

IMMUNITY OVER JUSTICE: HOW THE FIFTH CIRCUIT SHIELDED NEGLIGENCE IN THE WAKE OF HURRICANE KATRINA

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The Fifth Circuit's decision in Robinson v. United States represents a flawed interpretation of governmental immunity that disregards statutory intent, environmental accountability, and binding precedent. This Note critiques the appellate court's reversal of the district court's ruling, which had held the U.S. Army Corps of Engineers (USACE) liable for negligence in the design and maintenance of the Mississippi River-Gulf Outlet (MRGO), a key factor in the catastrophic flooding during Hurricane Katrina. The analysis focuses on three central legal errors: (1) the misapplication of the Flood Control Act of 1928; (2) the USACE's failure to comply with the National Environmental Policy Act (NEPA); and (3) the Fifth Circuit's erroneous application of the Discretionary Function Exception (DFE). By dissecting these legal shortcomings, this Note argues that the appellate ruling not only deprived victims of justice but also set a dangerous precedent, enabling agencies to evade liability through post hoc reclassification and procedural noncompliance. The decision undermines congressional mandates, environmental safeguards, and the judiciary's role in holding federal actors accountable for preventable disasters.

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I. Introduction

The overturning of *Robinson v. United States* shows a significant legal failure for several reasons. In its original ruling, citizens residing in the Lower Ninth Ward and St. Bernard Parish were compensated for losses incurred due to the flooding.¹ Upon appeal, however, the case was overturned in the Fifth Circuit Court of Appeals in 2012.² Judge Jerry Smith ruled that the courts reversed the judgments for the victims and immunized the USACE for a breadth of reasons

¹ *Robinson v. United States*, No. 06-2268, 2009 WL 3852800 (E.D. La. Nov. 18, 2009)

² *Robinson v. United States*, 696 F.3d 505, 509 (5th Cir. 2012)

which will be analyzed and critiqued in the Note. By examining the contextual evidence and analyzing the court's legal shortcomings, this Note will argue that the overturning of *Robinson v. United States* was a legal failure.

II. Context

The case of *Robinson v. United States* concerns the flooding in New Orleans during Hurricane Katrina and the legal ramifications surrounding the responsibility for the disaster. The MRGO is a man-made shipping channel designed, constructed, and maintained by the U.S. Army Corps of Engineers (USACE). Originally authorized by Congress in 1956 through the Rivers and Harbors Act (Law 84-455),³ the MRGO was intended to facilitate national defense and commercial shipping by providing a more direct navigational route between the Gulf of Mexico and the Port of New Orleans.⁴

From the outset, the MRGO's implementation was fraught with critical oversights. During construction, the channel significantly exceeded its authorized dimensions, cutting through over 20,000 acres of ecologically critical wetlands.⁵ Historically, these wetlands served as a vital storm buffer, naturally absorbing and slowing storm surges before reaching inland communities. The destruction of these natural defenses increased the vulnerability of New Orleans's eastern flank, particularly the Lower Ninth Ward and St. Bernard Parish. Despite mounting environmental evidence and warnings from scientists and local stakeholders, the USACE failed to revise its approach or take corrective action over the years. The unchecked expansion of the MRGO and the Corps' negligence in its maintenance contributed significantly to the city's devastation during Hurricane Katrina.

At its construction and for years thereafter, the MRGO was not classified as a flood control project. Instead, USACE documentation repeatedly identified the MRGO as a navigation channel, specifically created "in the interest of national defense and general commerce."⁶ This designation is important because it places the MRGO outside the scope of immunity offered by the Flood Control Act of 1928.⁷ The Act states that the federal government cannot be held liable for damages caused by floodwaters stemming from projects "for purposes of or related to flood control." This legal distinction later became the basis for the initial court's rejection of government immunity in the *Robinson* case. If the MRGO was not authorized or designed as a flood control project, then its contribution to flooding could not be protected under the statute's immunity provision.

³ Rivers and Harbors Act of 1956, Pub. L. No. 84-455, 70 Stat. 65

⁴ U.S. Army Corps of Engineers, "History of MRGO," *U.S. Army Corps of Engineers – New Orleans District*, <https://www.mvn.usace.army.mil/Missions/Environmental/MRGO-Ecosystem-Restoration/History-of-MRGO/>.

