in southern Utah, which was the first use of the Antiquities Act since 1978. GSE became the largest monument in the contiguous United States at roughly 1.7 million acres. Although environmentalists praised Clinton's designation, others saw it as executive abuse. Utah's Republican Senator Orrin Hatch called the designation 'the mother of all land grabs,' and Utah's other Republican Senator Bob Bennett deemed Clinton's action 'an outrageous, arrogant approach to public policy' (Larmer, 1996). Evidence suggests a majority of Utah voters, state-level policymakers, and resource-extraction interest groups similarly disapproved (Deseret News, 1996; Spangler, 1996; Veravanich, 1996). An anonymous White House official reportedly said that 'administration staffers had been on the lookout for environmental victories they could achieve without congressional support. They'd considered making Alaska's Arctic National Wildlife Refuge a monument, but decided that the president could use his veto powers to stop destructive oil drilling in the refuge, so they targeted Utah instead' (Larmer, 1996).

Clinton held an official proclamation signing ceremony at Arizona's Grand Canyon National Park. Holding the ceremony in Arizona was electorally strategic because polls from August 1996 showed Dole leading Clinton 41% to 40% in the state, meaning that the election in Arizona was a dead heat

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(Curry, 1996). Clinton's speech at the Grand Canyon was his second visit to Arizona within a week, which was part of his campaign trail across the country (Basken, 1996). Only a few weeks after the designation, Arizona State University conducted a statewide poll in October 1996, which showed 'most likely' voters picking Clinton over Dole by 45% to 41%, suggesting that the monument designation may have helped boost Clinton's likelihood of winning the state (Sipchen, 1996). Relatedly, the *Los Angeles Times* noted in October 1996 how the monument designation ceremony had been part of a larger political strategy to sway Arizona's voters: 'Last month, for instance, Clinton rhapsodized about nature from the rim of the Arizona's beloved Grand Canyon. For good measure, he then beat Dole to the draw on a campaign no-brainer, visiting conservative icon Barry Goldwater at the hospital where he was recovering from a stroke' (Sipchen, 1996). The combination of Clinton's electoral strategies, including the GSE designation, ultimately led Clinton to win Arizona with 46.5% of the vote to Dole's 44.3% and Perot's 8%, making Clinton the first Democrat to win Arizona since Truman in 1948.

The political salience of the GSE designation is further reflected in the timing and content of environmental endorsements during the 1996 campaign. Despite the national controversy that the designation sparked, major environmental organizations endorsed Clinton in early October 1996, mobilizing their members and resources in support of his re-election (Sierra Club, 1996; Associated Press, 1996). In announcing its endorsement of Clinton, the Sierra Club explicitly highlighted the proclamation as evidence of the administration's environmental commitment. Sierra Club President Adam Werbach said, 'This is without a doubt President Clinton's boldest environmental initiative' (Basken, 1996). Other groups, including the League of Conservation Voters and Clean Water Action, similarly emphasized monument designations in their public communications during the campaign.

Journalistic evidence from 1996 gives further evidence that national organizations and prominent Democratic politicians strongly supported Clinton's creation of GSE, making it strategically valuable for his 1996 reelection. High-profile Democratic figures, including Vice President Al Gore and Colorado Governor Roy Romer, publicly defended the move and vowed to resist congressional retaliation. Clinton's actions received wide support from editorial writers at newspapers across the country, including *The Washington Post*, *St. Louis Post-Dispatch*, *The Omaha World-Herald*, and *The Boston Globe* (Deseret News, 1996; Spangler, 1996). On November 5, 1996, Clinton won reelection by a substantial margin in the popular vote and Electoral College, consistent with the view that Clinton's designation plausibly contributed to his electoral positioning among environmentally salient voter groups.

