Statement of William Heinzen
Deputy Counselor to the Mayor
New York City Council
Committee on Consumer Affairs
June 23, 2009

Good morning, Chairman Comrie and members of the Committee on Consumer Affairs. My name is William Heinzen, and I am Deputy Counselor to the Mayor. Thank you for the opportunity to be heard today about Intro 995, which would require landlords to disclose to potential renters the contact information of any tenant screening agency that is used to review the potential tenants' backgrounds. The bill would also require landlords to notify potential renters of a right to obtain one free tenant screening report per year from tenant screening agencies.

The Bloomberg Administration is committed to increasing transparency in government processes and encouraging private industry to do the same. In dealing with a subject as important as accurate personal credit information, a small error can create a big problem. That's why we support the intent of this bill, and we appreciate the Council's support in our efforts to help New Yorkers gain access to the information they need to make informed decisions in the housing market. With respect to Intro 995, we share your concern that New Yorkers should not be disadvantaged by personal credit information that is incorrect, or that they have no opportunity to challenge potentially incorrect credit information.

As written, this bill presents a number of implementation concerns. First, if a landlord simply declines to state that it has used a tenant screening agency, it will be difficult to demonstrate otherwise. Further, even if we are able to determine the universe of agencies that

compile Tenant Screening Reports, there is an enormous amount of similar information available to any landlord with a computer. In other words, even if these agencies did not exist, landlords could still use readily-available information against tenants.

That said, we appreciate the Council's focus on this issue and agree that it is ripe for review. To that end, the Mayor's Office has asked DCA, through its Office of Financial Empowerment, and the Department of Housing Preservation and Development, our agencies with the most relevant expertise, to review the issue of tenant screening agencies and evaluate how it affects the City's rental market and renters. Particularly, we would like to better understand the universe of such agencies, how they work, where they receive their information, and how often they update it, and how widely such agencies are used. We also want to review the overlay of state and federal regulatory schemes governing credit reports to ensure that any regulation taken up by the City does not conflict with any federal credit report regulations. Further, we anticipate speaking with the Office of Court Administration about information concerning housing court cases and how it is reported. Informed by the information your Committee develops today, and our review, we anticipate reporting back to you within thirty days with our findings. We look forward to working with the Speaker, Council Member Garodnick, the Consumer Affairs Committee, and the entire City Council to allow this bill to improve transparency in the rental process and protect potential tenants.

I'll be happy to take your questions.

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Testimony of James B. Fishman
Before the Committee on Consumer Affairs
of the New York City Council
on Int. No. 995
June 23, 2009

Speaker Quinn, Chairman Comrie, and members of the Committee. My name is James Fishman. I am an attorney in private practice specializing in representing tenants and consumers. I am a former Assistant Attorney General in the Bureau of Consumer Frauds and Protection and a Senior Staff Attorney with the Legal Aid Society, Civil Division. I am here this morning to speak in support of Int. No. 995, a proposal to amend the administrative code to provide disclosure of tenant screening information to applicants for rental housing.

For the past 6 years I have been extensively involved in the problem of "Tenant Blacklisting." I have seen many of my clients unable to rent housing because they found themselves trapped in a database whose only criteria for admission is being named in an eviction proceeding filed in the Housing Court. In 2004 I brought a federal class action against First American Registry, now known as First American SafeRent, the nation's largest tenant screening bureau, on behalf of thousands of tenants who had been sued in the NYC Housing Court. The suit charged First Advantage with violating the federal and state Fair Credit Reporting Acts by failing to completely and accurately report the disposition of Housing Court cases.

Tenant blacklisting is probably the most serious threat facing tenants in New York because it prevents them from being able to exercise the rights given to them by the Legislature. Every tenant who is sued in a summary eviction proceeding, even where the tenant's position was justified, or if the case was brought by

mistake, is immediately swept into the electronic database dragnet created by the Office of Court Administration. That database is then used by data companies known as Tenant Screening Bureaus to create reports which are sold to landlords and brokers who want to know if a prospective tenant was ever named in a Housing Court proceeding. Many tenant screening companies fail to expunge cases that are more than seven years old, as required by federal and state law.

It is well known that many New York City landlords and brokers routinely reject applicants out of hand, simply because they were named in an eviction proceeding, regardless of its outcome.

