

9th Circuit Court rules visitors to national forest don't have to pay a fee

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In a decision that could bring an end to the national Adventure Pass program, the U.S. 9th Circuit Court of Appeals ruled that the U.S. Forest Service cannot charge for hiking, walking, picnicking or visiting undeveloped areas of national forest land.

In the unanimous ruling released Feb. 9 in favor of four hikers who objected to paying a fee to visit the forest, Judge Robert Gettleman wrote: "Everyone is entitled to enter national forests without paying a cent."

The case involved four plaintiffs who objected to paying a fee to the U.S. Forest Service for visiting Mount Lemmon within the Coronado National Forest in Arizona. The court reversed a district court ruling, saying the federal authorities violated the 2004 Federal Lands Recreation Enhancement Act (FLREA).

While it remained unclear Wednesday if the ruling spells the end of the Adventure Pass program in the nearby Angeles National Forest, local activists and others involved in the long-standing battle against the fee program say it will be very difficult to charge folks who enter the sprawling forest, which forms the northern border of the San Gabriel Valley. Under the fee program, it costs \$5 a day or \$30 annually to enter many parts of the forest.

"This is the best news I have heard in years," said Bob Bartsch, 72, of Pasadena. Bartsch, who still hikes the 10-mile roundtrip up to Henninger

Flats and back, has been fighting the Adventure Pass program since it began in 1997.

"This ruling washes out the Adventure Pass... unless they see you using the amenities, then they see you go back to your car and you're not showing a valid pass," he said.

Still, local forest officials aren't saying what the ruling means.

"I don't have anything officially on that at this time," said Sherry Rollman, spokesperson for the U.S. Forest Service in Arcadia. "It happened in another state and we haven't assessed it yet."

The strongly worded, 15-page decision says any member of the public who walks, hikes, rides a horse, picnics on the side of a road, camps at undeveloped sites, even parks in a national forest "without using facilities and services" is allowed to do so without being charged. Charging a fee, such as the Adventure Pass, even for someone who visits an area with amenities but doesn't use them, violates the FLREA, according to the decision.

Using vivid examples to illustrate the court's decision, Gettleman makes a distinction between someone using the amenities in the national forest, and someone who doesn't:

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"The Forest Services fails to distinguish - as the statute does - between someone who glides into a paved parking space and sits at a picnic table enjoying a feast of caviar and champagne, and someone who parks on the side of the highways, sits on a pile of gravel, and eats an old baloney sandwich while the cars whizz by. The agency collects the same fee from both types of picnickers. That practice violates the statute's plain text."

Those who go to a place in the forest with "a majority of the nine amenities" such as picnic tables, permanent toilets, garbage cans and running water, may be charged, the court said.

However, the court's ruling concludes the federal statute says "individuals can go to a place offering facilities and services without using the facilities and services and without paying a fee."

This includes not being charged simply to park, said the court.

The attorney for the plaintiffs, Mary Ellen Barilotti of Hood River, Ore., has been bringing cases against the Adventure Pass for at least a decade. She said this is the most significant ruling on the issue of charging fees simply to step foot in a national forest.

"This case makes a pretty strong statement that they (Forest Service) are not supposed to be doing that. It carries over (to other national forests)," she said on Wednesday.

"It (the 9th Circuit decision) is binding on all the western states. That is pretty significant," she said.

The U.S. Forest Service has 90 days to appeal the ruling to the U.S. Supreme Court. Rollman did not know if the Forest Service is going to appeal.

"If you look at the language of the case, there are no cases in conflict with it at the moment," she added.

The Adventure Pass program began in 1997 as part of a Fee Demonstration Program. It attracted protests from activists who said it amounted to "double taxation" for using federal lands already paid for through taxes.

One of those activists was Bartsch, who has received seven citations for not having an Adventure Pass and fought to have six of the seven dismissed in court, he said.

Later, in 2004, Congress tightened up the rules by writing the FLREA. Barilotti and others thought that precluded charging fees for using undeveloped portions of the Angeles. But the program continued in what the USFS called "high impact recreation areas." There are 96 such designated areas in the United States, including 10 in the Angeles National Forest, accounting for more than 150,000 acres from Angeles Crest Highway to Mt. Baldy.

"Now, it seems the court is saying, you can park any place you want on Angeles Crest or Angeles Forest Highway and go for a hike or have a picnic on the side of the road and they can't stop you from doing that," Bartsch said.

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