⁵ "Seven Years Later: Hurricane Katrina and Mrgo." Restore the Mississippi River Delta, August 28, 2012. <https://mississippiriverdelta.org/seven-years-later-hurricane-katrina-and-mrgo/>.

⁶ U.S. Army Corps of Engineers, "History of MRGO," *U.S. Army Corps of Engineers – New Orleans District*, <https://www.mvn.usace.army.mil/Missions/Environmental/MRGO-Ecosystem-Restoration/History-of-MRGO/>.

⁷ 33 U.S.C. § 702c (1928)

In 2009, Judge Stanwood Duval Jr. of the U.S. District Court for the Eastern District of Louisiana delivered a groundbreaking opinion in favor of the plaintiffs. He found the USACE guilty of gross negligence in its maintenance of the MRGO, concluding that this negligence was a substantial cause of the flooding that occurred during Hurricane Katrina.⁸ Judge Duval emphasized that the Corps had long been aware of the structural and environmental dangers posed by the MRGO, yet failed to implement any meaningful measures to reduce the risk. “The Corps’ failure to properly maintain and operate the MR-GO was a significant cause of the catastrophic flooding,” he wrote. “This failure constituted a breach of the duty owed to the plaintiffs.” He went on to note that the MRGO functioned not only as a conduit for commercial vessels but as a “hurricane highway” that funneled storm surges directly into the heart of the city, exacerbating the disaster.⁹

It marked the first time the federal government was held legally responsible for the consequences of Hurricane Katrina. The court awarded approximately \$720,000 in damages to a small group of plaintiffs, including Tanya Smith of St. Bernard Parish, who had lost her home and personal property in the flood.¹⁰ The judgment emphasized the role of human error, institutional failure, and environmental negligence, challenging the prevailing narrative that the disaster was a purely natural event.

However, in 2012, the Department of Justice (DOJ) appealed the decision to the Fifth Circuit Court of Appeals.¹¹ The DOJ argued that the MRGO, although originally designed as a navigation channel, had evolved into an integral component of the city’s flood control infrastructure. The government maintained that the MRGO’s integration into the Hurricane Protection System (HPS) brought it under the protective umbrella of the Flood Control Act.¹² Over time, the Corps built levees, floodwalls, and outfall canals tied to the MRGO, thereby transforming its purpose and function. According to the DOJ, this made the MRGO part of a comprehensive flood control network, entitling it to statutory immunity.

The Fifth Circuit accepted the government’s argument, overturning Judge Duval’s decision. The court relied heavily on precedent from *United States v. James* (478 U.S. 597, 1986), in which the Supreme Court held that immunity under § 702c of the Flood Control Act applied broadly to any damages caused by waters associated with a flood control project. The Fifth Circuit concluded that the MRGO, due to its physical and functional interconnection with the HPS, now fell within this category.¹³ This reinterpretation effectively nullified the distinction between navigation and flood control projects, redefining the MRGO’s legal identity and erasing the original basis for the USACE’s liability.

The Fifth Circuit’s decision thus illustrates a profound misapplication of legal principles. By reframing the MRGO’s purpose and leaning on expansive interpretations of immunity and

⁸ *Robinson*, 696 F.3d at 511

⁹ *Robinson v. United States*, No. 06-2268, 2009 WL 3852800 (E.D. La. Nov. 18, 2009)

¹⁰ “Katrina Justice: Tanya Smith’s Story,” *Insider Exclusive*, <https://insiderexclusive.com/katrina-justice-tanya-smiths-story/>.

¹¹ *Robinson v. United States*, 696 F.3d 505, 509 (5th Cir. 2012)

¹² 33 U.S.C. § 702c (1928)

¹³ *United States v. James*, 478 U.S. 597, 602 (1986)

discretion, the court allowed the USACE to evade responsibility for decades of environmental mismanagement. This outcome not only deprived Katrina victims of justice but also set a dangerous precedent, suggesting that agencies can reclassify infrastructure to suit legal strategy after a disaster has occurred.

Understanding the historical context is essential in evaluating the legal errors in the court's decision. The Corps' failure to maintain and reassess the MRGO was not discretionary; it was negligent. The Fifth Circuit's reversal disregards the original congressional intent of the project, the environmental warnings issued over decades, and the Corps' internal classifications of the MRGO as a navigational project.