Testimony from a 1997 House oversight hearing reveals a sharp partisan and interest-group divide over GSE that helps explain its strategic value for Clinton's 1996 reelection. Support came from national environmental groups (e.g., Robert Redford, Theodore Roosevelt IV, Sierra Club, Southern Utah Wilderness Alliance) and prominent Democrats (e.g., Interior Secretary Bruce Babbitt, CEQ Chair Kathleen McGinty, Rep. Maurice Hinchey) who framed the designation as a historic conservation victory and provided endorsements and favourable national media coverage. Opposition from Utah's Republican delegation, state officials, and extractive interests was regionally concentrated and electorally less consequential, making the political tradeoff advantageous for Clinton (Committee on Resources, 1997).

During the campaign of 2000, Democratic candidate and incumbent Vice President Al Gore ran against Texas Governor George W. Bush. Gore emphasized his environmental credentials as a key component of his campaign, which built on the Clinton Administration's pro-environmental stances (Harris and Nakashima, 2000). Gore's campaign frequently touted the Clinton Administration's environmental achievements and argued for expanded environmental protections (Toner, 2000). In the spring and summer of 2000, Clinton made several pre-election monument designations, some of which were hundreds of thousands of acres. In June 2000, presumptive Democratic-nominee Gore was chosen to publicly announce Clinton's designations of Cascade-Siskiyou and Hanford Reach national monuments during a campaign event (Tribune News Services, 2000). Bush accused the Clinton Administration, and Gore by extension, of being too pro-environmental by concentrating power in the federal government and supporting the efforts to designate millions of additional acres as national monuments, overriding local opposition (Jehl, 2000).

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The creation of several new national monuments during the 2000 campaign was one of the many strategies that Clinton used on Gore's behalf to help attract voters who prioritized environmental issues. Despite the general popularity of the Clinton Administration and a strong economy, the Gore campaign had to balance several concerns simultaneously. Due to the Monica Lewinsky scandal and the subsequent impeachment, the Gore campaign selectively used Clinton only for fundraising activities and limited campaigning in Democratic strongholds. The Gore campaign determined that Clinton's tarnished reputation would likely drive away swing voters in battleground states. However, Gore tried to claim many of the successes of the Clinton Administration, leading to a delicate balance between distancing himself from Clinton while also proving that his platform was not too different (Mann, 2001).

Ralph Nader, a significant third-party candidate in the 2000 presidential election, complicated the campaign process because Nader also tried to claim the title of environmental candidate (Jehl, 2000). Many prominent environmental groups criticized Gore and the Clinton Administration for underperforming on environmental issues throughout Clinton's two terms. Clinton's monument designations in spring and summer of 2000 seem to have played a role in the broader strategy to garner support from environmental groups, especially those who had an alternative with Nader. Ultimately, the environmental community's initial disappointments were overlooked, and major environmental organizations, such as the Sierra Club and the League of Conservation Voters, endorsed Gore, mobilizing their members and resources in support of his campaign (Nelson, 2000).

Building a legacy: midnight monument designations by Clinton, Bush, Obama, and Biden

After Bush beat Gore in the election of 2000, and with Republican control of Congress, Clinton likely foresaw the rollback of many environmental policies from his administration. Without electoral pressures, Clinton created and enlarged several national monuments to a degree that had not been seen since the Carter Administration. Between November 2000 and January 2001, Clinton designated ten new national monuments. Four of the ten new designations were significantly large, each spanning hundreds of thousands of acres (National Park Service, 2025). Clinton also enlarged Idaho's Craters of the Moon National Monument by hundreds of thousands of acres (Congressional Research Service, 2001; National Park Service, 2025). Journalistic sources at the time note that Clinton's lame-duck actions suggest that he was bolstering his legacy of environmental protection (CBS/AP, 2001). The Bush-Cheney transition team said, 'We are reviewing all eleventh-hour executive orders, rules and regulations by the Clinton administration and we will make decisions after President-elect Bush is sworn into office' (CBS/AP, 2001). Ultimately, the Bush Administration did not change any of Clinton's monument designations.

