

No. _____

**In the
Supreme Court of the United States**

DTLD L.L.C., ET AL.,

Petitioners,

v.

THE POWER STATION LIMITED PARTNERSHIP, ET AL.,

Respondents.

**On Petition for a Writ of Certiorari to the
District of Columbia Court of Appeals**

PETITION FOR A WRIT OF CERTIORARI

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June 15, 2026

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BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether the Due Process Clause of the Fifth Amendment is violated when a court grants summary judgment for lack of “material” evidence without first identifying the legal standard that determines what facts are material, where the court has simultaneously held that it lacks authority to articulate that standard.

PARTIES TO THE PROCEEDINGS

Petitioners and Appellants/Appellees, Defendants below

- DTLD L.L.C.
 - Iraklion LLC
- (collectively, “DTLD”)

Respondents and Appellees, Plaintiffs below

- The Power Station Limited Partnership
- SJG Properties, LLC
- 15th and H Street Associates, LLP
- Southern Building Associates, LLP

Respondent and Appellant below

- JPMorgan Chase Bank, N.A.
(NYSE: JPM)

CORPORATE DISCLOSURE STATEMENT

Neither petitioner has a parent company and no public company owns 10% or more of their respective stock.

LIST OF PROCEEDINGS

D.C. Court of Appeals

No. 24-CV-1163

DTLD, LLC et al., *Appellants* v. Power Station
Limited Partnership, et al., *Appellees*

No. 24-CV-1173 (consolidated)

JPMorgan Chase Bank, National Association,
Appellant v. DTLD, LLC, et al., *Appellees*

Final Opinion: February 12, 2026

Rehearing Denial: March 18, 2026

D.C. Superior Court, Civil Division

No. 2023-CAB-006784

DTLD, LLC et al., *Plaintiffs* v.
Power Station Limited Partnership, et al., *Defendants*

Final Order: November 22, 2024

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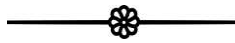
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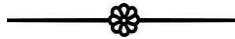
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The opinion and judgment of the District of Columbia Court of Appeals, dated February 12, 2026, is included in the appendix at App.1a, 3a. This opinion was not designated for publication.



JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 12, 2026. Rehearing and rehearing en banc were denied on March 18, 2026. App.34a. This Court has jurisdiction under 28 U.S.C. § 1257(a). The petition is timely filed within 90 days of the denial of rehearing en banc, pursuant to Sup. Ct. R. 13.1. The deadline for filing is June 16, 2026.



CONSTITUTIONAL PROVISION INVOLVED

U.S. Const., amend. V

No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



INTRODUCTION

This case presents an open question of fundamental importance to fair adjudication: whether a court may resolve a claim on evidentiary-insufficiency grounds under a legal standard it has not identified and has declared it lacks authority to develop. No decision of this Court has directly addressed that question. The answer determines whether due process guarantees can be satisfied through a procedure that denies litigants advance notice of the rules that will govern their case.

The decision below presents the question in its starkest form. The D.C. Court of Appeals acknowledged that its precedents do not “identify exhaustively” the equitable factors governing non-enforcement of restrictive covenants. It nevertheless affirmed summary judgment by concluding that petitioners presented “no evidence” of changed conditions and “no claim” of hardship-determinations that necessarily depend on a standard the court declined to define. The court then held that a division “has no authority” to develop that standard, ensuring the vacuum persists.

No future division can cure the problem because the court has declared itself without authority to supply the missing standard. Only this Court, or the full court sitting en banc, can close the gap. But the full court has declined to act. This Court’s review is warranted.



STATEMENT OF THE CASE

A. The Property and the Restrictive Covenant

Petitioners own real property in the District of Columbia that was historically used as an entertainment venue. The property is burdened by a perpetual restrictive covenant imposed by a prior grantor.

Petitioners seek to restore the property to its historical use. Respondents invoked the restrictive covenant to prevent that use, asserting that the covenant's original purpose-related to safety and vehicle-access concerns associated with an abutting alley-remains enforceable.