III. Wetland Destruction Preceding the MRGO's Integration into HPS

The reclassification of the MRGO as part of a comprehensive flood control system, as asserted by the Fifth Circuit, not only undermines the legislative intent behind its original authorization but also distorts the timeline of environmental damage that played a central role in the devastation of Hurricane Katrina. A critical error in the court's analysis lies in its failure to recognize that the MRGO's destruction of wetlands that served as New Orleans's natural flood defense occurred before its integration into the HPS in 1965.¹⁴ This temporal distinction matters, as it separates the MRGO's navigational function from the scope of flood control immunity granted under the Flood Control Act of 1928.

From its creation, the MRGO was environmentally catastrophic. Designed as a deep-draft navigational shortcut, the channel was dredged through ecologically fragile shallow bays, coastal marshes, and cypress swamps. This destruction was not incidental but rather a direct consequence of construction activities authorized and executed by the USACE. These freshwater environments absorbed wave energy, reduced wind-driven water levels, and anchored soil through native vegetation. Once the MRGO introduced higher salinity levels into these systems, native plants and trees died, root structures disintegrated, and widespread erosion followed.¹⁵ As a result, New Orleans became increasingly exposed to the Gulf of Mexico's forces, rendering man-made levees insufficient as a sole line of defense.

To challenge the overly broad application of immunity under the Flood Control Act, it is essential to distinguish between the MRGO's status before and after its 1965 integration into the HPS. Upon its authorization in 1956 under the Rivers and Harbors Act, the MRGO was federally funded and categorized strictly as a navigation project. It was not designed or financed as a flood control measure. This is confirmed by budget allocations at the time: funds for the MRGO were drawn from navigation appropriations, not from flood control appropriations. It was only in the

¹⁴ U.S. Army Corps of Engineers, "History of MRGO," *U.S. Army Corps of Engineers – New Orleans District*, <https://www.mvn.usace.army.mil/Missions/Environmental/MRGO-Ecosystem-Restoration/History-of-MRGO/>.

¹⁵ Rchauvin, "MRGO Closure Has a Greater Impact on Coastal Restoration and Recovery than Ever Imagined." *Restore the Mississippi River Delta*, April 30, 2020. <https://mississippiriverdelta.org/mrgo-closure-has-a-greater-impact-on-coastal-restoration-and-recovery-than-ever-imagined/>.

aftermath of Hurricane Betsy in 1965 that Congress began allocating funds to support flood control infrastructure alongside the MRGO, marking the beginning of its physical and administrative integration into the HPS.¹⁶

Environmental data from the U.S. Army Corps of Engineers (1999) further illustrates that the most severe wetland degradation occurred before this integration. The destruction occurred in the following areas: Bayou Bienvenue, Bayou Dupre, Lake Borgne, the Violet Marsh, and the Michoud area. All of these historically acted as horizontal levees, dispersing floodwaters and preventing storm surges from directly reaching residential communities.¹⁷

Quantitative models further underscore the economic and protective value of these lost wetlands. A log-linear regression model analyzing 34 hurricanes since 1980 found that wetlands account for 60% of the variation in hurricane damage severity. For every acre of wetland lost, the average increase in storm damage was estimated at 2,000%. Economically, U.S. coastal wetlands are valued at \$20,400 per acre annually, providing over \$23.2 billion per year in natural storm protection.¹⁸

The court's failure to account for this timeline undermines the logic of applying Flood Control Act immunity to the MRGO. Section 702c of the Act states that "no liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place" arising from flood control projects. But the MRGO, at the time it inflicted its most significant damage, was not a flood control project.¹⁹ To apply immunity to damage caused by the MRGO during this earlier phase is to retroactively cloak a commercial project in legal protections intended only for flood control measures. The court's reasoning conflates the channel's later integration into the HPS with its initial purpose, thus extending immunity beyond its intended legal bounds.

Proponents of immunity, however, argue that the MRGO should qualify under the Flood Control Act due to its later integration into the HPS and its physical interconnection with levees and floodwalls. Citing *Central Green Co. v. United States*, 531 U.S. 425 (2001), the Fifth Circuit applied the "significant relationship" test, which allows for immunity so long as a project bears a meaningful connection to flood control, even if that is not its primary purpose.²⁰ According to this interpretation, because the MRGO ultimately became part of a unified flood control system, the entire structure—including its navigation elements—should be granted immunity.

