Good morning Chair Allen and members of the Committee. My name is Mike Dearington, and I’m an attorney at the Washington, DC, office of Arent Fox LLP, which provides pro bono counsel to DC Appleseed Center for Law and Justice. Thank you for convening this hearing and for providing me with the opportunity to testify on behalf of DC Appleseed regarding the performance of the District of Columbia Board of Elections (“BOE”) and the Office of Campaign Finance (“OCF”).

The Committee holds this hearing at a watershed moment for campaign-finance reform in the District of Columbia. As you know, in May 2018, the Fair Elections Amendment Act of 2018 became law, which established the Fair Elections Program and will provide public funding to qualified candidates who forgo campaign contributions from corporations and traditional political action committees. And just last month, the Council enacted the Campaign Finance Reform Amendment Act of 2018, which would restrict political contributions by government contractors who do business with the District, address improper coordination between campaigns and political action or independent-expenditure committees, and strengthen campaign disclosure requirements. We commend the Council and this Committee for their tireless work on these important legislative initiatives, which have DC Appleseed’s full support.

My testimony today focuses on implementation of the Fair Elections Act by BOE and OCF and, in particular, the treatment of independent expenditures in BOE’s proposed Fair Elections Program rules, published January 4, 2019.

DC Appleseed has long voiced its support for the Fair Elections Act because of its critical goals of amplifying the voices of everyday voters, reducing pay-to-play politics or the
appearance thereof, and increasing participation in the political process. For as long as DC Appleseed has supported the legislation, however, it has emphasized that its success depends in part on the effective regulation of independent expenditures. If a participating candidate could accept public financing by agreeing to certain contribution and expenditure restrictions, but then circumvent those restrictions by engaging in unauthorized coordinated spending under the guise of being independent, that would not only violate the Fair Elections Act but also frustrate its principal purpose. This is why DC Appleseed advocated in a memorandum to the OCF Planning Committee that BOE should promulgate regulations that clarify which expenditures are truly independent within the meaning of the Fair Elections Act.

We were pleased to see that BOE adopted this recommendation in its proposed rules, which provide a non-exhaustive list of eight factors that “the Director may consider” in deciding whether an expenditure is in fact independent. The proposed rules provide a workable framework that will aid the Director in making consistent, well-reasoned decisions as to which expenditures are in fact independent, and which are coordinated and may be improper. We think that the proposed rules would therefore increase the Fair Elections Program’s overall efficacy.

Nevertheless, we think that these rules could be even stronger if BOE were to harmonize them with the newly enacted independent-expenditure provisions in the Campaign Finance Reform Amendment Act of 2018. Specifically, we think that the rules should provide that the Director’s finding that an enumerated factor applies to a given expenditure “gives rise to a rebuttable presumption that the expenditure is not independent,” shifting the burden of production to the participating candidate to demonstrate that the expenditure was in fact independent. We also think that the rules should specifically include among its enumerated factors any factor that is included in section 6(b)(6) of the Campaign Finance Reform Amendment Act of 2018. These recommendations are included in the DC Fair Elections Coalition’s comment to the proposed rules.

We are confident that these recommended changes, if adopted, would bring even greater clarity and comprehensiveness to the law regarding independent expenditures.

In closing, DC Appleseed appreciates the efforts of BOE and OCF to include and carefully consider the perspectives of an array of community stakeholders in implementing the Fair Elections Program, including by addressing the aforementioned concerns regarding the
regulation of independent expenditures. DC Appleseed hopes and expects that these efforts will continue.

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Thank you for the opportunity to testify. I would be happy to answer any questions you may have.