

John Doe political prisoner Kelly Rindfleisch nears end of her sentence

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The first – and hopefully the last – political prisoner in Wisconsin’s unconstitutional John Doe investigation will be released from state custody this week.

But Kelly Rindfleisch tells Wisconsin Watchdog her fight for justice is far from over.

“I will continue to work to make sure the type of search warrants used in this investigation are officially ruled by the court as being illegal,” Rindfleisch said in an email.

The former aide to Gov. Scott Walker when Walker was Milwaukee County executive concludes her six-month sentence as of 6:39 a.m. Thursday.

Rindfleisch has been on home confinement in Sauk County since April 2. She was granted work-release privileges. She is employed by Eric O’Keefe, one of the many conservative targets in a political probe, which the state Supreme Court ruled unconstitutional and ordered shut down.

“I am happy and relieved to finally be able to get back to my home and my life,” said Rindfleisch, who resides in Columbia County but has lived with her sister since she began serving her sentence. “This has been an extremely difficult period in my life. But my fight has not stopped.”

In June, Rindfleisch asked the U.S. Supreme Court to review her 2012 conviction on a charge of misconduct in office. She cited the highly questionable search-and-seizure practices of the Milwaukee County District Attorney’s office.

As Wisconsin Watchdog has reported, some of the brightest constitutional minds in the country — on the right and left — have filed amicus briefs urging the high court to review a criminal conviction they say is riddled with Fourth Amendment abuses and prosecutorial overreach.

But the high court went into summer recess before deciding whether to take up Rindfleisch’s petition for appeal. The court is back in session Oct. 5.

While the odds are generally long against petitioners — the Supreme Court takes up about 2 percent of the petitions for review it receives — Rindfleisch’s Fourth Amendment case may be of keen interest to the court. There are unsettled areas of law involving police searches and seizures in the Digital Age.

“Does the Fourth Amendment permit a search warrant authorizing the unfettered seizure of all of an individual’s emails from her internet service provider for a specified period of time, without

limiting the seizure to communications containing evidence of a crime?” poses Rindfleisch’s petition.

Milwaukee County District Attorney John Chisholm, a Democrat, first launched the probe into Walker’s former aides and associates in 2010; in 2012 the investigation expanded into a multi-county dragnet into Walker’s campaign and dozens of conservative activist organizations.

Chisholm used wide-ranging warrants approved by John Doe Judge Neal Nettesheim to go through tens of thousands of Rindfleisch’s professional and personal digital communications. The DA’s office found the aide, who was also working for the campaign of Republican lieutenant governor candidate Brett Davis at the time, responded to campaign emails at her government job.

Rindfleisch has said prosecutors threatened her with lengthy prison time if she didn’t give them incriminating information on Walker. She had no information to give, and they charged her with a felony.

Rindfleisch immediately appealed her conviction in 2012, saying prosecutors violated her Fourth Amendment rights through general warrant searches. A state appeals court last year upheld the conviction on a 2-to-1 vote, with the dissenting judge concluding the prosecutor’s search was overly broad and unconstitutional.

Because Rindfleisch was not the original target of the Milwaukee County District Attorney’s office’s John Doe investigation into a theft of a veterans fund, Rindfleisch’s petition before the U.S. Supreme Court alleges the state appeals court gave its blessing to a “meandering” search that allowed “investigators to seize and search every email (an individual has) sent, received, or deleted over an extended period.”

Erwin Chemerinsky, founding dean and distinguished professor of First Amendment law at the University of California, Irvine School of Law, is one of three constitutional law experts who has collectively filed a friend of the court brief asking the U.S. Supreme Court to review Rindfleisch’s case.

Chemerinsky has “for decades been a prominent liberal public intellectual and litigator, and he has written scores of opinion articles taking liberal positions,” according to a New York Times article in 2007.

The legal experts say they want to bring to the court’s attention how sharply a Wisconsin appeals court ruling in the Rindfleisch case “departs from fundamental Fourth Amendment principles.”

“The sweeping power to secretly intrude on private communications claimed by the state of Wisconsin in this case may be as egregious a departure from the original constitutional understanding as this Court will ever see in a case involving the seizure (and subsequent search) of emails pursuant to a warrant,” the brief states.

Among the lineup of Rindfleisch petition supporters are the Cato Institute and the DKT Liberty Project, jointly filing a friend-of-the court brief in the case.

“The reason this is so dangerous a precedent for police searches of electronic information is because it means that anybody who has gotten an email from any individual suspected of a crime is at risk of having all of their communications collected and reviewed by law enforcement,” AC Bushnell, program director of the Liberty Project told Wisconsin Watchdog in August.

While she cannot get back the time taken from her, Rindfleisch said she remains optimistic justice will eventually be served.

“I am hopeful that the US Supreme Court will see the dangerous precedent set by the Wisconsin courts and reverse the 1st District Court of Appeals’ ruling,” she said.