It is also well known that it is almost impossible for individuals who are seeking to rent an apartment to determine, in advance, if their tenant screening file contains erroneous, inaccurate or obsolete information. A recent Yale Law Journal article reported that there are over 650 tenant screening companies operating in the United States. Unlike the big three credit reporting agencies, Trans Union, Experian and Equifax, there is an almost endless number of TSB's. Under current law, landlords and brokers are not required to disclose the name of the tenant screening bureau they use in their application evaluation process. The proposed legislation represents an important first step toward making the tenant screening process more equitable by making it possible for apartment applicants to check their tenant screening file in advance and correct any errors.

The primary responsibility for tenant screening and credit reporting protection rests with the state and federal governments, leaving few areas for involvement by City government. However, this bill is the type of pro-active legislation that addresses a need that neither the Federal or State governments have dealt with. New York City in particular, where the rental housing market is so tight, needs legislation like this because it is too late for tenants to learn the name of the tenant screening company a particular landlord used after an application is denied, as current state and federal law provides.

I urge this Committee, and the full Council, to pass this bill. Thank you.

Testimony Before the Consumer Affairs of the New York City Council on Intro 995
June 23, 2009
By Louise Seeley, Executive Director,
The City-Wide Task Force on Housing Court
125 Maiden Lane, New York, NY 10038; 212-962-4266

I am Louise Seeley, Executive Director of the City-Wide Task Force on Housing Court. I am here today to testify in support of Intro 995.

The City-Wide Task Force on Housing Court is a non-profit organization which provides information and referrals for unrepresented tenants and landlords with questions about Housing Court. Every year we assist over 40,000 New Yorkers at our Information Tables, which are located in Housing Court and through our hotline which operates Monday through Friday 9 a.m. to 5 p.m.

At our information table and through our hotline we encounter many New Yorkers who are having difficulty securing apartments because their name appears on a tenant screening report. Most of these people are shocked to learn of the existence of tenant screening reports and are appalled that the Office of Court Administration (OCA) sells the data from Housing Court. Some of these people were brought to court for legitimate reasons, such as owing rent, but others were brought to court through no fault of their own. Some of the people we speak to were not even aware a case had been filed against them. And others find their names on the report in complete error. Intro 995, while not solving all of the problems associated with tenant blacklisting, provides needed relief and an avenue for redress for some tenants.

So what are tenants screening reports and where does the data come from? A tenant screening report is a report which lists all housing court cases filed against a particular tenant. In New York, OCA, which administers Housing Court, sells the data of housing court cases to anyone who is willing to pay for it. Currently OCA has contracts with five companies: First Advantage Safe Rent, Incisive Media, National Tenant Network, On-Site Manager and RentPort, Inc. These companies have to buy all the old data and then get a daily feed of whatever happened in court that day. Up until last January OCA would send the data as soon a case was filed. However, thanks to our and other organization's advocacy and with the help of elected officials, OCA now only sells the data of calendared cases. To put real numbers of this, in 2008 there were 290,986 cases filed in NYC Housing Court. 157,101 were added to the calendar. Thus, the 133,885 cases that were filed and not calendared are not reported. However, the data from the 157,101 calendared cases are sold and herein lies the problem. The tenants in these 157,101 cases are now blacklisted. These tenants will have difficult securing new housing, and, as we recently discovered, may have difficulty securing employment.

Tenants applying for apartments are screened for prior housing court history. Many landlords will not rent to anyone who has ever been in Housing Court. However, in NYC, tenants are brought to Housing Court for all kinds of reasons, and not all of them reflect on whether a person will be a good tenant. For example, after a banks take over a home in foreclosure they move to evict everyone. We are seeing many people brought to court because their landlord defaulted on the mortgage. These people did

nothing wrong, yet they are now blacklisted. Predatory equity companies, like Vantage and Pinnacle used Housing Court to try and empty buildings of rent stabilized tenants. This council has heard much testimony about tenants being brought to court on frivolous suits. These tenants are blacklisted. Tenants in New York City Housing Authority apartments sometimes have difficulty getting NYCHA to recalculate their rent when they have had a change in income. These tenants are sometimes brought to court if they fall behind on their rent even if they have requested their rent be recalculated. These tenants are blacklisted. Even in these difficult times the New York real estate market is tight and decent affordable housing is extremely difficult to obtain even without being on the blacklist.

