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## Is The SAFE Act MOU Even Legal?

The controversy continuing to swirl over the memorandum of understanding between the Senate GOP and the Cuomo administration that appears to halt (at least for the moment) development of the SAFE Act's ammunition database really hinges on one central question: Does the document have any legal standing?

Zack Fink touched on this question in his blog post/memo item earlier today, noting that the MOU appears to try to subvert a law passed by two houses of the Legislature and signed by the governor through a non-legally binding agreement between one house of the Legislature and a top Cuomo aide – something that, at least to my memory, has never been done before.

The Cuomo administration has repeatedly insisted that this MOU does not other than codify an already existing situation. The database doesn't yet exist due to the fact that the State Police, which is charged with creating it, has said it is incapable at this time of bringing it to fruition.

According to the governor's office, the database project is still ongoing – although when, exactly, it will be up and running remains a mystery, and how it can get up and running without the say-so of the Senate GOP – which isn't likely to approve as long as it controls the chamber – is also under.

The Assembly and Senate Democrats say they're investigating their options for a potential legal challenge to the MOU. Over the weekend, I made some calls, looking for someone who would be able to opine on whether this thing has a legal leg to stand on, and the response I encountered (as so often occurs in these cases) was: Ask your Dad. (That would be Dr. Gerald Benjamin, a SUNY New Paltz political science professor and expert on all things state government related).

So, I did. And here's what he said:

*The executive has discretion in enforcement of the law. By analogy, if a budgeted program is demonstrated to be ineffective or suspect, he or she may not spend the money pending revision or investigation. No MOU is constitutionally required with either house or both houses for such an action to be taken, though it may be sought for political purposes. In fact, entering into an MOU may provide a troublesome precedent for the executive branch at a later time."*

*"(State Operations Director Jim Malatras') signature suggests that this is an administrative matter, and may be a hedge against precedent. The governor did not sign."*

*“Conditioning resumption of administration of a law on one house approval is suspect. If approval is withheld by the Senate, that portion of the law is effectively rendered void. This constitutes a de-facto one house legislative repeal. It also gives away executive authority; precedent again. Repealing the law requires the conventional process: action by both houses and gubernatorial approval.”*

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Jim Malatras is not the Governor. He's a hired hand. Cuomo won't sign that thing because then it would be real.

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But if he had signed it? Do you agree that the chief executive has latitude to determine enforcement priorities given scarce resources and questions about a statute's constitutionality?

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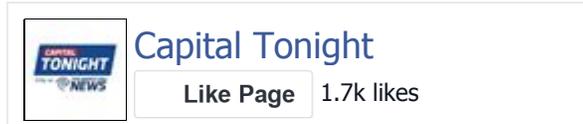
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