B. The Summary Judgment Proceedings

In the Superior Court of the District of Columbia, petitioners raised equitable defenses to enforcement of the covenant. They presented evidence of changed neighborhood conditions, modern safety and mitigation measures, and facts bearing on whether the covenant's original purpose was still served. The trial court granted summary judgment against petitioners.

C. The Decision Below

The District of Columbia Court of Appeals affirmed in a three-part sequence that is the source of the constitutional defect.

First, the court acknowledged that existing precedents do not "identify exhaustively" the equitable factors governing non-enforcement of restrictive covenants. App.15a.

Second, without defining those factors, the court held that petitioners presented “no evidence” of relevant changed conditions and “no claim” of hardship. App.15a.

Third, the court held that a division “has no authority” to develop or apply a more complete equitable framework. App.16a.

The combined effect is a framework in which the governing standard is undefined, evidentiary sufficiency is assessed under that undefined standard, and no division can supply the missing definition.

D. Denial of Rehearing

Petitioners sought rehearing and rehearing en banc, presenting the constitutional deficiency. The court denied rehearing without opinion. App.34a.



REASONS FOR GRANTING THE PETITION

I. The Decision Below Permits Summary Judgment Under an Undefined Legal Standard, Raising a Substantial Question Under the Due Process Clause.

The decision below raises a serious and unresolved due process question. This Court has held that due process requires fair notice and a meaningful opportunity to be heard before a protected property interest is extinguished. *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (“For more than a century the central meaning of procedural due process has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.’” (citation omitted)). Because the Fifth Amendment applies directly to the District of Columbia and embodies the same due process guarantees as the Fourteenth, these principles govern here.

This Court has also established that materiality at summary judgment is determined by the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“[t]he substantive law will identify which facts are material”). But this Court has not addressed whether a court may declare evidence immaterial without first identifying the standard that defines materiality.

This Court recognized as much in *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970), where it held that

due process requires “timely and adequate notice detailing the reasons for a proposed termination”—not merely notice that a proceeding exists, but notice of the specific basis on which the government proposes to act. That requirement reflects the same principle at issue here: a party cannot meaningfully respond without knowing the standard that governs the outcome.

The decision below illustrates the problem. The court acknowledged that the governing equitable standard for non-enforcement of restrictive covenants is not exhaustively defined by D.C. precedents, yet affirmed summary judgment by holding that petitioners had presented “no evidence” of changed conditions material to that inquiry. Whether evidence is “material” depends on the governing substantive law. By declining to identify that rule, the court resolved the materiality question implicitly—without disclosing which answer it adopted.

The constitutional problem is compounded by the procedural posture. Summary judgment proceeds without full evidentiary development; litigants cannot build a record responsive to an undisclosed standard. A court’s declaration that such a record is legally insufficient departs from the requirement that adjudication proceed under articulated legal rules.

Although *Anderson* interprets Rule 56, the constitutional requirement follows directly: a court that declines to identify the governing substantive standard has no principled basis for a materiality determination, and in declining to do so deprives the losing party of the opportunity due process demands.

The question presented arises in an unusually clear posture: the court below did not merely apply an

unclear standard—it expressly held that it lacked authority to define the governing standard, and nonetheless resolved the case under that undefined rule.

Due process does not permit a court to declare a record insufficient without first identifying the legal standard that governs sufficiency.

At minimum, this sequence raises a substantial question under *Mathews* and *Anderson* that warrants this Court’s attention. *Mathews*, 424 U.S. at 335 (the adequacy of process depends, in part, on “the risk of an erroneous deprivation of [the] interest through the procedures used”). Where the standard governing an equitable defense is never disclosed, the risk of erroneous deprivation is not merely possible—it is substantial and recurring.

II. The Decision Establishes a Structural Defect That Will Recur, and the Absence of a Recorded Circuit Conflict Reflects the Nature of the Error.

The problem is not limited to this case. Future litigants raising equitable challenges to restrictive covenants in the District of Columbia will face identical uncertainty—and the decision ensures they will have no recourse.