Eight years later, Bush designated several 'midnight monuments,' even though he had previously criticized Clinton for doing so. The election in November 2008 saw the victory of Barack Obama over John McCain, and the Democratic Party increased its total number of seats in the House of Representatives to 257, the largest number of seats held by either party in the House since Democrats lost control of Congress in the 1994 elections. In the Senate, the Democrats increased their majority by gaining 8 seats, while the Republicans did not gain any additional seats. With a huge Democratic wave at the federal level, Bush faced relatively low costs to exercise executive power to create national monuments. In December 2008 and January 2009, Bush designated four new monuments, with three of them being in federal waters within the U.S. Exclusive Economic Zone. The three marine monuments were some of the largest monument designations ever, spanning tens of thousands of square miles. The fourth monument – World War II Valour in the Pacific – was relatively small at 6,310 acres, which protected small military-related sites in Alaska, California, and Hawaii.

Bush, who was not known for his environmentalist policies, appears to have strategically chosen to create national monuments in the middle of the ocean because it was a relatively low-cost way to build an environmental legacy. Creating national monuments on federal lands in the western United States, which contains several states that are heavily Republican, would likely tarnish his legacy with people

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that would otherwise fondly remember his administration. By making large monuments in the Pacific Ocean, only a relatively small number of people would be directly affected, such as those who extract marine resources. In fact, the Marine Resources Committee acknowledges that Bush likely used the Antiquities Act to create a more positive environmental legacy, but they also argued that the president does not have legal authority under the Antiquities Act to manage fishing activity in waters within the U.S. Exclusive Economic Zone (Walsh and Fanger, 2009). Despite the claims that these marine national monuments exceeded the statutory authority of the Antiquities Act, the courts have maintained that these designations are legitimate under the law, based on the 2011 case *Commonwealth of the Northern Mariana Islands v. United States*.

Another set of 'midnight' monument designations occurred shortly after the election in November 2016, which saw the victory of Donald Trump over Hillary Clinton. The Senate and House of Representatives remained in Republican control, even though the Democrats gained a few seats in each chamber. In December 2016 and January 2017, Obama used his lame-duck period to designate five new monuments and enlarged two others. Obama had worked throughout his time in office to promote environmental issues, and he was likely concerned about the potential rollback of environmental policies under the incoming Trump Administration. *The New York Times* reported that these designations were largely to help Obama 'nail down as much of his environmental legacy as he can before Donald J. Trump assume[d] the presidency' (Davenport, 2016). Obama's designation of Bears Ears National Monument also promoted Native American empowerment because it was the first monument to be comanaged by the federal government and Native American tribes.

After the 2016 election, Obama's calculus shifted because the costs to exercise discretion under the Act were minimized. Earlier in 2016, a militia group led by members of the Bundy family gained national fame for violently seizing the Malheur National Wildlife Refuge headquarters in eastern Oregon to protest federal land-use policy (Berry, 2016). Against this tense backdrop related to public lands, Obama's uses of the Antiquities Act had to be strategic to avoid damaging Hillary Clinton's electoral chances and allow himself to build his environmental legacy. Obama had designated and enlarged several monuments in the few months before the 2016 election, but they were in electorally safe, Democratic-leaning jurisdictions, including New York, Maine, and territorial waters. Creating monuments in those specific locations would minimize exposing Hillary Clinton to swing-state backlash or energizing opposition in politically competitive regions. After Trump won the 2016 election, Obama's electoral constraints were relaxed, and he created and enlarged several monuments in his lame-duck period. Of these, Bears Ears National Monument in Utah was by far the largest and most controversial of Obama's midnight monuments, but it was praised by environmental groups and Native American leaders as a crowning achievement of Obama's tenure (Meyer, 2016). He also made three monuments related to Civil Rights and Reconstruction in Alabama and South Carolina, which were likely to bolster a favourable legacy for America's first Black president.

The 2024 election is also instructive in terms of pre-election and lame-duck monument designations. Unlike Clinton in 1996, who faced scepticism from environmental groups, Biden entered the 2024 election cycle with strong environmental credentials, as well as an opponent widely perceived as hostile to environmental protection. From a public choice perspective, Biden's relatively limited use of monument designations during the election season can be understood in terms of perceived marginal benefits and costs. Because Biden was widely seen as the more environmentally friendly candidate, the marginal electoral benefits of additional designations were relatively low. At the same time, the perceived marginal costs, particularly the risk of alienating pivotal voters in competitive states, remained salient. As a result, Biden had weaker incentives to rely on monument designations as an electoral strategy compared to other presidents. In fact, during the election season, Biden only used his power under the Act twice. In May 2024, Biden enlarged the pre-existing Berryessa Snow Mountain and San Gabriel Mountains national monuments in California. These election-season designations were low electoral risk and high coalition payoff because California was electorally safe for Democrats, and Biden could signal commitment to environmental voters and donors without risking much backlash.

