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(For Release, Morning Papers, Monday, Jan. 14, 1935)

Open Letter From William L. Fiesinger, M.C., 13th Ohio Dist.

Re: Federal Court Action in Gold Clause Contracts.

## DEVALUATION VS. REGULATION

Hon. Homer S. Cummings,  
Attorney General,  
Washington, D.C.

Dear Mr. Cummings:

In your address before the Supreme Court in the gold contract cases on Jan. 9, attacking the gold clauses in contracts, you are reported as having said: "Their effect, if enforced, is of such serious consequence as substantially to deprive the Congress of the power to regulate the value of the dollar".

I am a member of Congress from the state of Ohio and of the ONLY committee of Congress which, in my opinion, has made an exhaustive study of this question. In view of its great importance I am constrained to write you an open letter so that the American people may be advised of the FUNDAMENTAL FALLACIES INVOLVED IN THE ABOVE QUOTED STATEMENT. I do this recognizing that these matters are SO VITAL TO OUR NATIONAL WELFARE, and because it may be that in the crux of these things we shall find the remedy for much of our present sufferings.

Let me repeat that the only committee of Congress which has exhaustively studied this question, one which so far has not been ALLOWED TO EXPRESS ITS VIEWS, is abundantly able TO SUSTAIN THE PROPOSIT / ON THAT THE COURTS CAN UPHOLD THE GOLD CLAUSE AGREEMENTS WITHOUT IMPAIRING THE POWER OF CONGRESS TO REGULATE THE VALUE OF MONEY by a sound compliance with well known principles of economic law.

This gold content bill WAS NOT DRAWN BY THE CONGRESS notwithstanding that the Constitution has so directed by implication. The committees of Congress could not ascertain WHO drew it. As a member of the House, I WAS NOT ALLOWED TO DEBATE THE GOLD CLAUSE BILL. But if the House Committee of authorized jurisdiction had been permitted to hold hearings on these bills and debate them fully, we should have been able to determine WHO FRAMED THE MEASURES; and we would have shown in debate that they were NOT drawn in the INTEREST of the UNITED STATES, for two reasons: First, because it was not an act "regulating" the value of money; second, because it called for the abrogation of contracts— EXACTLY WHAT YOU ARE NOW ASKING THE SUPREME COURT TO DO.

I call your attention to the wording of the Constitution: "Congress shall coin money and regulate the value thereof, and of foreign coins". Congress can coin money only by the process of fixing upon an agreed weight and fineness; the stamp placed upon the coin being in the nature

of a certification of “weight and fineness”, as provided by law. By THIS process you “FIX” the WEIGHT of coins. ONLY BY ANOTHER PROCESS CAN YOU “REGULATE” VALUE.

Clearly, coining money is a process of FIXATION whereby weight and fineness are fixed. Regulating the VALUE thereof is a separate function, which must be and can only be done in full recognition of the inevitable and inexorable force of economic law.

It is a striking fact that the Congress has never enacted ANY LAW in compliance with this provision of the Constitution.

After fixing the weight of the coin, when we leave the VALUE OF THE METAL THEREIN TO FLUCTUATE, we not only FAIL TO REGULATE THE VALUE of the coined money, but we increase the INSTABILITY OF PAPER MONEY AND BANK CREDITS, which are MEASURED by the coin as a UNIT OF VALUE. We must recognize that collateral back of paper money is CHANGED IN VALUE if the VALUE of the COIN is allowed to FLUCTUATE. The stability of our paper money and of our WHOLE CREDIT STRUCTURE is involved in our neglect to REGULATE THE VALUE OF THE METAL CONTAINED IN THE COIN.

In your arguments before the Court, due apparently to your zeal to support the administration’s policies, you have confused these two separate provisions of our fundamental law, namely: To “fix” weights and to “regulate” values. I am so sure that this is unintentional on your part that I am endeavoring to bring the matter forcefully to your attention. I feel sure you would not intentionally confuse the issue in the public mind, possibly including members of the court itself, for you yourself have fully emphasized the gravity thereof.

To regulate the value of the coined money involves a clear understanding of two words: “Regulate” and “value”. After changing the weight of a coin, Congress, under the Constitution, must still REGULATE ITS VALUE, or purchasing power. There is nothing in the present law which “regulates” the value of the gold dollar AFTER its weight is changed from 23 to 14 grains. Is it not just as important to “regulate” the value of the gold in the 14 grain dollar as in the 23 grain dollar? THE FLUCTUATING VALUE OF GOLD is as destructive in one case as it is in the other.

