We have posted repeatedly here on Legal Planet on the Trump Administration's efforts to rollback national monument designations made by prior administrations. Litigation over those efforts is still ongoing (and likely will be for a long time). However, I want to note some of the implications if the Administration should succeed in convincing the courts that it does indeed have the power to rollback monument designations (along the lines of the arguments made by John Yoo).

A court that reaches such a conclusion would likely reason that there is no explicit language in the original Antiquities Act that prohibits rescission or reduction of a monument, and therefore the President implicitly has the power to do so. (Again, I am on the record that such a conclusion is wrong, but let's assume that is the result the court reaches.) In other words, the absence of explicit statutory language restricting a President's ability to undo a predecessor's action implicitly gives them the power to undo it.

Well, the Antiquities Act is not the only example of a federal statute that gives affirmative power to the President to do things, but does not explicitly restrict a future President from undoing those things. And thus, the reasoning that allows such a rescission to occur under the Antiquities Act could apply quite broadly, and in ways that I don't think the advocates of rolling back monuments may have fully appreciated.

For instance, the congressional statutes that authorize the leasing of federal lands for oil, gas and coal development do not explicitly prohibit a future President from rescinding those leases. Thus, a future President who supported the "keep it in the ground" movement to restrict fossil fuel extraction might draw on a precedent allowing rollback of national monuments in order to rollback oil, gas, and coal leases around the country. (In fact, I think the language allowing rescission under the leasing statutes is probably stronger than in the monument context, including relevant Supreme Court authority.)

I'm sure there are other examples. As this article from New York Magazine earlier this year put it (in the context of analyzing Trump's efforts to prop up coal-fired electric power plants), a Democratic president who emulated Trump's aggressive use of executive power could do a lot.