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JEFFREY A. NIRENSTEIN

March 14, 2008

Members of the Judiciary Committee
Legislative Office Building
Hartford, CT 06106

Re: Raised Bill 508 – An Act Adopting the Connecticut Uniform Trust Code and Establishing an Alternative Rule Against Perpetuities

Ladies and Gentlemen:

I am a principal of the above referenced firm having practiced law in Hartford for 30 years. Since 1994 my firm has prepared over 9,000 estate plans for Connecticut residents. Many of those clients' stated objectives in adopting their estate plans have included the retention of privacy over their own financial affairs, the avoidance of unnecessary court supervision over such affairs and the ability to adapt their plans to meet changing circumstances. For those clients, the inter vivos (living) trust is often the focus of their estate plans. I am writing this letter on behalf of those clients and other Connecticut residents similar to them in opposition to the current version of the Connecticut Uniform Trust Code (CUTC), Raised Bill 508, which has been submitted to you for your consideration.

The version of the CUTC before you today is the product of a massive undertaking by Attorney Suzanne Brown Walsh and others to adapt a proposed Uniform Act for the purpose of providing the first comprehensive body of legislation in Connecticut to the law governing trusts while meeting the needs and interests of competing constituencies. Notwithstanding the valiant effort made to accommodate the concerns of the various interests, the proposed Code does not satisfy the concerns of the settlors of inter vivos trusts in a number of respects.

Judicial Intervention. CUTC's mandatory provisions that arbitrarily limit settlors' privacy risk opening up inter vivos trusts to more judicial scrutiny and limit settlors' flexibility in managing their estates. Historically, inter vivos trusts have been outside the purview of probate courts (unlike testamentary trusts). Traditionally, courts cannot intervene in an individual's private affairs absent a dispute. Trusts are contracts and contracts do not require court approval prior to their enforceability. Judicial intervention of contracts only occurs upon the filing of a claim by an interested party. Today, Section 45a-175 of the General Statutes gives the probate court jurisdiction over accountings of trustees of inter vivos trusts but only after petition by a trust beneficiary. That section further provides that the court's authority over such accounting does not give it continuing jurisdiction over the inter vivos trust. CUTC Section 5b(11) could potentially expand the court's authority over inter vivos trusts exponentially. This section authorizes the court, on its own, to assume complete jurisdiction over all trusts, if it believes that its exercise of jurisdiction "may be necessary in the interests of justice." The language is vague and undefinable. It provides no criterion or other minimum standard that must be met prior to court intervention. A paternalistic courts, given such broad authority, may assume jurisdiction over an inter vivos trust on its own whenever a party

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to the trust is before the court on some unrelated matter, eg. conservatorship or guardianship, upon the theory that it needs to protect the interest of such individual in the trust, thereby opening up such trusts to public scrutiny irrespective of whether the parties to the trust (or their representatives) have requested judicial determination of a dispute. This approach is inconsistent with the historical perspective that inter vivos trusts are traditionally not subject to judicial review absent unusual circumstances. A person establishing a trust should have the right to choose whether to subject the trust to court supervision by creating a testamentary trust or whether to avoid such supervision by creating an inter vivos trust. The adoption of Section 5b(11) will force the settlors of inter vivos trusts to increased judicial review thereby foregoing the privacy that they value.

Notice to Beneficiaries. Perhaps the most difficult sections of CUTC upon which to build consensus pertain to the right of beneficiaries to receive notice of their trust interests. These provisions have been the focus of bitter debate in previous attempts to adopt the Uniform Trust Code. No one questions the right of beneficiaries to be given sufficient information to enable them to protect their trust interests; however, the mere fact that a settlor has identified a member of a class as a potential beneficiary should not empower such individual to interfere with the administration of the trust.

CUTC Section 5b(7) compels a trustee of an irrevocable trust to provide a current beneficiary with reports and other information related to the administration of the trust, regardless of whether the beneficiary has a right to mandatory distributions from the trust or whether the beneficiary's rights are dependent upon the discretion of the trustee. It is common for a settlor to set up an irrevocable trust for the benefit of a spouse and descendants naming the spouse as trustee, directing the trustee to make distributions primarily for the spouse's benefit but giving the trustee the discretion to sprinkle distributions for the benefit of children and grandchildren as well. The settlor intends to give the spouse control over the trust share without interference or review by the descendants who have been given no right to mandatory distributions. Nevertheless, under the proposed statute, the descendants, as eligible beneficiaries of the trust, are "current beneficiaries". Current beneficiaries have the right to demand reports and review the administration of the trust. Furthermore, CUTC entitles such beneficiaries to information with respect to the entire trust rather than limiting it to that portion of the trust in which such beneficiaries may have any interest. This provision deprives the settlor of the privacy previously inherent in the establishment of an inter vivos trust and further challenges the settlor's control over the management of his affairs. A settlor's only recourse to avoid such oversight would be the exclusion of the descendants as possible beneficiaries, a result that legislation should not promote.

Several attempts have been made to balance the rights of trust settlors and beneficiaries with respect to the notice provisions contained in the trust. The interests of both sides have been well articulated and represented. Nevertheless the notice provisions should be further refined to protect the interests of both parties, keeping in mind the realities of the relationship of trust administration to money management within the family.

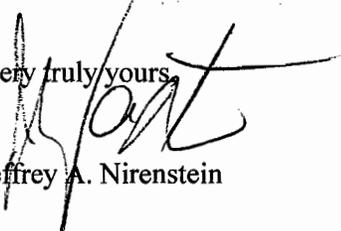
Spendthrift Protection. CUTC, as proposed, arbitrarily deprives the settlor from permitting a trustee to exercise the trustee's independent judgment for the purpose of protecting a beneficiary's trust share from the claims of creditors or to ensure that the beneficiary will derive the full benefit of such share. Regardless of the existence of a spendthrift provision (designed to protect a beneficiary's trust share from the claims of a beneficiary's creditors or assignees), CUTC Section 43 allows a creditor or assignee of a beneficiary to reach a mandatory distribution if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date. A beneficiary's circumstances may have changed from the date of trust creation to the date at which the trustee is directed to make distributions to the beneficiary. A settlor may initially intend that a beneficiary receive an immediate distribution of trust income or principal and draft the trust accordingly. If the beneficiary subsequently becomes the target of creditors' claims or might become incapable of managing the trust share after

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the execution of the trust, the settlor may still desire the trustee to be permitted to withhold the distribution or continue to administer the share in trust beyond the reach of creditors and assignees. If the proposed section is adopted, a settlor can still reach the same result by redrafting the trust to eliminate any mandatory distribution language and directing that all beneficiary distributions will be made at the discretion of the trustee. As CUTC will apply equally to trusts established prior to the effective date of the Code as well as those created subsequently, many existing trusts may need to be amended at considerable cost to comply with the new law just to achieve the same result.

In conclusion, the proposed Uniform Trust Code is prejudicial to the rights that trust settlors have under current law, particularly the settlors of inter vivos trusts. Until these issues are redressed, the Act will not provide the comprehensive uniformity in the law advocated by its proponents because settlors will choose to "opt out" of the non-mandatory statutory provisions. For these reasons, Raised Bill 508 should be rejected.

Very truly yours,



Jeffrey A. Nirenstein