

FOIA MARKER

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Collection:	Cheney Vice Presidential records			
Office of Origin:	Chief of Staff			
Series:	David Addington			
Subseries:				
OA/ID Number:	01108			
Folder Title:	Signed-But-Not-Effective Resignation			
Stack:	Row:	Section:	Shelf:	Position:
20W4	9	14	1	2

FOIAed Under:



OFFICE OF THE VICE PRESIDENT

WASHINGTON

January 12, 2009

MEMORANDUM FOR THE ARCHIVIST OF THE UNITED STATES

FROM: David S. Addington, Chief of Staff to the Vice President

SUBJECT: Resignation of Richard B. Cheney from the Vice Presidency that Never Took Effect

Vice President Richard B. Cheney paid careful attention to ensuring the continuity of constitutional government.

The Constitution does not address the situation in which (1) the Vice President suffers a non-lethal medical condition that prevents the Vice President for a significant time from discharging the duties of the Vice Presidency, and (2) during that Vice Presidential inability, the President suffers a non-lethal medical condition that prevents the President for a significant time from discharging the duties of the Presidency. Implementation of the procedures set forth in Section 4 of the Twenty Fifth Amendment to address Presidential inability to discharge the powers and duties of the Presidency depends upon a functioning Vice President. Thus, a Vice President who cannot discharge the duties of his office constitutes a risk to the continuity of the Presidency in the case of Presidential inability.

Section 20 of title 3 of the United States Code specifies: "The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State." Vice President Richard B. Cheney signed a resignation of the Vice Presidency dated March 28, 2001 to be effective at the date and time on which it is delivered by George W. Bush to the Secretary of State. The signed-but-not-yet-effective resignation provided a mechanism by which, if Vice President Cheney suffered a non-lethal medical condition that prevented him for a significant time from discharging the duties of the Vice Presidency, the President could effect a vacancy in the Vice Presidency by delivering the resignation to the Secretary of State. The President and the Congress could then fill the vacancy pursuant to Section 2 of the Twenty Fifth Amendment.

In addition to solving the legal problem of Vice Presidential inability preventing implementation of Section 4 of the Twenty Fifth Amendment in certain circumstances, the signed-but-not-yet-effective resignation gave the President a means for obtaining anew the practical and political benefits of having an effective Vice President, by making it possible, once delivery of the resignation occurs, to select a new Vice President under Section 2 of the Twenty Fifth Amendment.

Enclosed are four vice presidential records (44 U.S.C. 2207) that relate to the resignation: (1) a stationery note card of the Vice President dated March 28, 2001 with instructions to me with respect to the resignation, (2) the resignation, (3) the inner envelope dated March 28, 2001 in which I sealed the note card and resignation, and (4) the larger outer envelope dated March 28, 2001 in which I sealed the inner envelope. Vice President Cheney wrote the note card and signed the resignation in my presence on March 28, 2001. He informed me that he had told President George W. Bush that the resignation existed and that I would take the resignation to the President in the event of Vice Presidential inability for a significant time. I sealed the note card and resignation in the inner envelope and outer envelope and kept them in my possession from that date forward.

Making the Vice Presidential resignation take effect upon its delivery by the President to the Secretary of State was consistent with the decision of the U.S. Supreme Court in Mimmack v. United States, 97 U.S. 426 (1878). No such delivery of Vice President Cheney's resignation occurred, as no occasion for delivery arose, and therefore the resignation never took effect.

THE VICE PRESIDENT *Mar. 28, 2001*

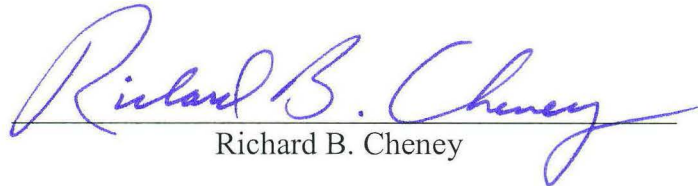
1 Dave Addington - You are to present the attached document to President George W. Bush if the need ever arises.

Richard B. Cheney

RICHARD B. CHENEY

In accordance with Section 20 of Title 3 of the United States Code, I, Richard B. Cheney, hereby resign the office of Vice President of the United States effective at the date and time on which this writing is delivered by George W. Bush to the Secretary of State.

SUBSCRIBED:


Richard B. Cheney

DELIVERED at the date and time set forth below to me by George W. Bush:

Date

Time

Secretary of State

OFFICE OF THE VICE PRESIDENT
WASHINGTON, DC 20501
OFFICIAL BUSINESS


VICE PRESIDENT

TO BE OPENED ONLY BY:
RICHARD B. CHENEY
OR
DAVID S. ADDINGTON
SENSITIVE DOCUMENT ENCLOSED
SSA 3/28/2001

David S. Wharton

OFFICE OF THE VICE PRESIDENT
WASHINGTON, DC 20501
OFFICIAL BUSINESS

Dick Cheney
VICE PRESIDENT

TO BE OPENED ONLY BY:
RICHARD B. CHENEY
OR
DAVID S. ADDINGTON
EBA 3/28/2001