This interpretation, however, stretches *Central Green* beyond its intended application. The Supreme Court in *Central Green* emphasized factual inquiry, not blanket immunity. The test was meant to assess the relationship between specific damages and a project's flood control

¹⁶ U.S. Government. "Home." New Orleans District. Accessed April 22, 2025.

<https://www.mvn.usace.army.mil/Missions/Environmental/MRGO-Ecosystem-Restoration/History-of-MRGO/>.

¹⁷ U.S. Army Corps of Engineers, *MRGO Deauthorization Chief's Report*, January 29, 2008, <https://www.mvn.usace.army.mil/Portals/56/docs/environmental/MRGO/MRGODEauthorizationChiefsReport29Jan2008.pdf>.

¹⁸ Costanza R;Pérez-Maqueo O;Martinez ML;Sutton P;Anderson SJ;Mulder K; "The Value of Coastal Wetlands for Hurricane Protection." *Ambio*. Accessed April 22, 2025. <https://pubmed.ncbi.nlm.nih.gov/18686502/>.

¹⁹ 33 U.S.C. § 702c (1928)

²⁰ *Central Green Co. v. United States*, 531 U.S. 425, 428 (2001)

features, not to retroactively immunize every consequence of a multi-purpose project. Here, the damages in question were caused by environmental degradation occurring nearly a decade before any flood control infrastructure was integrated into the MRGO. Applying *Central Green* to immunize those damages ignores the factual specificity the decision demands.

Moreover, such a broad reading effectively nullifies the accountability mechanisms built into the Flood Control Act. It allows the government to rebrand infrastructure post hoc to avoid liability, regardless of the initial purpose or consequences. If a navigation project can later be folded into a flood control system and retroactively protected from liability, then Congress's intent to create a narrow immunity becomes meaningless. The precedent would discourage transparency, incentivize classification manipulation, and leave communities vulnerable to the fallout of negligent federal engineering.

IV. Failure to Satisfy NEPA

The U.S. Army Corps of Engineers' continued maintenance and operation of the MRGO without filing a Supplemental Environmental Impact Statement (SEIS) constitutes a direct violation of the National Environmental Policy Act (NEPA). NEPA was enacted to ensure that federal agencies account for the environmental consequences of their actions.²¹ An SEIS is "a supplemental or supplementary EIS, prepared if the project changes, or new impacts are discovered after the original EIS is done, or the agency is ordered to do so by a court."²² In the case of the MRGO, the Corps failed to uphold this responsibility despite overwhelming evidence that the environmental conditions surrounding the channel had significantly deteriorated since its construction. This omission allowed decades of ecological harm to go unaddressed, worsening the region's vulnerability to flooding and storm surges.

NEPA imposes procedural duties on all federal agencies, requiring them to assess the environmental impact of major federal actions that significantly affect the human environment. Central to NEPA's framework is the requirement to prepare an Environmental Impact Statement (EIS) for such actions.²³ However, NEPA's obligations do not end with the initial EIS. When a federal project continues to evolve or produces significant new environmental consequences, agencies are required under 40 C.F.R. § 1502.9(c)(1)(ii) to prepare a Supplemental Environmental Impact Statement. This obligation is triggered when there are "significant new circumstances or information relevant to environmental concerns."²⁴

The changes seen were not gradual, speculative, or debatable. They were extensively documented, measurable, and ecologically devastating. The aforementioned areas saw rapid transitions from freshwater and intermediate marshes to brackish and saline environments. These

²¹ U.S. Government. "NEPA: National Environmental Policy Act." NEPA | National Environmental Policy Act, 1970. <https://ceq.doe.gov/>.

²² "NEPA Terminology." National Preservation Institute. Accessed April 22, 2025. <https://www.npi.org/nepa-terminology>.

²³ U.S. Government. "NEPA: National Environmental Policy Act." NEPA | National Environmental Policy Act, 1970. <https://ceq.doe.gov/>.

²⁴ 40 C.F.R. § 1502.9(c)(1)(ii)

areas had previously functioned as critical storm barriers for New Orleans and its surrounding parishes. Their degradation fundamentally altered the landscape, eliminating natural flood defenses and increasing the risk to human life and infrastructure.

