Ohio Northern University
Law Review

Dean's Lecture

The Many Misconceptions About Section 4 of the Twenty-Fifth Amendment

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INTRODUCTION

Among the many perks of being a law professor is the platform it provides. When I am fired up about something, I can write about it—an op-ed, an article, or a book—and get it published. Such was the case in 2018. I got so tired of reading posts on social media misunderstanding Section 4 of the Twenty-Fifth Amendment that I resolved to write a book. And I did.[1]

Law professors also know that just because you write something does not mean that people will read it, understand it, and agree with it. Misconceptions about the Twenty-Fifth Amendment still abound. But I still like to chip away at them, putting as much good information out there as I can. That is why I am here today.

I am going to address five common misconceptions about Section 4 of the Twenty-Fifth Amendment. Some of the things I will address are very basic. Others are more complicated. But all are too common, and given what is at stake here—control of the presidency in a crisis—it would be very helpful to the country if the public had an accurate understanding of these things.

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1. BRIAN C. KALT, UNABLE: THE LAW, POLITICS, AND LIMITS OF SECTION 4 OF THE TWENTY-FIFTH AMENDMENT (2019). Some passages in this article are drawn directly from *Unable*, without specific citation, and are reproduced by permission of Oxford University Press.

I. TWENTY-FIFTH AMENDMENT BASICS

Before talking about misunderstandings, it is worth going through the basics of how the Twenty-Fifth Amendment works. Section three of the Amendment allows the president to declare himself "unable to discharge the powers and duties of his office," and thereby transfer power to the vice president, who becomes acting president.[2] Then, whenever the president declares himself able again, he immediately takes power back.[3]

Section 4 is for when the president is unable or unwilling to invoke Section 3.[4] The vice president and a majority of the Cabinet can declare the president unable, again transferring power to the vice president immediately.[5] But unlike Section 3, where the president retakes power immediately upon his or her own declaration, Section 4 requires the president's declaration to be reviewed.[6] The vice president and Cabinet have four days to disagree with the president, during which time the vice president remains in charge as acting president.[7] If the vice president and Cabinet disagree with the president, the vice president remains in power as Congress assembles to settle the dispute.[8] If both the House and Senate vote by two-thirds majorities against the president, within twenty-one days, then the vice president remains as acting president.[9] But if either chamber fails to get two-thirds, or fails to vote within twenty-one days, the president retakes his powers.[10]

With that, we can turn to the five misconceptions and correct them.

II. MISCONCEPTIONS CORRECTED

Correction 1: Section 4 Does Not Remove the President from Office

People discussing Section 4 often refer to it as removing the president from office.[11] Perhaps these people are reading just the first sentence of Section 4—the part about declaring the president unable and transferring his powers to the vice president.[12] But of course, Section 4 recognizes that the vice president only becomes acting president.[13] More importantly, the other

2. U.S. CONST. amend. XXV, § 3.
3. *See id.*
4. *Id.* § 4.
5. *Id.*
6. *See id.*
7. *See* U.S. CONST. amend. XXV, § 4.
8. *See id.*
9. *Id.*
10. *Id.*
11. A simple search on Twitter reveals countless instances of this. For just one example, *see* Keith Olbermann (@KeithOlbermann), TWITTER (Oct. 4, 2020, 6:20 PM), https://twitter.com/KeithOlbermann/status/1312880186266988544.
12. U.S. CONST. amend. XXV, § 4.
13. *Id.*

two sentences in Section 4 provide a process for presidents to retake their powers when they recover.[14]

Indeed, this is one of the main reasons Section 4 was passed in the first place.[15] Under the original Constitution, it was clear that the vice president stepped in when the president was disabled, but it was not clear that the president would take power back when he recovered.[16] This made vice presidents reluctant to take charge, such as when President Garfield was shot but lingered for eleven weeks in varying degrees of incapacity.[17] It was also an issue when President Wilson had a severe stroke and was declared by his doctor to be unable to do any work.[18] Fear of appearing as a usurper, and fear of permanently depriving the president of his hard-won position, made these vice presidents hang back, leaving the nation with an unmanned helm.[19]

