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NINETY-NINTH CONGRESS

SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE  
OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

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Honorable George W. Crockett, Jr.  
1531 Longworth House Office Building  
Washington, D.C. 20515

Dear George:

In order to have a successful gold coin program the coins must be legal tender and must have face value. As a conferee on section 17 of H.R. 1460, the Anti-Apartheid Act of 1985, I urge you to support that position in conference.

Legal tender means that the coins can be used to pay debts and other obligations, such as taxes. Face value fixes the value of the coins so there is no dispute over the value. Quite simply, one cannot have legal tender without face value. Article I, section 8 of the Constitution gives Congress the power "to coin Money" and "regulate the Value thereof." Section 5101 of Title 31 United States Code provides that United States money is expressed in dollars and its decimal parts.

Section 17(d) of the Senate amendment proports to make the gold coins authorized by the section legal tender only for obligations denominated in ounces of gold. Dollar denominated debts could not be discharged by tender of the gold coins. Quite simply, that provision denies the coins legal tender status.

An obligation calling for payment in a specified number of ounces of gold does not create a debt. A debt is a sum of money due by certain and express agreement. A gold-denominated obligation requires no payment of money, and by definition does not give rise to a debt. It is, in essence, a barter contract. It is a valid and enforceable contract, as are all gold clause contracts entered into since October 27, 1977, under section 5118 of title 31. Section 17(d) creates no new rights. It creates no new legal tender.

Section 5103 of title 31, United States Code, provides that all United States coins are legal tender for all debts. Section 17 of the Senate amendment would disallow legal tender status for dollar denominated obligations. Since debts, by definition, must be dollar denominated, the gold coins would have no legal tender status whatsoever.

The Treasurer of the United States, Katherine Ortega, has admitted as much. In a letter to Senator Garn dated April 19, 1985, she stated: "All legal tender coins should have a face value. The necessity and wisdom of ascribing a definite value to each of our coins is evidenced by nearly two hundred years of coinage legislations. Since the face value is an intrinsic element of a coin as a monetary instrument, all of our coins have been denominated by Congress in terms of a dollar or its multiples and fractions since the beginning of the Republic."

Legal tender status is important for very practical reasons. If Congress wants to create something that will compete with other nations' gold coins, that something must be a coin. A coin is a piece of metal of prescribed shape, weight and fineness, issued by authority of the government as money at a fixed value.

The best selling gold coin in the world today is not the Krugerrand, but the Canadian Maple Leaf. The Maple Leaf currently accounts for about 70 percent of the gold coin market, compared to about 25 percent for the Krugerrand. (Other nations' coins comprise the rest of the market.) The Maple Leaf is a legal tender coin, and each Maple Leaf carries an inscription of its value, 50 dollars. Anyone can use a Maple Leaf in Canada to pay debts because of the legal tender face value of the coin.

Bullion dealers recognize the importance of legal tender status. An article in the July 31, 1985, edition of Coin World on dealer reaction to the recently enacted Liberty Coin Act, which calls for the minting of a legal tender, one ounce silver dollar, stated that "most observers agree that its legal-tender status should be a big plus for the coin - psychologically and also in more tangible ways." The article notes that the Mexican Libertad silver coin, which is virtually the only legal tender silver coin on the market, is exploiting its legal tender status as its "strong selling point." And Bruce Kaplan, senior vice president of A-Mark Precious Metals Inc. of Beverly Hills, California, was quoted as saying the the public "told us they wanted, a coin, not a medallion . . . . There are [sales] tax advantages, too, . . . So this makes legal-tender coins much more attractive as an investment."

The failure of the American Arts Gold Medallion program showed the futility of attempting to market a gold piece that is not a legal tender coin. That program, designed to sell five million ounces of one ounce and one-half gold medals over a five-year period from 1980 to 1984, was an abysmal failure. Only 1.66 million ounces were sold. Of that amount, over one million ounces were sold to a private distributor. Even then the Treasury discharged the private distributor from an obligation to purchase an additional two million ounces of medallions because of an inability to sell those it had purchased.

Donna Pope, Director of the United States Mint, wrote to me on May 15, 1985, that "the Gold Medallion has not been a competitive product with the Krugerrand and the Maple Leaf." One of the reasons she gave, based on her conversations with dealers in the gold marketplace, was the medallions "lack of legal tender status." Unfortunately, the Senate amendment would repeat the mistake of the Gold Medallion program by denying them legal tender status. That would doom the success of the program before it began.

The two publications which cover the coin collecting field both have editorialized in favor of legal tender gold coins with face value. According to an editorial in the April 30, 1985, edition of Numismatic News:

[a]n American gold coinage must be legal tender and must have a stated dollar face value to be accepted in the market. Rep. Frank Annunzio has the right idea in giving the gold coins . . . a stated dollar face value far below the gold value. No one is going to insist on trying to pay a \$10 debt with a coin that has \$75 or \$80 worth of gold in it.

Legal tender status must be assured so that an American coin can compete on an even basis with foreign pieces. After all, we have already had U.S. one-ounce medallions, and they didn't sell well.

Coin World, in its June 19, 1985, editorial stated:

The [American Arts Gold Medallion program] was a miserable failure. . . . the gold pieces will always be medals, not coins.

To capture the public's confidence and acceptance, the United States will have to issue a coin. By definition a coin is a piece of metal of fixed value and weight issued by a government and used as money.

Mr. Annunzio appears firm in his resolve not to accept bullion coin amendments which do not accord such coins legal tender status and do not designate denomination. We would urge him to keep that resolve.

We cannot in good conscience advocate a package deal whereby legislators are asked to . . . authorize bullion coins without legal tender status or designated denominations.

Several of the States exempt legal tender coins from State sales tax. Without legal tender coins buyers would be placed in the position of having to choose whether to purchase United States-issued pieces and pay sales tax, or purchase foreign legal tender coins and not pay sales tax. At current gold prices and State sales tax rates, non-legal tender status could cost purchasers 15-20 dollars per ounce for the Senate-passed pieces. That premium will drive purchasers to the foreign coins.

Legal tender status is vital if we are to succeed in selling these coins in the international market. Under the General Agreement on Tariffs and Trade, legal tender coins are free from duty. The coins in the Senate amendment are not legal tender and would be subject to duty. In many nations these duties can approach fifteen percent, an amount sufficiently high to make non-legal tender coins noncompetitive with the Krugerrand and other legal tender bullion coins.

If we want to authorize a gold coin program that will displace the Krugerrand as well as all other gold coins, then we must authorize just that - a gold coin, not a medallion. We tried a medallion program, and it failed. Now is the time for a coin, a legal tender, face value coin. If we authorize that, we will create the world's leading gold coin.

Sincerely,



Frank Annunzio  
Chairman