

Supreme Court leaves Katrina victims stranded again

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The U.S. Supreme Court's refusal to review a case involving Louisiana residents whose homes and businesses were destroyed by Hurricane Katrina flooding sent a stark message, says Tulane Law School's Mark Davis. People affected by federal projects that go wrong "don't have many remedies."



Portable pumps remove water from New Orleans after Hurricane Katrina. (Photo by the U.S. Coast Guard)

"It's public policy now that people live at risk," says Davis, senior research fellow and director of the [Institute on Water Resources Law and Policy](#).

The justices on Monday (June 24) turned down a petition from plaintiffs who argued that the U.S. Army Corps of Engineers' negligence in maintaining the Mississippi River-Gulf Outlet led to the levee breaches and devastating flooding after Katrina.

U.S. District Judge Stanwood Duval Jr. had said the plaintiffs could go forward under the Federal Tort Claims Act, which allows suits against the federal government when its employees wrongfully cause losses, injuries or deaths.

The 5th U.S. Circuit Court of Appeals initially agreed but in September 2012 reversed course, saying the Corps couldn't be sued because it was exercising a discretionary function in deciding how to maintain MRGO.

A friend of the court brief by Davis and Tulane law professor Oliver Houck on behalf of legal scholars and environmental groups had urged the Supreme Court to overrule the 5th Circuit.

The brief pointed out that the flooding caused 1,833 deaths, billions of dollars of property damage and “incalculable environmental and cultural damage.”

Much of the damage was attributable to the failure of navigation and flood control projects built and maintained by the Corps of Engineers, the brief said: “The MRGO levee breaches exposed the flaws in the federal government's approach to public risk assessment, more particularly its disregard of overwhelming technical and scientific evidence that the eroding MRGO threatened the New Orleans region.”

Davis says that, if the government couldn't be sued in a case with damages “as catastrophic and well-documented” as this, “I don't think you'll find one.”

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