Section 4 fixed this problem by providing a process for presidents to return to office. Not only can presidents contest the vice president and Cabinet's action and potentially win the congressional vote, but presidents remain in office even if they lose the congressional vote.[20] They can assert that they are recovered as many times as they want, saying, "Now I'm better," and forcing the vice president, Cabinet, and Congress to reconsider their case again and again.[21]

The difference between the president temporarily losing power and permanently losing his or her office has one other important consequence. When a president actually leaves office (such as through death, resignation, or the impeachment process), the vice president actually becomes president and can appoint a new vice president.[22] But Section 4 does not do this—the vice president remains vice president, acting as president, and the speaker of the House remains next in line.[23]

Correction 2: When Section 4 Is Invoked, the President Does Not Retake Power Immediately upon Declaring Himself Able

This misconception is probably the most dangerous, in terms of how much trouble it would cause in practice. In fact, I devoted an entire chapter to it in my 2012 book, *Constitutional Cliffhangers: A Legal Guide for*

14. *Id.*
15. *See* KALT, *supra* note 1, at 31.
16. *See id.*
17. *See id.* at 32.
18. *See id.* at 34–35.
19. *See id.* at 32–35.
20. *See* KALT, *supra* note 1, at 12.
21. *See id.* at 143–45.
22. U.S. CONST. amend. XXV, §§ 1–2.
23. *See* KALT, *supra* note 1, at 20.

Presidents and Their Enemies.[24] Unlike the first misconception, this is not mainly just technical semantics. The consequences here would be deadly serious.

The issue here is the wording of Section 4's provision for the president to declare himself able and retake power. It says that when the president sends in his declaration, "he shall resume the powers and duties of his office unless the Vice President and [a bunch of words meaning the Cabinet] transmit within four days . . . their written declaration that the President is unable to discharge the powers and duties of his office."[25]

The problem is that it is unclear to some people who is in charge during the four-day waiting period. Many people, including some smart lawyers, have misread these words as providing that the president retakes power immediately and that a counter-declaration by the vice president and Cabinet re-removes the president's powers before sending the issue to Congress.[26]

Admittedly, the amendment is poorly drafted here. Earlier drafts made it much clearer that the vice president was the one in charge during the waiting period, but the language was made more "concise" and this clarity was lost.[27] But even looking just at the language used, it should be clear that the vice president is in charge during the waiting period.

Consider this analogy: You order some widgets and you send me a check to pay for them. I say that I will mail the widgets to you unless your check bounces within four days. Hopefully it is clear to you that I am not going to do anything until the four days are up. If and only if your check has not bounced, I will deliver the widgets. Hopefully you understand that when I say I will deliver the widgets unless your check bounces within four days, I am not saying that I will deliver the widgets right away and then, if your check bounces, find you and forcibly recover the widgets.

Moreover, Section 4 specifies when power transfers immediately. When the vice president and Cabinet make their initial declaration, Section 4 states that the vice president "shall *immediately* assume the powers and duties of the office as Acting President."[28] If the president were meant to retake power immediately, we can presume that the drafters would have said so. But they did not.

The proper reading of "unless" also makes more sense as a matter of structure.[29] A president who can take power back immediately can then fire

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24. BRIAN C. KALT, CONSTITUTIONAL CLIFFHANGERS: A LEGAL GUIDE FOR PRESIDENTS AND THEIR ENEMIES 61–82 (2012). Some passages in this article are drawn directly from *Constitutional Cliffhangers*, without specific citation, and are reproduced by permission of Yale University Press.

25. U.S. CONST. amend. XXV, § 4.

26. *See* KALT, *supra* note 24, at 72 (discussing examples).

27. *Id.* at 69–70.