However, this is only part of the problem. These reports are also infamously inaccurate and incomplete. Our organization has spoken to many people whose name appeared on the report in error or the information was not complete. For example, Louise Brown called our office because she had been denied senior housing. When she asked why she was told it was because she had been brought to court. When she obtained a copy of her tenant screening report it showed 10 cases brought against a Louise Brown. However, this Louise Brown had never been brought to court and didn't live in any of the apartments listed on the report. The report indicated that they were only possible matches, but it didn't matter to the prospective landlord. Her report showed housing court history – she was denied the apartment. Adam White, the plaintiff in the class action *White v First Advantage* had been denied an apartment because his report indicated he had an open case in Housing Court even though his case had been dismissed. Discovery during the case showed that errors and incomplete records were common in the industry. The problem is that trying to clean up errors is incredibly frustrating and prior to this legislation almost impossible. Although OCA only sells the data to five companies, there are hundreds of companies which buy the data from the five and then resell the data to prospective landlords. A quick Google search shows the multitude of people in this business. And new ones spring up every day. A tenant like Louise Brown would not even know where to begin to clean up all of the reports. Intro 995 will solve this problem. Now a tenant will know which company their prospective landlord uses and can move to clean up any errors prior to applying.

The harm of the tenant blacklist is real. Not only are good tenants denied housing but tenants have lost a major method of getting repairs. Prior to blacklisting, tenants were informed that they could withhold rent to force their landlord to make necessary repairs. However, with the blacklist few tenants are willing to use this avenue. Even landlords who might be willing to rent to someone who was brought to court because their building was foreclosed upon will be loath to rent to someone who knows their rights and is willing to fight for them.

And the inability to find housing is not the only problem caused by the sale of this data. Recently our office learned that the New York City Police Department is using tenant screening reports in screening prospective applicants. Who knows whether other employers are not using these reports as well?

We look forward to working with the council on this issue and thank you for allowing me to testify this morning.

RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

TESTIMONY OF THE RENT STABILIZATION ASSOCIATION, IN OPPOSITION TO INTRO. 995, RELATING TO TENANT SCREENING REPORTS

June 23, 2009

Good morning. My name is Mitchell Posilkin and I am General Counsel for the Rent Stabilization Association. On behalf of the 25,000 members of RSA who own or manage approximately one million apartments throughout New York City, I am here to testify in opposition to Intro. 995.

Over the course of the past year, property owners have been unfairly targeted by the City Council. In 2008, the Council passed yet another in a series of laws to address harassment of tenants by owners, even though at least a dozen laws on that subject already exist. Also in 2008, the Council passed, over the Mayor's veto, a bill to prohibit discrimination against persons with Section 8 vouchers by property owners, even though over 35,000 property owners already accept Section 8 vouchers. RSA testified against those bills not because we believe that owners should harass or discriminate. Rather, we testified against those bills to question the effectiveness of enacting laws which only serve to perpetuate out-dated stereotypes of property owners.

Intro. 995 joins the list of bills which unfairly target property owners. Intro. 995 would amend the Administrative Code to address the screening procedures utilized by property owners as part of the apartment application process. The application process in general and screening procedures in particular are the most important mechanisms which help owners ensure that the tenants to whom they are about to allow into their property are worthy in all respects. As anyone familiar with Housing Court knows, it is far more preferable to screen applicants at the outset than to attempt to evict them after they have become tenants.

Under Intro. 995, owners would be obliged (1) to disclose to the prospective tenant the name and address of the consumer reporting agency issuing the screening report, (2) to notify potential tenants that they are entitled to one free tenant screening report annually and may dispute inaccurate information, and (3) to post a sign to inform applicants of the consumer reporting agencies used by the owner, and that they are entitled to obtain one free report and to dispute inaccurate information. The bill also contains a penalty provision, subjecting owners to a civil penalty of up to $500 for a first violation and up to $700 for subsequent violations.

We are not here to suggest that tenants should not be informed of their rights to credit-related information; that is already the law in this country and about which there is no dispute. Rather, we are here to point out that existing federal law already provides these

protections and to highlight the Council's willingness to put ever-increasing burdens on property owners.

