

No. 23-CV-0826

**IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS**

CLIENT EARTH, *et al.*,

Plaintiffs-Appellants,

v.

WASHINGTON GAS LIGHT COMPANY,

Defendant-Appellee.

Appeal from the Superior Court of the District of Columbia
Civil Division No. 2022 CA003323 B (Hon. Danya A. Dayson, Judge)

**BRIEF OF LEGAL AID DC, THE NATIONAL ASSOCIATION OF
CONSUMER ADVOCATES, TZEDEK DC, AND WASHINGTON
LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN
AFFAIRS AS *AMICI CURIAE*
IN SUPPORT OF APPELLANTS' PETITION
FOR REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 26.1

Pursuant to District of Columbia Court of Appeals Rule 29(a), counsel for Amici states that parties represented in this brief are Legal Aid DC, the National Association of Consumer Advocates, Tzedek DC, and Washington Lawyers' Committee for Civil Rights and Urban Affairs. None of Amici is a publicly held corporation, issues stock, or has a parent company.

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INTERESTS OF AMICI CURIAE

Amici are four D.C. nonprofit organizations that, among other things, advocate for the rights of consumers, including D.C. residents with lower incomes. Legal Aid DC is the District's oldest and largest civil legal services organization, providing free legal advice and representation to low-income D.C. residents, including through its Consumer Law Unit. The National Association of Consumer Advocates is a nonprofit association of over 1,500 attorneys and consumer advocates whose primary focus is the protection and representation of consumers. Tzedek DC's mission is to safeguard the legal rights and financial health of D.C. residents dealing with the devastating consequences of abusive debt collection practices and other consumer related issues, and the organization has provided direct, pro bono services to over 5,000 D.C. households. And the Washington Lawyers' Committee for Civil Rights and Urban Affairs works to create legal, economic and social equity for low-income tenants, homeowners, and other consumers and individuals in D.C.

Amici's work focuses on protecting D.C. residents from unfair, deceptive, and discriminatory practices. Many D.C. residents who are victims of unfair or deceptive trade practices by utilities are low-income people of color. Amici submit this brief to assist the Court in understanding how the incorrect holding in *Gomez v. Independence Management of Delaware* prevents D.C. residents from seeking relief from improper trade practices by persons subject to regulation by the Public Service

Commission of the District of Columbia: PEPCO, Washington Gas, and Verizon.

INTRODUCTION

Utility companies are deeply intertwined with the lives of District residents—especially the most economically vulnerable. Forty percent of low-income households in D.C. are financially strained by energy costs, and SNAP-eligible D.C. residents spend over twenty percent of their household income on energy bills.¹ Often, families are forced to forgo electric service entirely when they cannot pay their bills: in 2024, unaffordable utility bills resulted in nearly 15,000 gas or electricity shutoffs in D.C. households.² When utility companies exacerbate these already high costs with improper trade practices, D.C. residents should be allowed to seek relief from those trade practices just as they would from any other company. That is what the D.C. Council intended when it enacted the Consumer Protection Procedures Act, D.C. Code §§ 28-3901-13 (“CPPA”). This case presents the Court with a prime opportunity to remove an unnecessary, incorrect, judicially created barrier to this powerful consumer protection law.

¹ CCAN Action Fund, *Soaring Energy Costs in Washington, D.C.: How Rising Bills are Impacting Households* (2025), <https://ccanactionfund.org/soaring-energy-costs-in-washington-d-c-how-rising-bills-are-impacting-households/>.

² See Letter from PEPCO to the PSC (Jan. 21, 2025), available at <https://edocket.dcpSC.org/apis/api/Filing/download?attachId=217324&guidFileName=da131ed2-3c90-465d-9dde-083ac4dfaecc.pdf>; Letter from Washington Gas to the PSC (Jan. 17, 2025), available at <https://edocket.dcpSC.org/apis/api/Filing/download?attachId=217111&guidFileName=544d9c02-cb9f-432f-a6fd-ecd84867b228.pdf>.

When most businesses engage in unlawful conduct, D.C. consumers have the right to bring an action in D.C. Superior Court under the CPPA, a “broad consumer protection statute[] meant to assure that a just mechanism exists to remedy all improper trade practices.” *District of Columbia v. Facebook, Inc.*, 340 A.3d 1, 4 (D.C. 2025). The CPPA creates a private right of action for relief from unfair or deceptive trade practices affecting “any and all parts of the economic output of society, at any stage or related or necessary point in the economic process.” *See* D.C. Code § 28-3905(k); *id.* § 28-3901(a)(7). CPPA remedies include treble damages or \$1,500 per violation (whichever is greater), punitive damages, attorneys’ fees, and equitable relief. *Id.* § 28-3905(k)(2)(A). The CPPA also creates multiple avenues for recovery, which is crucial for Amici’s clients. In addition to cases by individuals, the CPPA allows nonprofits and public interest organizations to bring actions on behalf of consumers, members, or the general public without necessarily needing to meet the requirements of Rule 23. *See* D.C. Code § 28-3905(k). These broad standing requirements lower the barriers to relief for Amici’s clients.

