

Mr. WIGGINS. Yes. You see, the problem is whether or not housing is commerce. This Congress ought to face up to it and make that finding, that it is commerce, and indicate in the bill that we are only reaching commerce because that is our constitutional policy.

That has been our approach in other civil rights bills which we sought to justify under the commerce clause. Here we carefully neglected to confine it to commerce. I conclude we are really attempting to reach beyond commerce to a certain level of housing. That is unconstitutional.

Mr. PEPPER. It is true that when we are generally speaking about the necessities of the people, we ordinarily say food, clothing, and shelter.

Mr. WIGGINS. Yes.

Mr. PEPPER. Thank you.

Mr. WIGGINS. Thank you.

The CHAIRMAN. Mr. Matsunaga?

Mr. MATSUNAGA. Mr. Wiggins, is it your position that if the dictum in the *Guest* case were the law today, then the constitutionality of H.R. 2516 would be upheld?

Mr. WIGGINS. My view is that if the dictum in the *Guest* case is the law, the answer is that this bill would be constitutional, and more than that, whatever the Congress wanted to do in the area of civil rights would also be constitutional. It is a no-holds-barred dictum. You can do whatever is appropriate.

Mr. MATSUNAGA. Then the gentleman will agree, of course, that much of our law today is based on dicta, what used to be dicta. The mere fact that the review of the Court over the actions of Congress started out as a dictum in the *Marbury v. Madison* case, there is the possibility, not a probability, that by the time H.R. 2516 comes before the Supreme Court, the Supreme Court may hold what is now dictum in the *Guest* case?

Mr. WIGGINS. I confess, sir; that the Court may uphold that and I regret to say that it probably will at some future time. I invite the gentleman to read the language of the 14th amendment and just search your heart and say, "Does that make sense? Does the language, the dictum, in the *Guest* case make sense?"

It seems to me rather clear that the appropriate legislation which can be enacted under section 5 of the 14th amendment specifically refers to enforcing the provisions of this article and the provisions referred to are the 14th amendment provisions.

It would require an utter repudiation of a long line of cases to say that the 14th amendment refers to private actions.

Mr. MATSUNAGA. The fact remains that reasonable men do disagree on the interpretation, especially of our Federal Constitution. There is this possibility, not a probability, of a dictum becoming a holding?

Mr. WIGGINS. It may, but I again will restate my view that we in Congress have the separate, independent duty to interpret the Constitution. I suggest this commonsense interpretation.

Mr. MATSUNAGA. No further questions.

The CHAIRMAN. Mr. Anderson?

Mr. ANDERSON of Tennessee. I have no questions.