This matter is so clearly fundamental that misunderstanding is unfortunate. Fixing the weight is an ACT OF COINING. Regulating can only relate to the VALUE OF THE MONETARY METAL from which the coin itself is made—and this can be done only, as far as Congress is concerned, by operating upon the demand-supply ratio of the metal. This is a statement of a fundamental truth. Any doubt about it is set at rest by the words of the Constitution which immediately follow—“and FOREIGN coins”. How can the United States regulate the value of FOREIGN coins otherwise than by REGULATING THE VALUE OF THE METAL OUT OF WHICH THOSE COINS ARE MADE? Congress is required to regulate the value of the metal of its coins for domestic use, and also the metal out of which foreign coins are made, to assure the United States export trade at profitable price levels. The Government’s presentation before the Supreme Court COMPLETELY IGNORES THIS FUNDAMENTAL FACTOR. You may say Congress cannot regulate the value of the metal, gold. I say it can. It is the business of Congress to do it. IF LEFT FREE TO ACT, Congress can and will do it. The bill that was open to debate before Congress of this specific point WAS SUPPRESSED BY THE HOUSE RULES COMMITTEE.

You speak of an international agreement. Congress, under its Constitutional powers, has another plan. WHAT WILL BECOME OF THIS CONSTITUTIONAL POWER OF THE CONGRESS TO REGULATE THE VALUE of its coins if we unalterably commit ourselves to

fixation by AN INTERNATIONAL AGREEMENT? In that case, will not the BANKERS OF EUROPE have power to exercise control-regulation INSTEAD OF CONGRESS? Can Congress make SUCH A DELEGATION OF POWER UNDER THE CONSTITUTION AS YOU HAVE PRESENTED TO THE COURT?

By your position, then, you are asking the court not only to DESTROY CONFIDENCE IN THE SANCTITY OF CONTRACTS, but at the same time you propose to DESTROY THE EFFECTIVENESS OF THE VERY PROVISIONS OF THE CONSTITUTION YOU ADVANCE AS A BASIS FOR THIS DANGEROUS ACTION. Is not this a statement of FACT, Mr. Attorney General?

In the present confused state of world economics, it is VITAL for the Supreme Court to refuse to set up the principle of repudiation of contracts; but it is equally important that we permit Congress to “regulate” the value of money as well, and to recognize their oath of office and preserve all other provisions of the Constitution which our forefathers, with profound and inspired vision, have established.

Can you not recognize the fact that the very foundation of civilization must give way under the impact of such an attack, which might well abolish the remnant of confidence that now STAGGERS ON THE BRINK OF AN ABYSS? Is not the oath of office imposed to take these fundamental questions out of political consideration?

So grievous is this error and so grave the consequences of it that, in my humble opinion, the destiny of this nation rests upon a simple, sane and clear conception of the fundamentals here involved. Under the circumstances, will you pardon me for presenting for your serious consideration my reasons why it is not necessary for our country to TEAR DOWN THE BULWARK OF CONFIDENCE AS TO THE SANCTITY OF CONTRACTS, AND WHY THE POWER OF CONGRESS TO REGULATE THE VALUE OF THE MONEY IT COINS HAS NO RELATION IN FACT TO THE GOLD CLAUSES; but, on the contrary, the relation you have urged upon the court rests upon a fundamental misunderstanding and misconception of the simplest application of basic economic law.

That which you ask the court to do does violence to the sanctity of contracts. YOU ADMIT IT! You must recognize this as one of the cornerstones of Anglo-Saxon Law. You justify such violence by urging upon the court that Congress would be divested of its Constitutional power to coin money and regulate the value thereof. THIS IS ERROR BASED UPON ERROR; and of such grave consequences, in my judgment, that you SHOULD SERIOUSLY CONSIDER MODIFYING YOUR POSITION BEFORE THE COURT. You must recognize that Devaluation (fixation) is NOT REGULATION; and I am sure that you agree with me that political policies must take second place to the economic security preserved to us in the Constitution, and which, in this case, so manifestly affects the general well-being of the nation and the world—and even touches the preservation of a civilization which it has taken centuries to evolve.

With great respect and high personal esteem, I beg to remain,

Yours very sincerely,

(Signed) WILLIAM L. FIESINGER, M.C.

Representing the 13th Dist. Ohio.