

Tucson Citizen

U.S. Forest Service sued over \$5 Mt. Lemmon fee

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Four Tucsonans sued the U.S. Forest Service on Monday, claiming the fee to drive up Mt. Lemmon Highway violates their rights and federal law, their attorney said.

Gaye Adams, Greg Lewis, Daniel Patterson and Christine M. Wallace - all active in the Arizona No Fee Coalition, which has long opposed the Mt. Lemmon fee - sued for themselves and for thousands of others who have paid the \$5 since 1996, said Mary Ellen Barilotti, the group's Oregon lawyer.

Colorado residents filed a similar lawsuit over fees at Mt. Evans in Arapaho National Forest near Denver.

"We don't believe the law authorizes the fee," said Barilotti, who defended Wallace during her two-year court battle over not paying the Mt. Lemmon fee. Wallace was charged in 2005 and convicted and fined \$100 in September.

The suit, which was filed in U.S. District Court in Tucson, lists the Forest Service; Jeanine Derby, Coronado National Forest supervisor; and Diane Humetewa, the U.S. attorney in Arizona, as defendants.

Heidi Schewel, a spokeswoman for the Coronado National Forest, declined comment. The Mt. Lemmon fee - \$5 per day or \$20 for an annual pass - is illegal in part because federal law allows fees only for areas with specific improvements, including toilets, trash cans and developed parking. Many areas along the 28-mile road do not have such improvements, including 15 trails and three campgrounds, the suit states.

The fee violates the plaintiffs' Fifth Amendment right to due process because it would fine the owner of a vehicle, even if the owner were not present and did not know the vehicle was used to break the law, the lawsuit says.

The First Amendment is violated because the requirement to display a pass in the car window impairs visitors right "to stop en route to enjoy the scenery, take a break or have a picnic along the highway," the suit says.

The lawsuit is not intended to eliminate the fee, Barilotti said.

"We're not arguing that they shouldn't charge the fee in areas where there are improvements," she said.

Plaintiff Lewis is against all fees for Forest Service access. He joined the lawsuit rather than pay the fee, which he and his wife and co-defendant, Gaye Adams, have not paid since 2000, he said.

"The alternative to that is to stop being a citizen and start being a customer," he said. The Forest Service has 60 days to respond to the lawsuit.