

Vieira's Titanic; Ignoring the Facts about an Article V Convention

By Bill Walker

Factual accuracy—the accurate presentation of fact, or rather, the lack of accurate presentation of fact is the major issue concerning an Article V Convention. Convention opponents, that is, those urging government insurrection against the Constitution by not calling a convention when so mandated, all share the common trait of either misstatement of facts, outright lying or most frequently ignoring the facts altogether.

For an example of the last trait, examine the [recent column](#) by Dr. Edwin Vieira, Jr. According to his biography, Dr. Vieira holds four degrees from Harvard including a law degree. However to make his point why a convention should not be called, he ignores long established Supreme Court rulings in order to present his biased view. Being charitable, perhaps he missed a day of law school and doesn't know the Supreme Court has ruled several times on the amendment process thus settling any question surrounding that issue.

Vieira is fond of comparing the calling of a convention to the actions of ship's personnel the night of the sinking of the Titanic. He mocks a discussion between the ship's designer and its captain about "designing a new ship" when the Titanic is already sinking saying holding a convention will achieve too little, too late. The problem is, Vieira creates his own Titanic disaster when he mocks the speed of the amendment process and demonstrates how little he really knows about the convention process. He should have learned in law school to carefully research all facts before asserting anything publicly. Perhaps he missed two days in law school.

He asserts a convention will take too long to resolve the problems of this nation. The facts prove otherwise. First, the states have already [applied](#) in sufficient numbers to cause a convention call meaning a convention call can immediately be issued by Congress. Second, according to the [Congressional Research Service](#), ratification of a proposed amendment requires, on average, one year, eight months, seven days to accomplish—less than one election cycle. In other words if Congress obeyed the Constitution and called a convention now, its results could be in effect before the 2016 elections. In short, the facts prove an amendment is the fastest way to bring about change in our nation, faster even than elections. He ignores the fact the reason a convention has never been called is not because of any "unknown fear" but because [Congress has never consented](#) to be bound by Article V and count the applications.

While this last fact may at first appear to support Vieira's main assertion that under Article I, Section 8, Clause 18 usually known as the "necessary and proper" clause, Congress has the power to *legislatively* control a convention both as to agenda as well as operational procedure, the facts prove otherwise. Additionally, Vieira suggests if Congress proposes its own amendment on subject matter contained within state applications this satisfies the convention call provision of Article V. Facts again refute Vieira. Vieira's biography states he has practiced law for over 30 years with an emphasis on constitutional issues, i.e., constitutional law. As the facts that refute Vieira are Supreme Court rulings, there is no excuse he can offer for his omission—except that it

is deliberate on his part. If so, he has created his own Titanic scenario, one where deliberate avoidance of relevant facts brings into question his veracity about anything he presents or has presented because he fails to tell the truth.

Regarding his substitution proposal (Congress passes an amendment instead of calling the convention) the Supreme Court refuted Vieira in [U.S. v Sprague](#), 282 U.S. 716 (1931) when it ruled no rules of construction, interpolation or *addition* is permitted in Article V. Vieira might try assert in rebuttal the ruling dealt with ratification and therefore cannot be applied to amendment proposal. However he is incorrect. As the court said, “A mere reading demonstrates that this is true.” The court specifically referred to the amendment proposal process of Article V *including* the convention process to assert that there was no reason for any rules of construction. From that premise in discussing the *proposal* process it then proceeded to discuss the ratification process having first established the principle of no construction, interpolation or addition existed in the *proposal* process.

The court stated, “The United States asserts that Article V is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the states, must call a convention to propose them. Amendments proposed in either way become a part of the Constitution.”

The Sprague decision makes it clear Article V contains *two* distinct, separate methods of amendment proposal. It does not allow one method to be substituted for the other as Vieira suggests because this would require language that simply is not in Article V. The *central point of Sprague was that language intended to control, modify or otherwise thwart the clear intent and meaning of the present words simply are not permitted*. Further the court applied its “no rules of construction, interpolation or addition” ruling to this portion of Article V with its “mere reading” comment making it abundantly clear its ruling applied to both proposal and ratification. In sum, there is no textual language in Article V which permits Congress the authority to do as he states. The ruling makes it clear no implied power exists to do this. Therefore Congress cannot act as Vieira states. The facts prove him wrong. True, Congress may propose an amendment on an amendment subject contained in state applications but this does not relieve it of its peremptory responsibility to call a convention which can then propose its own amendment on the same amendment subject if it so determines *because the convention proposal process is a separate process completely independent of Congress’ proposal power and therefore not dependent on whether or not Congress proposes an amendment, regardless of the reason or subject for the proposal*.