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After Biden dropped out of the race on July 21 and Vice President Kamala Harris took his place on the ticket, he designated Springfield 1908 Race Riot National Monument in Illinois on August 16. Biden would want to avoid actions that could harm Harris's electoral coalition, and a race-focused monument is symbolically powerful, especially since his desired successor was a Black woman. The monument is less than two acres and located in the Democratic stronghold of Illinois, meaning that it would have minimal electoral costs. The National Association for the Advancement of Colored People (NAACP) had specifically requested this monument designation in 2023, and Biden timed the designation during the height of the campaign (NAACP, 2023, 2024). Responding to the NAACP's request was implicitly a *quid pro quo* political exchange because the organization plays a significant role in mobilizing African American voters, who are a core constituency for Democrats. Additionally, since Biden was out of the race, he was effectively a lame duck, meaning that this designation likely factored into his legacy-building strategy.

After the 2024 election, Biden, like Clinton, Bush, and Obama, used the Antiquities Act to a relatively large degree during his lame-duck period to secure an enduring environmental legacy, especially in anticipation of Trump's expected policy reversals and regulatory rollbacks. Two of Biden's lame-duck monument designations, Chuckwalla and Sáttítla Highlands, were especially large at over 600,000 acres and 200,000 acres, respectively. Additionally, his renaming and redesignation of Pacific Islands Heritage Marine National Monument was explicitly intended to 'build on President Biden's historic record of delivering for Indigenous communities across the country,' as specified in a White House briefing release (Biden White House, 2025). The combination of these various designations suggests Biden's strategic shift towards legacy building, especially after the Democratic defeat of the 2024 election.

Political exchanges: Trump and Biden on Bears Ears National Monument

In December 2017, less than a year after taking office, President Trump significantly reduced the size of Utah's Bears Ears and GSE, which reflected the prevailing sentiment from Utah officials and many local residents (Fox *et al*., 2019). Trump spoke at Utah's state capitol building shortly after his proclamation, saying that Clinton and Obama had 'violated the spirit' of the Antiquities Act. His actions catered to complaints from Republican lawmakers and ranchers, who criticized the perceived overreach of the previous designations (Grabenstein, 2017). Many Republican politicians at the state and federal levels voiced support of Trump's actions (Murkowski, 2017; Reyes, 2017).

Although Trump's reduction of Bears Ears and GSE was not close to an election, it served a broader strategic purpose to benefit influential members of Congress, as well as associated special interest groups. In particular, the reduction of Bears Ears and GSE can be seen largely as a mutually advantageous exchange between Utah's Senator Orrin Hatch and Trump. Hatch, who was the president pro tempore of the Senate and the chair of the Senate Finance Committee, vocally opposed the original designations of Bears Ears and GSE because the designations had negatively impacted local land use and economic activities. Hatch, along with the other members of Utah's congressional delegation and many state-level officials, bristled at the curtailment of opportunities for energy development, grazing, and other land uses important to Utah's economy (see Reyes, 2017).

One of the most salient considerations for Hatch and other Utah officials was the state's School and Institutional Trust Lands Administration (SITLA), which is the agency responsible for funding public education. Most of SITLA's funding comes from energy/mineral leases, real estate planning, and surface resource use on state trust lands. In much of Utah, state trust lands are scattered inside federally owned land, making it difficult to access state lands if federal lands have strict restrictions like a national monument designation. Thus, Hatch and the rest of Utah's congressional delegation had a strong incentive to push for the development of state lands for educational and economic purposes by reducing the protections to Bears Ears and GSE.