28. U.S. CONST. amend. XXV, § 4 (emphasis added).

29. *See* KALT, *supra* note 24, at 74–76 (making the structural arguments presented here).

the Cabinet and prevent it from making a counter-declaration to send the issue to Congress. It would make no sense to give the president the power to do this. Moreover, we would have power transferring, transferring back, and then re-transferring in short order. Under the proper reading, by contrast, there would be one transfer of power, not three. The president can take back power in an orderly manner after all of the requirements for doing so had been met.

Another structural point is that the president's inability to retake power immediately is an intentional contrast with Section 3. Section 3 incentivizes the president to declare himself unable by giving him the ability to retake power immediately.[30] If the president leaves it to the vice president and Cabinet to step in, then the president has to wait to retake power until they or Congress approve.[31]

For those who respect legislative history as a source of interpretive clarity, the case is even stronger. Section 4's framers made it clear that they understood the words they were writing would leave the vice president in charge during the four-day waiting period. In both the House and Senate debates, someone asked, for the record, who would be in charge during the four-day waiting period, and in both cases the amendment's key proponents (Birch Bayh in the Senate and Manny Celler in the House) stated with perfect clarity, for the record, that it would be the vice president.[32]

Adding even more force to this conclusion, Representative Arch Moore wanted the president to be in charge during the four-day waiting period, not the vice president.[33] He proposed an amendment to change Section 4 so that the president would be in charge instead of the vice president; the House voted on that proposition, and Moore lost.[34] So again, it was clear to Congress what Section 4 was providing here.

As I mentioned, though, smart people have gotten this wrong.[35] And if smart people looking at this in the abstract could get it wrong, imagine what a president with his or her own powers at stake might do in the heat of the moment. In such an instance, if the president insisted that he or she had, in fact, retaken power immediately, we would have a very bad situation. If the president purported to fire the Cabinet members who had invoked Section 4, the situation would be much worse.

The absolute minimum requirement of any system that governs transfers of presidential power is that they make it crystal clear at any given moment

30. *See* U.S. CONST. amend. XXV, § 3.
31. *See id.* § 4.
32. *See* KALT, *supra* note 24, at 70, 204 n.15.
33. *See id.* at 204 n.16.
34. *See id.* at 71, 204 n.16.
35. *See supra* note 26 and accompanying text.

who the president is. Because of its poor drafting, Section 4 could fail this test. It would be very useful for the White House Counsel's office to issue a clear statement about the proper reading here.[36] Every president has contingency plans in place for Twenty-Fifth Amendment situations. For obvious reasons, these contingency plans are kept under wraps. But it would be of great benefit for stability and public understanding if certain sections of these contingency plans were made public.[37] This would both inform the populace how things are supposed to work, and hem in any president who might otherwise wreak havoc by pushing the incorrect interpretation.

Correction 3: The Twenty-Fifth Amendment Does Not Apply to Cases of Vice-Presidential Inability

Those first two common misconceptions are ones I covered in my book, in the section it has on common misconceptions. Rather than just repeat the rest of that section, the remainder of my discussion will deal with different misconceptions that have gained prominence more recently.

The fact that the Twenty-Fifth Amendment does not apply to cases of vice-presidential inability is potentially a serious problem. This problem is easy to fix, as I will explain in a minute, but in part, because people do not seem to realize that the gap is there, it has never been filled.

The Twenty-Fifth Amendment only provides for the transfer of power from an incapacitated president to a capable vice president.[38] It makes no provision at all for a situation in which the vice president is gone or disabled him or herself.[39] The framers of the amendment realized that they were leaving this gap, but they felt that the possibility of such a situation was too remote to worry about, given that the amendment was already so long and so complicated.[40]

Of course, the Constitution provides that Congress can establish a line of succession for when both the president and vice president are gone or incapacitated.[41] And Congress has done so, passing the first line of succession statute in 1792,[42] and subsequent statutes in 1886[43] and 1947.[44] The 1947 law is our current one and is the reason why the speaker of the House is next in line after the vice president.[45] But the Constitution provides