But under a 2009 panel opinion of this Court, three private, for-profit companies currently enjoy immunity from the CPPA: PEPCO, the monopoly electric supplier for the District; Washington Gas Light Company, the monopoly natural gas supplier in the District, and Verizon DC, an affiliate of the world’s second-largest telecommunications company. The plain text of the CPPA does not grant immunity

to these D.C. Public Service Commission (“PSC”)-regulated companies from CPPA actions by or on behalf of harmed consumers in Superior Court. *See Client Earth v. Washington Gas Light Co.*, --- A.3d ---, 2025 WL 2535182, at *3-4 (D.C. Sept. 4, 2025). Instead, Section 28-3903(c)(2) only restricts the Department of Licensing and Consumer Protection (“Department”) from bringing administrative enforcement actions against certain categories of entities, including those regulated by the PSC.

And yet, as the panel in this case explained, this Court held in *Gomez v. Independent Management of Delaware*, 967 A.3d 1276, 1286-88 (D.C. 2009) that the limitations on the Department in § 28-3903(c) likewise constrain the *private* right of action under § 28-3905(k)—even though the latter provision does not say anything about such an exemption. And as a result, when PEPCO, Washington Gas, and Verizon—the three PSC-regulated entities—commit improper trade practices, they cannot be sued in a CPPA action. No merchants other than those restricted by *Gomez* enjoy such immunity from trade practice accountability.

Consumer problems with utilities are widely reported, encompassing many practices that would be actionable under the CPPA if committed by any other business. Amici urge the Court to grant rehearing en banc and return to consumers the right to seek relief from unfair or deceptive practices utility companies in D.C.³

³ If the Court overrules *Gomez*, none of the limitations on the Department in section 3903(c)(2) would apply to the private right of action. But consumers seeking redress from other entities identified in that section would still have to show the existence

ARGUMENT

District of Columbia consumers regularly report unfair or deceptive trade practices by utility companies PEPCO, Washington Gas, and Verizon DC that fall well within the scope of the CPPA. These complaints demonstrate the harms these practices cause to residents by stretching their already-tight budgets and inducing them to make purchases they would not otherwise have made. Further, in Amici's experience, unfair and deceptive practices by PSC-regulated entities disproportionately affect low-income residents. Yet the broad relief under the CPPA, including significant statutory damages, punitive damages, attorneys' fees, and equitable relief, as well as the multiple paths to representation, are closed off to consumers. Below are some of the types of practices consumers have encountered, which would ordinarily fall within the CPPA's ambit but for *Gomez*.

Debt Collection Violations. Consumers report that utility companies engage in deceptive and unfair debt collection tactics. For example, in *Davis v. Washington Gas Light Co.*, No. 2025-CAB-004582 (D.C. Super. Ct. July 15, 2025), a D.C. consumer alleges that Washington Gas billed him improperly for years and unlawfully disclosed his utility debt to his apartment's leasing office. Another consumer who was represented by Amici Tzedek DC has reported that Washington

of a consumer-merchant relationship and an improper trade practice. This brief focuses on PSC-regulated utilities because of their direct impacts on the lives of Amici's clients.

Gas billed them for large amounts of money but was later unable or unwilling to substantiate the origin of those charges, even after they escalated it to higher levels of corporate management multiple times. While some of these acts may also violate other statutes, like the D.C. Debt Collection Law, D.C. Code § 28-3814, these other statutes do not typically include the same avenues for relief (including public interest or nonprofit standing) or remedies that would be available under the CPPA.

Improper shut-offs. There have been many reports of improper or unfair utility shut-offs, or shut-offs that did not follow required procedures, placing D.C. residents at severe and immediate risk of harm. For example, the plaintiff in *Davis*, *supra*, alleges that Washington Gas disconnected his gas service in winter without notice. Another client of Amici Tzedek DC reported that Washington Gas billed her for a massive, unexplained surge in gas usage, causing her bill to jump from \$65 to \$365 per month and incurring a debt of over \$3,000. Washington Gas initially told her to stop paying while they searched for a potential leak—then sent her a shut-off notice. After they replaced her meter, the bill went back to normal, but she was forced to enter a payment plan to avoid a service shutoff. PEPCO and Washington Gas have reportedly ramped up residential shut-offs in the last several years. Overturning *Gomez* would ensure D.C. residents could seek the full range of relief under the CPPA when utility companies shut off their heat or electricity improperly.

Pay-to-Pay Fees. Counsel for Amici represent a low-income D.C. resident

who alleges that PEPCO charges her a fee to make her monthly utility payments online or by phone (pay-to-pay fees). *See* Complaint ¶ 3, *Cornish-Scott v. Potomac Electric Power Co.*, Case No. 2025-CAB-003344 (D.C. Super. Ct. May 23, 2025). The *Cornish-Scott* complaint alleges that PEPCO’s pay-to-pay fees are not disclosed in its tariff. Federal courts have found that pay-to-pay fees likely violate the CPPA when charged by other companies. *See Hardnett v. Select Portfolio Servicing, Inc.*, --- F. Supp. 3d ---, 2025 WL 2615019, at *5-6 (D.D.C. Sept. 10, 2025); *McFadden v. Nationstar Mortg. LLC*, 2021 WL 3284794, at *11 (D.D.C. July 30, 2021), *report and recommendation adopted*, 2022 WL 1001253 (D.D.C. Apr. 4, 2022).