Trump was aligned with the Republicans' push to reduce federal land protections and promote energy independence, and he strategically used his discretion under the Act to build a strong

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congressional coalition that would back his preferred policy outcomes. One of Trump's goals in office was to expand fossil fuel development and remove barriers to the domestic energy industry. Under Executive Order 13792, Trump's Interior Department began a review process in the early part of 2017, which was meant to determine the level of natural resources that had been restricted by the previous monument designations. A spokesman for Hatch said that one of Hatch's main interests was protecting Utah's school funding, meaning that gaining access to coal reserves within the monument boundaries was crucial. Secretary of the Interior Zinke and his staff estimated the value of coal that could potentially be mined from Kaiparowits Plateau on GSE. When Trump reduced that monument, the Kaiparowits Plateau was no longer under monument protection, which would make coal extraction more viable (Lipton and Friedman, 2018).

Thus, Hatch's advocacy and support for Trump's broader agenda were rewarded by Trump's actions to address a significant local issue for Hatch and his constituents. Since Hatch was an influential senator, his support would help Trump to achieve a variety of legislative initiatives and to navigate congressional processes. Trump's reductions of the national monuments helped to secure Hatch's ongoing support, as well as the support of other Western lawmakers who shared similar views on federal land management. By opening up lands for potential oil and gas drilling, mining, and other activities, Trump demonstrated his commitment to reducing federal regulatory burdens and promoting economic development, which resonated with his broader political base. A 2017 phone call between Trump and Hatch suggests a mutually beneficial arrangement. Trump told Hatch, 'I'm approving the Bears Ears and Grand Staircase recommendation for you, Orrin.' Hatch responded that he was 'incredibly grateful the President called this morning to let us know that he is approving Secretary Zinke's recommendation on Bears Ears' (Merica, 2017). *The Salt Lake Tribune* reported that Hatch said Trump 'told me Bears Ears would be the way I said it should be,' and Hatch also said Trump would modify the Grand Staircase to allow coal mining in the Kaiparowits Plateau. Utah State Senator Jim Dabakis (a Democrat from Salt Lake City) said, 'The winners in the president's decision are the fossil fuels industry, giant international coal companies and the pollution industry' (Burr and Maffly, 2017). These statements from Hatch and Dabakis, as well as Trump's actions, suggest that Trump was engaging in reciprocal political exchange aimed at sustaining legislative support.

Roughly four years later, in October 2021, President Biden reversed Trump's proclamations and restored Bears Ears and GSE to their original sizes, but not without stirring up political disagreement. Utah's Republican governor and congressional delegation were upset by Biden's move, but many Democrats in Congress applauded it (Smith, 2021; Whitehurst and Daly, 2021). In April 2021, Representative Raul Grijalva (D-AZ), who was the Chair of the House Natural Resources Committee, sent a letter to the Biden Administration, calling for the immediate restoration of Bears Ears National Monument, as well as expanding its boundaries (Gallego, 2021). In October 2021, when Biden restored the monuments to their original size, he said, 'This may be the easiest thing I've ever done so far as president' (Partlow, 2021).

Just like Trump's actions, Biden's actions can be viewed as part of a *quid pro quo* relationship with influential members of Congress who supported environmental conservation and Native American interests. Influential Democratic members of Congress strongly advocated restoring the monuments to preserve cultural heritage, protect natural resources, and honour commitments to Native tribes. By restoring the monuments, Biden emphasized the protection of public lands and respecting Indigenous rights. Gina McCarthy, the White House national climate adviser, argued that the monument restorations were a part of a strategy to protect ecosystems to fight climate change (Partlow, 2021). Members of Congress who supported Biden's restoration of the monuments helped advance his broader legislative agenda, including climate change initiatives, environmental protections, and other progressive policies. By restoring the monument boundaries, Biden secured the continued support of these lawmakers, which would strategically maximize his administration's chances to fulfil its ultimate policy goals.