36. *See* KALT, *supra* note 24, at 81 (making and discussing recommendation presented here).
37. *See id.*
38. *See* U.S. CONST. amend. XXV, §§ 3–4.
39. See *id.*
40. *See* KALT, *supra* note 1, at 19.
41. U.S. CONST. art. II, § 1, cl. 6.
42. Act of Mar. 1, 1792, ch. 8, § 9, 1 Stat. 239, 240 (repealed 1886).
43. Act of Jan. 19, 1886, ch. 4, 24 Stat. 1, 1–2 (repealed 1947).
44. Act of July 18, 1947, 61 Stat. 380, 380–81.
45. 3 U.S.C. § 19.

no procedures or standards for transferring power down the line from a disabled vice president.[46] Just as this gap caused problems transferring power to the vice president before there was a Twenty-Fifth Amendment, it would cause similar problems if we ever had to transfer power from the vice president.[47]

Despite this serious and potential pitfall, discussion of the line of succession often acts as though everything is fine here, and that power would necessarily transfer smoothly. Again, this might be part of the reason why the gap has persisted this long.

To offer a prominent example of this misunderstanding, I will have to criticize a TV show that is dear to many people, *The West Wing*. Whatever else can be said about *The West Wing*, its depictions of the Twenty-Fifth Amendment were—to put it bluntly—awful. The amendment came up in two story arcs, and both times the show got it badly wrong.[48] In the one that is relevant here, President Bartlet had trouble dealing with his daughter being kidnapped. In an episode entitled "Twenty Five," in reference to the amendment, the distracted and distraught president invoked Section 3 to transfer power to the speaker of the House.[49] He did this because the vice presidency was vacant, and he did it even though the speaker of the House was his political adversary.[50] But of course, there is no provision in the Twenty-Fifth Amendment for transferring power to anyone other than the vice president.[51] The president could have made a declaration *analogous to* Section 3 of the Twenty-Fifth Amendment, but it would not have been a Section 3 declaration as the show portrayed it.

To be sure, a situation like that would not cause much controversy. If the president and speaker both agree that power is transferring, it transfers, no muss no fuss. But consider a different situation. Hypothetically, assume that the president and vice president are both ill at the same time. Perhaps, as I hypothesized in my book, they are both laid low by the same questionable potato salad.[52] What happens then? When the speaker is from the other party, the president and vice president might be reluctant to admit that they are incapacitated. And if they were well enough to contest the speaker's action, we would have no way of knowing who is in charge. There would be no process in place to resolve the disagreement. Control of the White House would be up in the air, which is a dangerous proposition.

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46. *See* U.S. CONST. art. II, § 1, cl. 6.

47. *See* KALT, *supra* note 1, at 19–20.

48. *See id.* at 91–92 (discussing the story arc not discussed here, in which the show acts as though Section 4 does not exist, only Section 3).

49. *The West Wing: Twenty Five* (NBC television broadcast May 14, 2003).

50. *Id.*

51. *See* U.S. CONST. amend. XXV, §§ 3–4.

52. *See* KALT, *supra* note 1, at 20.

The good news is that this is easy to fix. Congress is given the power to provide for a line of succession.[53] Under the necessary and proper clause, Congress can also legislate the needed standards and procedures to execute that line of succession.[54] The simplest thing to do would be for Congress to legislate something that imitates Section 4's process and says that whoever is next in line, along with the Cabinet, could make a declaration similar to the one in Section 4 that the acting president is unable. If there is a disagreement, it could be resolved using procedures that, again, parallel Section 4, but with the next in line acting in the role that Section 4 assigns to the vice president.

There is no good reason not to pass such legislation other than, perhaps, the fact that Congress has more immediate and pressing concerns to deal with (not that they are fixing those things either). But in the meantime, I worry about the fact that most people do not even realize that we are working without a net here. Maybe if more people were aware, they could put some pressure on Congress to pass this simple legislation.

