Ruling blocks some Forest Service fees

Mount Lemmon case may have wide impact

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In a ruling with statewide and possibly federal implications, a federal appeals court has slapped down the U.S. Forest Service for charging fees for those who want to park and hike in the Catalina Mountains.

Judge Robert Gettleman, writing for the court, said the justification used by the federal agency to impose the fees is contrary to the law and its arguments are illogical. And 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, unless overturned, is a victory for several individuals who hike in the mountains and who sued on behalf of other users. It overturns a ruling two years ago by a trial judge that the Forest Service was within its rights to charge $5 a day or $20 a year to those who park along the 28-mile Mount Lemmon Highway.

Rep. Daniel Patterson, D-Tucson, one of the plaintiffs in the case, 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, in his ruling, agreed.

"The Forest Service is prohibited from charging an amenity fee solely for parking," he wrote. "There is nothing ambiguous about that text."

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 said it may be that a visitor, after parking, does something else for which the Forest Service is allowed to charge a fee. But that does not permit a fee to be imposed solely because of that mere possibility.

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.

"The statute thus distinguishes between merely recreating in an area and actually using an area's amenities," Gettleman wrote.

The judge also rebuffed the government's argument that the ban on fees for picnicking along roads or trailsides does allow the fees if the activity takes place within an area that has amenities. Here, too, Gettleman said, there is a difference between the facilities being available and actually being used.

Finally, the court said the Forest Service cannot charge a fee for camping. Gettleman said such fees are permissible only at developed sites that have at least nine specified facilities and services. He said that makes it illegal to charge a fee to "a camper who pitches a tent in a spot without garbage cans, picnic tables, campfire pits, bathrooms and someone collecting fees."

While there has been no decision from the Forest Service on an appeal, the ruling has had some impact, at least in Arizona.

The signs telling people they need to pay the fee still exist on the Mount Lemmon Highway. But the station where people are supposed to pay it is closed.

The case is Adams vs. U.S. Forest Services 10-16711.
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