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Conclusion

Presidents use the Antiquities Act as one tool in a broader arsenal of strategic tactics for political exchanges, electoral benefits, and legacy building. The case studies presented here indicate that monument designations *may* help improve electoral outcomes in some circumstances. Or, presidents may use designations to achieve other desired outcomes as a political exchange. Presidents may choose to build up their legacy during the lame-duck period when electoral constraints are minimized. For example, Clinton created a large monument in Utah for electoral purposes in September 1996, but Obama waited until his lame-duck period in December 2016 to create a similarly sized monument in the same state. Depending on the specific political context, a president will use the Act at different times for different strategically self-interested purposes.

This analysis does not deny the role of ideological commitments in presidential decision-making. Presidents may hold genuine beliefs about conservation or environmental protection. However, public choice analysis shifts attention from simply considering a president's preferences to the institutional conditions and a president's marginal cost–benefit calculus. The case studies presented here suggest that the use of discretionary authority is more likely under specific circumstances, such as periods of high electoral benefits or low electoral constraint. Under other conditions, presidents may rationally refrain from using the Act or pursue their ideological objectives through alternative policy instruments.

This paper is only a preliminary and foundational examination of the Antiquities Act from a public choice perspective. Its primary contribution is to identify several institutional mechanisms through which public-choice theory can help explain presidential uses of discretionary authority under the Act and to illustrate those mechanisms through a series of prominent case studies. The objective has not been to provide exhaustive historical accounts of every monument designation or definitive tests of presidential motivations. Such an undertaking would require substantially more detailed archival and historical analysis than a single article. Future research should build on these propositions by examining individual case studies in greater depth, including the cases discussed here as well as additional monument designations not analysed in detail. Because presidential uses of the Antiquities Act occur within highly specific political and historical contexts, a thorough investigation of any designation could constitute a substantial study in its own right. Detailed case-study research drawing on archival materials and other primary sources would help further illuminate the mechanisms identified here and refine our understanding of how institutional incentives shape presidential decision-making under the Act.

Additionally, future research should empirically explore the patterns that emerge from the data of presidential monument designations. An important extension of this analysis concerns why only two states (i.e., Wyoming and Alaska) have successfully constrained presidential discretion under the Antiquities Act, while other public-land-heavy states have not. Future public-choice research could examine how organized local interests and legislators in these states mobilized to limit executive authority, shedding light on the endogenous constraints on presidential power.

Three normative considerations emerge from this public choice analysis. First, broad executive discretion increases the chances of abuses of power due to few practical constraints. Second, broad executive discretion over national monuments makes public-lands policy less predictable and undermines reliable expectations, potentially eroding trust in governance institutions. Third, democratic governance implies that local peoples and their representatives should be at least partially involved in the decision-making processes for public-lands policy.

To avoid such normative problems, Congress could limit presidential discretion under the Act in three ways: increase congressional oversight, clarify key statutory terms, and require stakeholder consultation (see Lofthouse and Jenkins, 2019). These changes would likely lead to more cooperative management of public lands by increasing predictability and providing clarity regarding presidential discretion under the Antiquities Act. Oversight could mirror the Congressional Review Act by allowing Congress to review and potentially overturn monument designations. Clarifying terms such as 'objects of historic or scientific interest' and 'smallest area compatible' would reduce ambiguity and constrain

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executive interpretation. Finally, Congress could require consultation with relevant stakeholders and experts, such as governors, state delegations, or the public, through a notice-and-comment process to increase cooperative land management.

However, legislatively constraining presidential discretion is not a panacea, as Congress is subject to familiar public-choice pathologies such as rent seeking and rent extraction. The relevant question is comparative: whether legislatively determined public-lands policy improves on unilateral executive action along normative margins such as legal predictability and democratic input. While congressional involvement may reduce volatility and lower external costs through deliberation and coalition-building, it would likely introduce new forms of political opportunism. Nonetheless, compared to the current structure of the Antiquities Act that permits sweeping land-use decisions without meaningful input from affected communities, greater legislative involvement may offer an institutional improvement.

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Appendix

'Presidential Uses of the Antiquities Act Since 1996 in Chronological Order.' To access appendix, visit https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7155500 or https://static1.squarespace.com/static/5d7fd567c2b19f010fd016a3/t/6a5fa455533b6965cde60645/1784652885800/Appendix_Antiquities+Act_Lofthouse.pdf.

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