Correction 4: It's Not True That President Trump Has Made Section 4 Impossible To Use By Appointing a Lot of Acting Secretaries

I spend an inordinate amount of time on Twitter correcting this one. I justify this to myself by saying that I am engaged in a sort of a social experiment. I am interested to see how people react to being corrected, and I am also interested in finding out the sources of their misconceptions. Most people either ignore me or are actually thankful to be corrected, probably because they are being disabused of something that they were unhappy about. But nobody responds much to my queries about where they are getting their nonsense from.

The typical form that this takes is that someone will tweet that the vice president and Cabinet should invoke Section 4 against President Trump, and somebody else will reply that it is impossible, because the Cabinet is "full of acting secretaries" who cannot invoke Section 4.

It is true that President Trump has had an unprecedented turnover rate in his Cabinet, has made unprecedented use of acting secretaries, and has a tremendous number of vacancies in the executive branch in general.[55] But as we speak, there is only one acting secretary in the Cabinet—Chad Wolf at Homeland Security.[56] Since his initial round of appointments were seated in

53. U.S. CONST. art. II, § 1, cl. 6.

54. *See* KALT, *supra* note 1, at 21 (proposing such legislation).

55. *See* Aaron Blake, *Trump's Government Full of Temps*, WASH. POST (Feb. 21, 2020), https://www.washingtonpost.com/politics/2020/02/21/trump-has-had-an-acting-official-cabinet-level-job-1-out-every-9-days/.

56. *See Cabinet of Donald Trump*, WIKIPEDIA, https://en.wikipedia.org/wiki/Cabinet_of_Donald_Trump [https://perma.cc/ZH7L-YCSX] (archived Oct. 12, 2020).

2017, President Trump has never had more than three acting secretaries at one time, out of the fifteen Cabinet members who would vote in a Section 4 action.[57] The intervals with three acting secretaries total under a month; for most of Trump's presidency the number of acting secretaries has been either zero or one.[58]

I should pause here to clarify something. The Cabinet is not actually mentioned in Section 4. Section 4 refers to "the principal officers of the executive departments."[59] The executive departments are defined by statute: 5 U.S.C. § 101 lists the fifteen of them, ranging from the Department of State to the Department of Homeland Security. These are the core Cabinet members, and they are the ones in the line of succession.[60] This leaves out the so-called "Cabinet-level" officials in posts like the head of the Office of Management and Budget and the Trade Representative. Each president decides for himself which "Cabinet-level" people attend Cabinet meetings.[61] But, these other people do not head "executive departments." The Constitution does not include them in the Section 4 process.[62]

Circling back to acting secretaries, it still would not matter for Section 4 purposes if there were more than just the one currently in position. This is for two reasons. The first reason is that acting secretaries probably *can* vote on Section 4 actions.

The legislative history here is, admittedly, muddled. A House committee report said very firmly that acting secretaries would be able to participate.[63] But Senator Bayh, the person generally regarded as the father of the Twenty-Fifth Amendment, opined in a Senate debate that acting secretaries would not be able to participate.[64] Therefore, the legislative history offers us no clarity.

But we should not start with the legislative history, we should start with the text. The text seems clear. Acting secretaries lead their departments; if they are not the principal officers of their departments, then who is?

Moreover, structurally, if acting secretaries cannot participate, a president would be able to head off any Section 4 action simply by firing the Cabinet.[65] This would not be a very sensible design. Not only would it provide the president with a way to evade Section 4, but that way would be extremely destructive. It might seem like a crazy thing for a president to do,

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57. *See id.*
58. *See id.*
59. U.S. CONST. amend. XXV, § 4. The second time Section 4 uses the phrase, it says "department," singular. *Id.* This is a typo. *See* KALT, *supra* note 24, at 67 n.*.
60. *See* 5 U.S.C. § 101; *see also* 3 U.S.C. § 19 (providing line of succession).
61. *See* KALT, *supra* note 1, at 62.
62. *See id.* at 17–18.
63. *See id.* at 62.
64. *See id.* at 63.
65. *See id.* at 133 (noting structural arguments presented here).

but we are, after all, talking about Section 4, and thus talking about presidents who just might be that crazy.