Section 615(a) of the federal fair credit reporting act already imposes virtually the same disclosure requirements that are required by Intro. 995. The major difference, however, is that instead of requiring disclosure of this information at the application stage, federal law imposes these requirements at the more appropriate time- when there is a so-called "adverse action," which occurs if and when, for example, the tenant's application for the apartment is denied or if the owner requires a co-signer. Why would the Council impose these requirements even in the vast majority of instances where tenant applications are granted? Unlike Intro. 995, Federal law is properly geared for those situations when applications are denied, when there is a genuine need for the applicant to know this information. In addition, unlike Intro. 995, the federal law also contains defenses for property owners who inadvertently fail to provide a notice in an isolated case.

If the Council was truly intent on protecting all consumers instead of simply targeting owners, it could have crafted a bill which provided that the protections set forth in Intro. 995 would apply to all transactions which are dependent upon information provided by a credit reporting agency. All consumers, such as those applying for car loans or mortgages or credit cards or who are participating in any other credit-dependent transaction should have the same rights as tenants applying for apartments. If expanding credit-related disclosure requirements for tenants is such a great idea, why doesn't the Council do so for everyone? Why should only property owners be obliged to provide this information at the application stage? If the Council is so intent on ensuring that tenants are aware of their rights in this regard, why doesn't the Council fund a public information campaign so that tenants know what their rights are under the federal law? Why does the Council now put the burden on property owners instead?

Instead of coming up with genuine solutions to real-life concerns, the Council once again has chosen the easy way out by targeting property owners for no legitimate public purpose.

TENANTS & NEIGHBORS

FOR THE RECORD

Tenant Fair Chance Act
Tuesday, June 23, 2009
Tenants & Neighbors Testimony

Good morning. My name is Katie Goldstein and I am an Organizer at the NY State Tenants & Neighbors Coalition. Thank you for the opportunity to testify today about the Tenant Fair Chance Act, which will give tenants the chance to dispute wrongful screening reports. Tenants & Neighbors strongly supports the Tenant Fair Chance Act and we commend Speaker Quinn and Council Members Garodnick and Comrie for introducing this important legislation.

Currently, screening companies purchase data from housing court that include information on actions taken against a prospective tenant in housing court, and make this data available to landlords seeking to vet prospective tenants.

These do-not-rent lists, which are also commonly known as tenant blacklists, makes it difficult for tenants who have been taken to housing court to find apartments.

This practice unfairly penalizes tenants whose landlord has taken them to court on frivolous charges as part of a systematic practice of harassment, or as retaliation for organizing a tenant association, complaining about conditions in the building, or publicly criticizing the landlord. It also penalizes tenants who have been involved in a rent-strike as part of an effort to get conditions improved in their buildings, and have been taken to court for non-payment of rent.

We are in an affordable housing crisis in New York City. Many tenants are struggling to both stay in their apartments and receive the conditions that they deserve in their apartments. In this economic moment and a time in which we are losing affordable housing units at a rapid pace, tenants are oftentimes forced to move to different apartments due to rising rents and should have the simplest time they can in finding and living in an apartment.

Many tenants don't exercise their rights due to fear of being placed on a blacklist and being unable to rent an apartment in the future. The tenant blacklist has a McCarthyist effect on tenant organizing.

As organizers and advocates, we encourage tenants to exercise their rights. We strongly support reforming this system so cannot be punished for exercising their rights or for having a harassing landlord. We support the initiative to assist renters in ensuring their tenant history is accurately reflected in reports that landlords use to determine whether not to rent them an apartment.

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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS ON INT. NO. 995—A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN RELATION TO DISCLOSURE OF TENANT SCREENING REPORTS

JUNE 23, 2009

This testimony is submitted on behalf of the Legal Support Unit of Legal Services NYC and the Legal Aid Society. Legal Services NYC provides free legal services in civil matters to low-income households in New York City. The nineteen neighborhood offices of Legal Services NYC operate in diverse communities throughout the city to represent thousands of low-income tenants annually in disputes involving tenants' rights to remain in their homes. The mission of the Legal Aid Society's Civil Practice is to improve the lives of low income New Yorkers by helping vulnerable families and individuals obtain and maintain the basic necessities of life — housing, health care, food, and subsistence income or self-sufficiency. The Legal Aid Society annually represents thousands of tenants faced with eviction, which provides the Legal Aid Society with valuable insight into the tenant-landlord relationship.