Despite these significant environmental changes, the Corps never prepared a SEIS. This is essential in building the argument because of NEPA's purpose: to ensure that federal agencies take a "hard look" at the consequences of their actions and maintain an ongoing obligation to assess environmental impacts throughout a project's lifecycle. The Supreme Court reinforced this duty in *Robertson v. Methow Valley Citizens Council*, emphasizing that NEPA is not just a box-checking exercise. It demands serious consideration of environmental consequences to guide and improve federal decision-making.²⁵

In *Marsh v. Oregon Natural Resources Council*, the Court further held that agencies are required to supplement environmental review documents when new information or changed circumstances arise.²⁶ The MRGO's environmental degradation met this threshold. Between 1964 and 1996 alone, 5,324 acres of marsh adjacent to the MRGO channel were lost. Additional impacts continued well into the 2000s, including the collapse of ecosystem services such as wave attenuation and water absorption. These outcomes were foreseeable and repeatedly warned about by environmental experts, local stakeholders, and even internal agency reports.

Yet, the Corps failed to act. The absence of a SEIS not only violated the letter of the law but also deprived policymakers and the public of a critical opportunity to reassess the MRGO's continued operation. This lack of reassessment contributed directly to the infrastructure failures that occurred during Hurricane Katrina. Without updated environmental analyses, flood risk modeling remained outdated and incomplete, and critical vulnerabilities in the regional landscape were ignored. In effect, the Corps' failure to comply with NEPA helped set the stage for a preventable disaster.

In this case, the Corps' inaction cannot be excused as an oversight or discretionary judgment. The requirement to file a SEIS under NEPA is clear, specific, and non-discretionary. It is triggered by concrete changes in environmental conditions—changes that were undeniably present in the case of the MRGO. The Corps's choice to ignore these developments and proceed without a SEIS constituted a failure to comply with its statutory obligations.

This failure had consequences. By avoiding an updated environmental review, the Corps evaded not just legal responsibility but also meaningful public accountability. A SEIS would have forced the agency to publicly acknowledge the growing danger, consider mitigation alternatives, and incorporate contemporary environmental science into its planning. It also would have empowered communities to advocate for their protection based on updated, transparent data. Instead, the absence of a SEIS concealed the risks posed by the MRGO behind a veil of bureaucratic stagnation.

Ultimately, the Court's treatment of this NEPA violation was deeply flawed. The district court correctly recognized that the Corps failed to file a SEIS despite significant new

²⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)

²⁶ *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989)

environmental circumstances. However, the Fifth Circuit dismissed this violation, concluding that the Corps' decisions were grounded in policy judgment. This transition from a statutory obligation to a discretionary choice mischaracterizes the nature of NEPA's requirements and, in doing so, shields the Corps from liability for environmental negligence.

V. Misapplication of DFE

Despite clear statutory mandates under NEPA, the Fifth Circuit's application of the Discretionary Function Exception (DFE) in *Robinson* mischaracterized the U.S. Army Corps of Engineers' failure to file an SEIS as a protected discretionary act, rather than what it truly was: a violation of mandatory legal duty. This misapplication of the DFE shielded the Corps from liability for conduct that falls squarely outside the scope of discretionary immunity and fundamentally undermines both NEPA and long-standing Supreme Court precedent.

The district court rightly found that the Corps violated NEPA by failing to file a SEIS. That finding should have precluded any invocation of the DFE, which does not apply when an agency fails to follow a binding legal directive. However, the Fifth Circuit reversed course. Rather than treating the SEIS failure as a breach of a nondiscretionary statutory obligation, it reframed it as a discretionary policy judgment—thereby extending the protective scope of the DFE far beyond what the law permits.

This reasoning directly contradicts the two-part test established in *Berkovitz v. United States*, 486 U.S. 531 (1988). Under *Berkovitz*, the DFE does not apply where a federal agency fails to adhere to a specific, mandatory requirement.²⁷ The first prong of the test fails here: NEPA and its accompanying regulations do not give agencies the option to disregard new environmental data—they impose a duty. The Court in *Robinson* wrongly concluded that this duty was subject to judgment and choice, ignoring NEPA's procedural mandate.