The court’s holding that a division “has no authority” to develop the governing standard ensures recurrence. That holding will be invoked in every future covenant dispute to bar any incremental doctrinal development at the division level. Courts that cannot define the standard cannot give litigants notice of what must be proved, and will continue to resolve

cases on “no evidence” grounds under standards they have not articulated.

The consequences extend beyond individual litigants. The rule of law requires that like cases be treated alike. Where the governing standard is undefined and no court has authority to define it, two litigants with identical facts may reach opposite results—not because the law distinguished them, but because no court ever stated it. The result is a framework that permits inconsistent outcomes without an articulated governing rule. And the “no authority” holding ensures this cannot be corrected through the ordinary channels by which courts refine doctrine. The problem is not that the standard is incorrect, but that it has not been articulated. The problem is therefore frozen at precisely the point where it is most harmful.

Petitioners do not identify a direct conflict among other federal or state courts of last resort on this question. The absence of a recorded conflict reflects the nature of the error: courts that resolve claims under undefined standards do not articulate the constitutional problem—they simply apply the undefined standard and rule against the party that failed to satisfy it. The defect remains invisible, and no conflict develops. The very feature that makes the error recurrent—its invisibility to ordinary appellate review—also prevents the circuit split that would ordinarily bring the question here.

The decision below is unusual precisely because the court named its own limitation. By acknowledging both that the standard is not exhaustively defined and that a division “has no authority” to develop it, the court made the defect explicit. That transparency creates a vehicle for this Court’s review that would not exist in

the ordinary case where the problem is implicit. It also confirms that the error is structural rather than incidental: the court below was not mistaken about the standard; it acknowledged the standard does not fully exist and proceeded to apply it anyway.

III. This Case Is an Ideal Vehicle.

This case is a suitable vehicle for resolving the question presented for several reasons.

First, the constitutional defect appears on the face of the opinion. The court's own words establish the sequence: acknowledgment that the standard is not exhaustively defined, followed immediately by "no evidence" and "no claim" holdings under that undefined standard. No disputed facts are required to identify the error; the relevant record is the opinion itself.

Second, the issue was preserved and presented below. Petitioners raised the constitutional deficiency in their petition for rehearing en banc, which the court denied without opinion. The question is squarely before this Court.

Third, the constitutional question is purely legal and does not require this Court to evaluate the merits of the underlying equitable dispute.

Fourth, the error cannot be corrected through ordinary appellate channels. The court has declared that divisions lack authority to develop the standard. No future panel can supply the missing definition. Only en banc action-which the court declined-or this Court's intervention can break the cycle.

Fifth, the question of remedy is manageable. If this Court grants certiorari and vacates the judgment,

the appropriate disposition on remand would be an order directing the D.C. Court of Appeals to: (1) define, en banc if necessary, the governing equitable standard for non-enforcement of perpetual restrictive covenants in the District; and (2) apply that standard to the summary judgment record, with the parties afforded an opportunity to supplement the record in accordance with the standard as defined. That is not a broad or open-ended remedy; it is the ordinary consequence of vacating a judgment for procedural error and remanding for proceedings consistent with the correct legal standard.

Finally, the property interest at stake is concrete, historically established, and significant. Petitioners own real property in the District of Columbia that served as an entertainment venue—a lawful, productive use—and they seek to return it to that purpose. They have been denied that ability, not because the law prohibits it, not because a defined equitable standard bars it, but because a court declared their evidence insufficient under a standard it declined to identify and lacks authority to develop. The Fifth Amendment’s protection of property against arbitrary deprivation was written for precisely this situation: a property owner who loses not to a rule, but to a declaration that no rule required it to prevail. The harm is ongoing. Every month petitioners cannot use their property in its historically established manner is a month in which the consequences of a constitutionally deficient adjudication accumulate. Those consequences are not remediable in damages. They are remediable only by this Court’s review.



CONCLUSION

A court may not declare a record insufficient without first identifying the standard that governs sufficiency. The petition for a writ of certiorari should be granted, the judgment vacated, and the case remanded for proceedings under an identified legal standard.

Respectfully submitted,

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