This brings us to the second point: even *if* acting secretaries cannot participate, it still would not matter. If they cannot participate—if they are not a principal officer of an executive department—then they would have to be taken out of the denominator, too. Section 4 has no quorum requirement and says nothing about needing eight votes. The requirement is simply that there be a majority of the department heads.[66] This means that if there are six acting secretaries and those six are not considered department heads, that leaves nine people who are and who can vote. A majority—five out of those nine—is all that would be required.

Some people have suggested that the problem with acting secretaries is not that they cannot participate, but rather that the whole question is uncertain.[67] A president could claim that a Section 4 invocation is invalid because it includes the votes of acting secretaries. The president could also complain that the vote is invalid because it excludes acting secretaries, if that is what happened.

But it is very unlikely that the result of a Section 4 vote would turn on whether acting secretaries are included. Remember, Section 4 would most likely be invoked on a president who is completely incapacitated. In such a case, we can presume that the Cabinet would be unanimous or something close to it. In other words, if the president is in a coma, it is highly unlikely that the vote would be eight to seven with the eighth vote coming from an acting secretary.

Moreover, we are also unlikely to see a close vote in the case of a president who is *not* completely incapacitated. If the president is up and around and able to contest the action, the Cabinet would almost certainly be reluctant to move unless it was confident that it had enough support to win the congressional vote. A divided Cabinet would not be able to have much confidence that it would win the necessary two-thirds majorities in the House and Senate. So, again, unanimity or near unanimity is much more probable than a close vote, making it unlikely that the result of the vote would turn on whether acting secretaries are included.

In sum, acting secretaries do not present a significant problem for using Section 4. You can find hundreds, if not thousands, of tweets to the contrary. But, like many things on Twitter, they are no less incorrect for being common.

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66. *See* U.S. CONST. amend. XXV, § 4.

67. *See, e.g.*, John Rogan, *Trump Has a Lot of Temps in Top Jobs. Would They Get a Say in Removing Him from His?*, WASH. POST (July 22, 2019), https://www.washingtonpost.com/outlook/2019/07/22/trump-has-lot-temps-top-jobs-would-they-get-say-removing-him-his/.

Correction 5: The Failure to Invoke Section 4 on President Trump Is a Reflection of How Section 4 Was Designed to Work, Not a Subversion of It

Over the past three and a half years, I have encountered many people on Twitter opposed to President Trump who have looked to Section 4 as a way to deliver the country from all of Trump's behaviors that they find problematic. They fume about things like, say, the president's discussion of injecting disinfectants to treat COVID-19, and say things like, "Why do we even HAVE a #25thAmendment if not for exactly THIS???"[68]

Sometimes, these criticisms will go further and say that the only reason Section 4 has not been invoked against Trump is that his vice president and Cabinet are some combination of sycophantic, craven, and corrupt. I am not here to attack or defend the president or his Cabinet. My point, rather, is that this was not, in fact, exactly what Section four was designed for.

Again, I am not saying that Trump has or has not done the things of which he has been accused. Rather, I am saying that even if you accept all of the most common accusations as true, it would still not be a matter for Section 4.

At its core, Section 4 is meant to transfer power swiftly and certainly when the president is completely incapacitated.[69] Think of things like a president in a coma, after a serious stroke, or with severe dementia that leaves him or her unable to function. Maybe add other possibilities, such as a president who is missing or kidnapped. The word "unable" obviously can be construed more broadly than that, and Section 4 could conceivably cover other sorts of cases too.[70] But in any case in which the president is able to resist the vice president and Cabinet's action, Section 4 is designed to err on the president's side. It does this in two main ways.

First, the framers of Section 4 put decision-making power in the hands of the president's own team. They understood that the vice president and Cabinet will be naturally loyal to the president and will be reluctant to move against him.[71] To the framers, this was a feature, not a bug.