The second prong of the *Berkovitz* test is equally inapplicable. The Fifth Circuit found that the Corps' decisions were “susceptible to policy analysis” and therefore protected. However, Supreme Court precedent has made clear that this “susceptibility” cannot be a license to immunize violations of law. In *Gaubert v. United States*, 499 U.S. 315 (1991), the Court held that for the DFE to apply, the conduct must be based on public policy considerations—but even *Gaubert* does not extend the DFE to situations where agencies flout legal duties under the guise of policy discretion.²⁸

By applying the DFE to excuse the Corps' failure to file an SEIS, the Fifth Circuit expanded the scope of discretionary immunity in a way that is incompatible with both NEPA and controlling precedent. The decision effectively rendered the statutory mandate optional, shielding the Corps from accountability despite the district court's explicit finding that a violation occurred. This distorts the DFE's intended purpose, which is to preserve space for legitimate policy choices, not to insulate agencies from the consequences of legal noncompliance.

²⁷ *Berkovitz v. United States*, 486 U.S. 531, 538–39 (1988)

²⁸ *Gaubert v. United States*, 499 U.S. 315, 323 (1991)

This misapplication has far-reaching consequences. It sets a dangerous precedent by suggesting that agencies can avoid statutory obligations simply by framing their decisions as policy-based, even in the face of clear regulatory duties. It undermines NEPA's core function: to ensure environmental accountability through public, transparent, and data-driven processes. And perhaps most troublingly, it allows the federal government to escape liability for avoidable disasters, like the one caused by the MRGO, by mislabeling negligence as discretion.

The Court's reliance on the DFE to excuse the Corps' failure to comply with NEPA requirements was not just incorrect—it was legally indefensible. The DFE was never meant to protect agencies that ignore statutory mandates. Its misuse in this case erodes both environmental protection and public trust in the legal system's ability to hold federal agencies accountable.

VI. Conclusion

In sum, the Fifth Circuit's ruling in *Robinson v. United States* reflects a legally unsound expansion of governmental immunity that fails to adhere to established statutory mandates and judicial precedent. The court's application of the Flood Control Act of 1928 mischaracterized the MRGO's original designation as a navigation channel, effectively erasing the significance of the environmental destruction that occurred before its integration into the Hurricane Protection System in 1965. The wetlands destroyed by the MRGO were not incidental to a flood control project but the direct result of a navigation initiative undertaken without regard for long-term hydrological and ecological consequences. By failing to distinguish between the MRGO's pre- and post-HPS functions, the court improperly extended § 702c immunity to conduct outside the statute's intended scope.

Moreover, the Fifth Circuit disregarded clear violations of NEPA, which imposes non-discretionary duties on federal agencies to evaluate the environmental consequences of their actions through Environmental Impact Statements and Supplemental Environmental Impact Statements (SEIS) when new information arises. The district court correctly found that the U.S. Army Corps of Engineers failed to file a SEIS despite substantial changes in the MRGO's ecological impact. The Fifth Circuit's failure to enforce this mandatory obligation reflects a fundamental misreading of NEPA's procedural framework, which exists precisely to ensure informed, transparent decision-making in the face of significant environmental change. The failure to file a SEIS constituted a breach of statutory duty and should have precluded immunity.

The court's application of the DFE was legally erroneous. Under the two-pronged test articulated in *Berkovitz v. United States*²⁹ and *Gaubert v. United States*,³⁰ the DFE does not apply where a federal agency violates a specific mandatory directive. The Corps' failure to comply with NEPA, particularly its refusal to file a SEIS in light of significant new environmental data, falls squarely outside the DFE's protective scope. The court's invocation of policy discretion to excuse a statutory violation reflects a misapplication of controlling precedent and dilutes the

²⁹ *Berkovitz v. United States*, 486 U.S. 531, 538–39 (1988)

³⁰ *Gaubert v. United States*, 499 U.S. 315, 323 (1991)

doctrinal integrity of the DFE. Rather than shielding legitimate discretionary judgments informed by policy considerations, the court extended immunity to unlawful omissions, thereby weakening the statutory protections afforded by NEPA.

The Fifth Circuit's opinion, therefore, not only misconstrues the statutory framework of the Flood Control Act and NEPA but also misapplies a key limiting principle of sovereign immunity. This result sets a dangerous precedent by insulating federal agencies from liability for statutorily proscribed conduct under the guise of discretion, undermining the accountability mechanisms that Congress expressly established to govern agency action. Accordingly, the decision in *Robinson* represents a significant departure from both legislative intent and established jurisprudence and warrants critical reconsideration.