Overcharging for sustainable energy. Community solar energy projects in D.C. provide residents with an accessible way to support clean energy production while receiving discounts on monthly energy bills via solar credits.⁴ A D.C.-funded program even enrolled thousands of low-income consumers in these projects for free.⁵ But thanks to PEPCO, all was not well beneath the surface. Over 6,000 D.C. consumers alleged that PEPCO overcharged them for solar, undercounted the solar energy generation at community projects—by 5,000 megawatt hours, enough energy to power 500 homes for a year—and failed to provide appropriate solar credits to

⁴ Jacob Fenston, *Pepco ‘Systematically Mishandling’ Solar Projects, Says D.C. Attorney General*, *dcist* (Mar. 23, 2022, 3:09 PM), <https://dcist.com/story/22/03/23/PEPCO-systematically-mishandling-solar-projects-ag-racine/>.

⁵ *Id.*

consumers.⁶ The Office of People’s Counsel (“OPC”) and Office of the Attorney General filed a complaint before the PSC on this matter and received a favorable judgment for consumers, including refunds of approximately \$800,000.⁷ The refunds to consumers represented the amount that PEPCO spent installing faulty meters; the amount was passed on to customers through bill increases. But it is not at all apparent that this relief accounted for all of the lost bill savings and solar credits that consumers should have received under the program. Had consumers had the right to seek relief under the CPPA from this allegedly false advertising, they could have also sought other remedies unique to the CPPA.

Greenwashing. As the causes and impacts of climate change, environmental degradation, and pollution have become better understood by governments, companies, and consumers alike, purchasing habits have begun to evolve. From cleaning supplies and cars to flights and fuel, consumers are now making purchasing decisions based in large part on sustainability. But for consumers, this increasing demand for “green” products also carries increasing risks. PSC-regulated companies have been accused of engaging in “greenwashing”—deceptively advertising their products as environmentally sustainable, when in fact, the opposite is true. Indeed,

⁶ *Id.*

⁷ See, e.g., Jacob Fenston, *Pepco Must Repay Ratepayers \$800,000 After Solar Violation*, DCist (July 7, 2023), available at <https://dcist.com/story/23/07/07/PEPCO-dc-community-solar-meter-violation/>.

greenwashing was the basis of the underlying allegations in this case. Greenwashing falls within the deceptive practices forbidden by the CPPA. *See, e.g., Earth Island Institute v. Coca-Cola Co.*, 321 A.3d 654, 663-73 (D.C. 2024). Yet the panel was constrained to affirm dismissal of the underlying action not because of a defect in the pleadings, but because of *Gomez*.

False advertisements and illegal billing. Companies like Verizon DC have been credibly accused of making false statements about products and services, including claiming untruthfully to offer “unlimited data,” provide “free” devices and services, or helping consumers “save” money by buying products.⁸ In 2015, the Consumer Financial Protection Bureau reached a \$120 million settlement with a Verizon entity over illegal billing practices.⁹ In 2024, Verizon Wireless settled a class action lawsuit alleging that it charged consumers junk fees in violation of numerous states’ consumer protection laws. *See Esposito v. Cellco Partnership d/b/a Verizon Wireless*, No. MID-L-6360-23 (N.J. Sup. Ct.). The CPPA creates a remedy for practices like these, which deceive consumers and burden them with hidden fees.

⁸ *See, e.g.,* Office of the Attorney General, Attorney General Schwab Announces \$10.25 Million Settlement with AT&T, Verizon, T-Mobile, Cricket & Tracfone Over Deceptive Advertising Practices (May 9, 2024), <https://oag.dc.gov/release/attorney-general-schwalb-announces-1025-million>.

⁹ *See* Consumer Financial Protection Bureau, Sprint and Verizon will refund \$120 million to consumers harmed by illegal billing practices (May 12, 2015), <https://www.consumerfinance.gov/about-us/blog/sprint-and-verizon-will-refund-120-million-to-consumers-harmed-by-illegal-billing-practices/>.

The foregoing examples are only some of the types of unfair trade practices that District consumers encounter when navigating utility monopolies. But unlike nearly every other business operating in the District, PEPCO, Washington Gas, and Verizon currently enjoy immunity from the CPPA's private right of action, statutory damages, and broad applicability. Reversing *Gomez* to conform to the Council's intent in the CPPA will promote the public interest by returning to consumers the powerful, effective consumer protection mechanism that exists against every other merchant whose business affects D.C. consumers.

CONCLUSION

Judicial oversight under the CPPA is a crucially important tool for D.C. consumers to hold companies accountable for bad practices. In the absence of a specific textual basis for excluding PEPCO, Washington Gas, and Verizon from the CPPA's private right of action, there should be no reason consumers cannot seek relief from unfair trade practices against them, too. Amici urge the Court to grant the Petition, reconsider *Gomez*, and return to D.C. residents the mode of relief that the Council intended.

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Respectfully Submitted,

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