Sprague also refutes Vieira’s first premise—that under the necessary and proper clause Congress can legislatively regulate a convention. Vieira cites as his authority for his claim that part of the clause which states, “...and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” He then continues, “The power to “call a Convention for proposing Amendments” is one of those “all other Powers”. Therefore, pursuant to that power, Congress may enact whatever “Law[] which shall be necessary and proper for carrying into Execution the ***Power [to call a Convention]”.

To reach his conclusion, Vieira ignored part the actual text of the portion of the Constitution he cites—that portion following “all other Powers.” That text specifies that “The power[s]” must, be “vested by this Constitution in the Government of the United States...” In short, unless the “power” is vested in the Government, the necessary and power clause *cannot* apply. The Supreme Court directly addressed this in Sprague.

The court stated, “Article V does not purport to delegate any governmental power to the United States, nor to withhold any from it; it is a grant of authority by the people to Congress, and not to the United States.” Combined with its statement of no rules of construction, interpolation or addition the conclusion of the court is obvious: unless the people, by expressed, textual consent in Article V delegate such authority to Congress it has no such authority. Therefore Congress cannot substitute itself for a convention and assert it has satisfied the peremptory requirement of Article V nor can it legislatively control a convention as he asserts because Article V does not delegate this governmental power to the United States. Rather, as the court notes, the powers of Congress in the amendment process (just as with the other bodies named—the state legislatures and state ratification conventions) are what the people have delegated to that body—nothing less and nothing more.

If Sprague were the only Supreme Court ruling addressing Vieira’s theory of legislative control of the amendment process by Congress then he might be excused. It is not. There is a more famous case bearing directly on his legislative control theory. It directly refutes him and brings into question his fundamental knowledge of constitutional law. Indeed the case of [Hollingsworth v State of Virginia](#), 3 U.S. 378 (1798) created the concept of constitutional law as it defined the difference between *legislative* law and *constitutional* law.

Hollingsworth raised the first challenge to the passage of an amendment in United States history. The argument presented was the “amendment has not been proposed in the form prescribed by the Constitution, and, therefore, it is void [as] it appears that the amendment was never submitted to the President for his approbation.” In sum, the argument was an amendment was like any other piece of legislation passed by Congress and therefore required the consent of the president to be enacted.

The court was succinct in disagreement. “There can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution.” Moreover the court continued, “And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not with the policy, or terms, of investing the President with a qualified negative on the acts and resolutions of Congress.”

Hence, legislation and amendment are to distinct functions each with their own procedures, powers and limitations. One of these is Congress is limited to a “call” which is neither a “bill” nor a “law” meaning the call is a distinct, limited, peremptory delegation by the people to Congress. Hence a “call” cannot become a “law.” Thus, because the Constitution mandates any *legislation* passed by Congress must suffer approbation by the president, and the court has ruled that the president may have “nothing to do with the proposition...of amendments to the

Constitution,” the Congress cannot *legislatively* act as Dr. Vieira suggests because Article V does not allow for the participation of the president in the amendment process. Obviously, if the Congress were to propose legislation as Vieira states whereby they either substitute their amendment in lieu of calling a convention or attempted to control convention procedures such as delegate selection, agenda and so forth, this *clearly* falls under the term of “proposition” of an amendment as the obvious intent is to define the terms, conditions and subject matter of an amendment proposal. The court made it unmistakably clear such a “law” is unconstitutional. It appears Dr. Vieira missed three days of law school.

The Founders also directly addressed the issue of congressional control and the convention. James Madison, father of the Constitution and author of Article V [made an unequivocal](#) statement regarding Congress’ authority and relationship to a convention call and thus addressed any notion of legislative control by Congress of the convention. It is difficult to imagine that sometime during law courses at Harvard Law School the father of the Constitution and his quotes were not discussed in class. Madison stated Congress may employ no committee to discuss a convention call, may not debate the matter and may take no vote regarding any aspect of it. Obviously, without these tools Congress is helpless to propose legislation. Thus both the Founders and the Supreme Court have expressly refuted Dr. Vieira’s congressional control theory which was determined to be unconstitutional centuries ago.

It appears Dr. Vieira missed four days of law school.