



Written by [Joe Wolverton, II, J.D.](#) on June 12, 2018

## Seattle City Council Places Prior Restraint on Free Speech of Landlords

*“What should ye do then, should ye suppress all this flowery crop of knowledge and new light sprung up and yet springing daily in this city? Should ye set an oligarchy of twenty engrossers over it, to bring a famine upon our minds again, when we shall know nothing but what is measured to us by their bushel? ... Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”*



John Milton (1644)

The city council of Seattle has declared itself to be the decider of what speech is or is not allowed. When it comes to trying to rent out an apartment in that city, you’ll have to make sure your methods of marketing *your* investment property are approved by the judges of the modern Seattle Star Chamber. Here’s a summary of the story written by Ethan Blevins, an attorney challenging the constitutionality of the city’s decision:

[The Seattle City Council] has slapped a year-long ban on the use of certain housing websites that allow renters to place bids on advertised rental housing, while it reviews the sites.

Officials say they fear the sites might violate local housing laws or inflate housing costs, so the City Council wants to study the sites while forbidding their use in the meantime. While city leaders try to figure things out, landlords are barred from posting ads on the sites, and renters can’t even do a simple search for Seattle housing on the sites.

The City Council will likely try to portray the website ban as modest and temporary, as if it is just pressing the “pause” button. But in fact, the City Council has resurrected a frightening government power — the power to censor speech until the government has decided to approve it.

This decision by the Seattle City Council represents what is known in the law as a “prior restraint” on speech. Simply put, “prior restraint” exists when government restricts or forbids certain types of speech before it is made. In this case, apartment owners cannot advertise their properties on certain websites for fear — completely unfounded — that those websites might be pricing certain renters out of the market or might be violating local housing ordinances. This is the textbook example of unconstitutional “prior restraint” on free speech.

The Pacific Legal Foundation, representing a website called Rentberry and a small-time landlord, has filed a legal complaint to fight this free speech restriction.

Here’s PLF’s position on the case (*Rentberry v. City of Seattle*):

Rentberry is a small San Francisco-based start-up that connects landlords and renters through a rent-bidding website. This fledgling innovation speeds up the renting process, boosts transparency, and helps both parties reach an optimal market price. Rentberry has been successful in other cities and hopes to expand to Seattle, but the city council has adopted a one-year moratorium on rent-



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bidding websites over unfounded fears that such sites might violate existing rental law and inflate housing costs.

The explicit purpose of the moratorium is to suspend all rent-bidding services while the city investigates if they comply with the first-in-time rule and other city regulations. The city also wants to study the possible effects of these services on the housing market before allowing landlords and renters to use them. The ordinance allows the city council to extend the moratorium for another year if city officials request more time to complete the study.

Thanks to the moratorium, Seattle renters and landlords cannot use this cost-effective means of meeting housing needs.

In his article, Blevins includes a bit of history on the principle of prior restraint, and I'll include a bit more here for readers of *The New American*.

On June 14, 1643 Parliament passed a law expanding on earlier orders (one of which, believe it or not, was enacted by the Star Chamber!) mandating the following restrictions on free speech and publication:

Given the great late abuses and frequent disorders in printing many false, forged, scandalous, seditious, libelous, and unlicensed Papers, Pamphlets, and Books, to the great defamation of Religion and Government. No book, pamphlet or paper shall henceforth be published or imported without license or without registration in the register of the Stationers' Company.

The Master and Wardens of the said Company, the Gentleman Usher of the House of Peers, the Sergeant of the Commons House and their deputies, together with the persons formerly appointed by the Committee of the House of Commons for Examinations" are authorised [sic] to make diligent search for unlicensed presses; "and likewise to apprehend all Authors, Printers, and other persons whatsoever employed [sic] in compiling, printing, stitching, binding, publishing and dispersing of the said scandalous, unlicensed, and unwarrantable [xxix] papers, books and pamphlets as aforesaid, and all those who shall resist the said Parties in searching after them, and to bring them afore either of the Houses or the Committee of Examinations, that so they may receive such further punishments, as their Offences [sic] shall demerit.

The Seattle City Council, it seems, has exalted itself to the position of Parliament and decided who may publish what and where. That didn't work in 1643, and it won't work now.

Just as Blevins and his colleagues at PLF are doing now, there were those in 17th-century England who wouldn't sit idly by and see their liberties abolished. One of the most noteworthy of those protesters was John Milton.

In November 1644, Milton published a scathing rebuke of Parliament's anti-speech agenda. The book was called *Areopagitica*.

Although *Areopagitica* was ineffective at getting the noxious act overturned, in it, Milton expresses perhaps the most direct defense of free speech ever written. Here are a few selected quotes from that powerful polemic, but I would recommend readers take the time to study the [entire book](#).

- "How great a virtue is temperance, how much of moment through the whole life of man? yet God commits the managing so great a trust, without particular Law or prescription, wholly to the demeanour [sic] of every grown man."
- "To wise men hurtful books are not temptations nor vanities, but drugs which temper wholesome medicines."



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- “The real art of government, elsewhere than in an Utopia or an Atlantis, is to discern where coercion and where persuasion should be used. Passions have been implanted [xxxv] in human nature because, rightly tempered, they are ingredients of virtue; and it is vain for human government to affect a rigour [sic] contrary to the manner of Providence and of Nature.”
- “No man, studious, learned, judicious enough to be a competent licenser will endure the drudgery.”
- “Are twenty men enough to estimate all the genius and the good sense of England? Is there to be a monopoly of knowledge; are the products of all English brains to be stamped like broadcloth and woolpacks? The affront is not to the educated alone: the common people are just as much wronged by the notion that they are too giddy to be trusted with a flighty tract.”

Seems we haven't progressed much — ironic given how Seattle promotes itself as a bastion of Progressive thought — since the days that Milton fought to disgorge Parliament of the usurped power to decide which books and pamphlets were approved and which should be shut down.

In our day, it's websites — not printers or publishers — that government is attempting to silence. Although the props may have changed, the players and the plot have not, and the City Council of Seattle needs to realize that in abridging free speech, it is placing itself on the wrong side of history, the wrong side of the Constitution, and the wrong side of liberty.



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