

# Scott Schnall Case Moves To Federal Court, Challenging The Constitutionality Of DOB Statute

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Scott Schnall's battle with the New York City Department of Buildings is moving to federal court.

Following the successful application to set aside 300 DOB stop-work orders for Schnall's projects, the new claim argues that the law granting the DOB discretionary power to permanently revoke filing privileges is unconstitutional and being abused by the department.

The case has the potential to loosen the DOB's vice grip on New York's design and construction professionals, many of whom do not speak out against the department's policies and regulations in fear of retaliation.

In December 2014, Schnall, an engineer and expeditor with 27 years worth of filing experience, was quoted in [The New York Times](#) saying that the DOB approval process was "screwed up." That is when he claims the department made him a target and took actions to put him out of business for speaking his mind.

In February 2015, the DOB decided that Schnall's interpretations of the building codes and zoning resolutions on various applications for properties in Brooklyn were false, and DOB commissioner Rick Chandler banned Schnall for life from filing in the city.

Chandler had the power to do so under a law Schnall's attorneys argue is unconstitutional, authorizing the commissioner to impose the draconian penalty of a lifetime ban.



According to section 28-211.1.2 of the city administrative code, the commissioner can refuse to accept an application or another document that bears the signature of a person found to have knowingly or negligently made false statements in an application. Omissions of any kind count as negligent and knowingly false, as does any position with

which the government disagrees. The commissioner does not need to prove materiality to revoke filing privileges under the statute.

After losing his privileges, Schnall, who maintains that he did not make any false statements, turned to Rosenberg & Estis attorney **Brett B. Theis**.

To Theis, a member of the Rosenberg & Estis litigation department, the administrative code gives the DOB unfair and unchecked power over the lives and livelihoods of design professionals and their businesses. Even the smallest of mistakes or an honest omission could result in a complete forfeiture of filing privileges based on the plain language of the statute.

"When the commissioner's decision whether or not to bring charges under the law is the only thing standing between a design professional and the loss of filing privileges, you clearly have an unconstitutional, vague and overbroad statute on the books," Theis said. "This is particularly problematic for the design professional community, because they are interpreting zoning laws and building codes. These are not black-and-white issues."

According to the federal claim, the broadness of the law encourages ad hoc discrimination and permits retaliatory enforcement, in this case stemming from Schnall's critical statements in the article.

Schnall's case not only challenges the constitutionality of the code, but also brings up issues of free speech.

"Scott is a very well-known and well-respected guy in Brooklyn, with a huge client base. When he spoke out, it struck a chord and it hurt the DOB," Theis said. "So the DOB decided to target him after the New York Times article, utilizing the vague and overbroad statute to ban him for life."



Before two Supreme Court judges canceled the DOB stop-work orders, Schnall and his clients were able to complete work on a range of projects, including affordable housing and neighborhood theaters and restaurants.

His clients came to his side. The Rosenberg & Estis litigation team received 50 character letters on his behalf and another 50 affidavits from Schnall's clients describing how the DOB was unfairly affecting their lives and causing irreparable injury. Theis packed the court with Schnall's supporters twice. And twice, the Supreme Court **rejected the DOB's decision** to issue stop work orders on Schnalls' jobs.

As Theis moves to bring Schnall's claims to court, the challenge to section 28-211.1.2 will have implications for the entire New York real estate community. He expects that the design professional community will break its silence and join the fight against this statute.

“I think this case is going to be a critical turning point,” he said. “It’s either going to solidify the government's existing ability to punish and retaliate against any design professional who enters their crosshairs, or it is going to give design professionals the freedom they need to advocate for their clients and put their names on plans without worrying that they could be run out of business for a minor misstep or because the DOB disagrees with their position on a particular issue.”

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