We strongly urge passage of Int. No. 995, the Tenant Fair Chance Act, which will allow prospective tenants to receive basic information about the existence of tenant screening reports and their right to challenge them. We commend the City Council for recognizing the problem that tenant screening reports pose to applicants for housing in an

economic climate in which housing is scarce and apartment-seekers are at a disadvantage in seeking scarce affordable and available housing.

The Problems Posed by Tenant Screening Reports

This legislation deals with a problem that arises because the New York State Office of Court Administration sells to tenant screening companies data concerning cases brought by landlords in New York City Housing Court to evict tenants. These companies then prepare and sell to landlords tenant screening reports. Landlords use the information to evaluate applicants seeking to rent apartments. The information about each case is both very basic (names of the parties, type of case, amount allegedly owed, and a simple summary of the outcome of the case that can be inaccurate and misleading). The result is that tenants who have been sued by a prior landlord are in effect blacklisted from renting another apartment, as, even if the tenant was justified in withholding rent for poor conditions in the apartment and received a significant rent abatement, the report will indicate a judgment against the tenant for some rent money owed. Most tenants, especially low-income tenants, are unaware of which company has issued the report and of their right to correct misleading information.

Moreover, the very existence of tenant screening reports has a chilling effect on tenants enforcing their rights to decent housing by withholding rent, either as individuals or as part of an organized tenants association in a rent strike, since, once they are sued by their landlord for nonpayment of rent, a necessary step in ensuring that necessary repairs are made, the case will appear on tenant screening reports, without any indication of the reason for the commencement of the nonpayment proceeding, presenting a serious obstacle to the tenant's ever renting another apartment.

Other tenants are brought to Housing Court through no fault of their own. Tenants living in buildings foreclosed upon by banks are routinely taken to court in a move to empty the building. Rent-stabilized tenants living in buildings owned by predatory equity companies are sued in frivolous non-primary residence holdover proceedings and other types of cases. Other tenants are on the "blacklist" simply because they share the name of another tenant who has been brought by their landlord to Housing Court.

In addition, the existence of a "blacklist" created by tenant screening reports prevents low-income tenants from moving from apartments that are either in disrepair or that do not accommodate the needs of disabled tenants. They are left with a choice between living in dangerous conditions or possible homelessness, given that landlords will refuse to rent to blacklisted tenants.

Int. No 995

This legislation, while not completely undoing the harm that tenant screening reports can do to tenants, provides important protections. §20-808 would require users of tenant screening reports to disclose to prospective tenants the name and address of the consumer reporting agency that has issued the report, as well as the tenant's right, under federal law, to obtain a free copy of the report and dispute inaccurate or misleading information. §20-809 would require that a sign be posted notifying the tenant of his or her right to the report and the right to correct inaccurate data. Finally, §20-810 would establish violations and gives the Department of Consumer Affairs the authority to impose civil penalties for users of tenant screening reports that fail to comply with the

provisions of this law. Each of these steps would provide tenants and City agencies with tools with which to correct some of the abuses that occur because of the existence of tenant screening reports. Tenants would learn of the opportunity to exercise their right to correct inaccurate or misleading information. This legislation would also build greater public awareness of the dangers posed to New York tenants by these reports and perhaps encourage officials at other levels of government to address this issue.

Conclusion

We commend the City Council for dealing with this serious issue and strongly urge passage of Int. No. 995.

Respectfully submitted,

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 995 Res. No. ______
☒ in favor ☐ in opposition

Date: 6/23/09

(PLEASE PRINT)

Name: David Robinson

Address: 350 Broadway, 6th Fl NY NY 10013

I represent: Legal Services NYC

Address: ______

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☒ in favor ☐ in opposition

Date: 6-23-09

(PLEASE PRINT)

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I represent: The Legal Aid Society

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Name: GINA [illegible]

Address: [illegible]

I represent: [illegible]

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Name: Louise Seely
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Date: ________

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Name: Mitchell Posilkin and Frank Ricci
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I represent: RSA - property owners
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(PLEASE PRINT)

Name: WILLIAM HEINZEN, DEPUTY Counselor to the MAYOR
Address: ________
I represent: Office of the MAYOR
Address: ________

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I intend to appear and speak on Int. No. 995 Res. No. _____

☒ in favor ☐ in opposition

Date: 6/23/09

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I represent: FISHMAN + NEIL

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