The second thumb on the president's side of the scale is the congressional supermajority requirement. Remember, even when the vice president and Cabinet are against the president, the president will win unless two-thirds majorities in both houses vote against him or her.[72] This amounts to a declaration by Section 4 that presidents are supposed to be able to come back

68. CrazyCatLadyCantSayNoToToeBeans (@snowflake4pete), TWITTER (Apr. 23, 2020, 9:46 PM), https://twitter.com/snowflake4pete/status/1253500443851980801.

69. *See* KALT, *supra* note 1, at 108.

70. *See id.* at 113–27.

71. *See id.* at 60–61.

72. *See* U.S. CONST. amend. XXV, § 4.

whenever they feel able, unless the entire rest of the leadership of the executive branch, and a supermajority of the legislative branch disagree. This sets the bar extremely high.

As a result, Section 4 will not work against very many conscious presidents. Effectively, the president's own people need to think that he or she is incapacitated, not just impaired or "unfit." A president can do all kinds of awful things without meeting Section 4's criteria. A president can be doddering, unwell, batty, or incompetent, but still have the upper hand in any disagreement.

Put another way, there are two kinds of problematically impaired presidents. One is a president who is doing bad things because of his or her unfitness. The other is a president who cannot do anything at all. The first kind of president should be dealt with, not through Section four, but instead, through the impeachment process. Now you might say that the impeachment process has recently proven itself difficult to execute successfully, but that is beside the point. The point is that Section 4 is *even harder* to execute effectively than impeachment and removal. In the congressional part of the process, Section 4 requires many more votes in the House than impeachment does.[73] This was by design. The framers did not want Section 4 to become a way for the president's opponents to make an end run around impeachment.[74] If you do not have the votes for impeachment and removal, you will not have the votes to win a contested Section 4 action unless the president is, in fact, severely incapacitated.

Concededly, Section 4 might be effective against a president who is not completely incapacitated, and who is able to contest the action, if the president is on the verge of doing something catastrophic.[75] An example would be a president who capriciously orders a nuclear strike. In a case like that, the vice president and Cabinet might invoke Section 4 just to stop him or her, even if they cannot be sure that they would win the congressional vote. If the alternative is to allow an imminent and irreparable catastrophe, Section 4 might be worth using even if just to allow enough time for the impeachment machine to warm itself up.

I understand that the president's opponents are worried about the things he does, and they desperately want to do something about it. It is only natural for them to use whatever mechanisms the Constitution offers to get rid of a president who should not be there. Impeachment failed, which leaves just Section 4. But just because something is the only tool left does not mean it is the right tool for the job. Although President Trump's opponents clearly

73. *See* KALT, *supra* note 1, at 56.
74. *See id.* at 4.
75. *See id.* at 121–24 (discussing the possibility presented here).

have a strong desire to get him out, that does not change the strict limits built into Section four. The failure to use Section 4 against President Trump is a reflection of Section 4's design, not a subversion of it.

This is actually why I titled my book *Unable*. The title has a double meaning. Unable is the standard for invoking Section 4, but it is also a description of the situation in which President Trump's opponents have found themselves: unable to use Section 4 the way they might like.

CONCLUSION

That concludes my list of misconceptions about Section 4 of the Twenty-Fifth Amendment. I am looking very much forward to answering your questions, but before we get to that I do want to conclude by saying something about how special Section 4 is. I have said a lot about Section 4's limits and its flaws. But we should not lose sight of what a remarkable achievement the Twenty-Fifth Amendment was.

Congress rarely does things proactively. The Twenty-Fifth Amendment was the sort of statesmanlike, good-government policymaking that professors often call for in our optimistic law review articles. "Here is a problem," we say, "and here is a simple way to fix it." Congress rarely follows our suggestions. But the Twenty-Fifth Amendment represents successful leadership, serious attention to institutional design, and, in the end, is a definite improvement over the Constitution's original design. Something that rare deserves to be celebrated when it happens, and it is on that note that I conclude.