



## Court halts fees for use of Forest Service land

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A federal appeals court on Thursday slapped down the U.S. Forest Service for charging fees for those who park and hike in the Catalina Mountains.

The 9th Circuit Court of Appeals ruling, if not successfully appealed, could bring an end to a fee system that has stoked controversy even as it has paid for improvements to national forests not just on Mount Lemmon but around the country.

The system, in effect since 1996, allows the Forest Service to charge fees of \$5 a day or \$20 a year to people who park and hike on trails on Mount Lemmon and in the Sabino and Madera Canyon areas outside Tucson.

It's unclear whether the fee will be scrapped starting today. Reached late Thursday, Coronado National Forest Supervisor Jim Upchurch said he couldn't comment on the ruling without first talking with U.S. Justice Department officials.

Judge Robert Gettleman, writing for the court, ruled in favor of four Tucsonans, including a state legislator, who had filed a class-action suit on behalf of thousands of others who regularly hike on Mount Lemmon.

Gettleman wrote the Forest Service's justification for the fees is not only directly contrary to the law used to set up the fee structure but that its arguments are "illogical." The court rejected the agency's contention that even if it cannot charge for parking, it can do so for hiking and camping.

The ruling overturns a trial judge's 2010 ruling that the Forest Service was within its rights to charge those who park along the 28-mile Mount Lemmon Highway.

"Excellent, excellent, excellent," said Gaye Adams, one of the plaintiffs and a psychotherapist who has been fighting the fees with her husband since 2000. "I see this as Congress versus the Forest Service. They're clearly breaking Congress' idea of what the fee system should look like."

Another plaintiff, state Rep. Daniel Patterson, D-Tucson, said he's not against the Forest Service charging for the use of developed areas. And he said federal law does allow the agency to charge in certain limited situations, including where there are amenities.

But he called it "a stretch by bureaucrats" to extend that to parking and the use of undeveloped areas. "There's no tables; there's no fire ring; you're off on the side of a rough dirt road," Patterson said. "I think it's clear that Congress never intended for extra fees to be imposed on citizens for that undeveloped land."

Gettleman agreed in the ruling.

"The Forest Service is prohibited from charging an amenity fee solely for parking," he wrote.

The service first started charging parking and hiking fees on Mount Lemmon under what was known as a fee demonstration program. Later, the service made the fee structure permanent after the Federal Lands Recreation Enhancement Act was passed. Dozens of other specific Forest Service recreation areas around the country have fee systems today.

In the Catalinas, the Forest Service has used fees to replace restrooms, erect interpretative or directional signs, and to build, maintain and improve trails and facilities such as visitor centers. It has also used fees to do law enforcement work and install a water tank, officials have said.

Plaintiff Adams said she had no objection to money being raised to help improve the national forest's infrastructure. But she did take exception to the service's practice of charging all hikers to pay for the improvements because many people are of modest or poor incomes and can't afford them.

She and her husband, Greg Lewis, who founded the No-Fee Coalition years ago, haven't paid the fees for years as a protest, she said. She was cited once for not paying the fee, but the charges were dismissed, she said.

But legally, there was also no question that under the fee system, Congress did allow for fees to be collected from those entering certain developed recreation areas. And government lawyers said the areas around the Mount Lemmon Highway fit that definition.

Gettleman, however, said it may be that a visitor, after parking, does something else for which the Forest Service is allowed to charge a fee, such as camping in an improved campground that has designated parking, permitted toilets, permanent trash receptacles, interpretive signs or exhibits, picnic tables and security facilities. But that does not permit a parking fee to be imposed solely because of that possibility, he said.

Beyond that, the judge said federal law "clearly contemplates that individuals can go to a place offering facilities and services without using the facilities and services and without paying a fee."

For example, he said, the law precludes charging someone who walks, boats, rides or hikes through the forest without using the facilities and services.

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