



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 9, 2022

Ms. Kendra Arnold
Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, DC 20006

VIA EMAIL: klma@factdc.org

RE: OSC File No. HA-22-000007

Dear Ms. Arnold:

This letter is in response to two complaints you filed with the U.S. Office of Special Counsel (OSC) alleging that U.S. Department of Energy (Energy) Secretary Jennifer Granholm violated the Hatch Act by using her official authority or influence to affect the results of an election. As explained below, with respect to the Marie Claire interview, OSC has concluded that Secretary Granholm violated the Hatch Act. However, we are not recommending disciplinary action and have issued her a warning letter.¹

As a presidential appointee with Senate confirmation, Secretary Granholm is covered by the Hatch Act.² The Hatch Act prohibits employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election.³ The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, it is a prohibited use of official authority for employees to use their official title or position while participating in political activity.⁴ Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.⁵ Thus, federal employees in their official capacity are prohibited from, among other things, promoting the election or defeat of political parties or candidates for partisan political office.

Tweet about Maine Ballot Issue

You alleged that Secretary Granholm violated the Hatch Act by using her official Twitter account to urge Maine residents to vote a certain way on a ballot question. Specifically, on October 28, 2021, Secretary Granholm used her official Secretary of Energy Twitter account to urge Maine residents to vote “no” on a ballot question about a transmission line. She wrote, “The @NECEC_ME transmission line will bring clean energy to New England and reduce

¹ Pursuant to 5 U.S.C. § 1215(b), when OSC concludes that disciplinary action is warranted for a presidential appointee with Senate confirmation, OSC sends a report to the President for appropriate action.

² See 5 U.S.C. § 7322(1)(A).

³ 5 U.S.C. § 7323(a)(1).

⁴ See 5 C.F.R. § 734.302(b)(1).

⁵ 5 C.F.R. § 734.101.

carbon emissions equivalent to taking 700k cars off the road. I hope Mainers vote NO on ONE to keep this project moving and reliable, affordable, #CleanEnergy flowing!” She also included a graphic in her tweet that compared the results of voting no versus voting yes on the ballot question, e.g., voting no means saving money and breathing cleaner air and voting yes means higher energy bills and pollution.

Secretary Granholm used her official social media account to tweet this message, and the Hatch Act prohibits the use of such accounts to engage in political activity. But her message did not constitute political activity for purposes of the Hatch Act because it was directed at the success or failure of a ballot question and not at a political party, partisan political group, or candidate for partisan political office. Accordingly, Secretary Granholm did not violate the Hatch Act when she tweeted this message.

Marie Claire Interview

You also alleged that Secretary Granholm violated the Hatch Act by engaging in political activity while being interviewed for a Marie Claire Instagram Live video on October 6, 2021. OSC’s investigation confirmed that Secretary Granholm participated in the interview in her official capacity. At the start of the interview, she was introduced as “Energy Secretary Jennifer Granholm,” and she discussed matters related to her official position as the head of the Department of Energy.

Secretary Granholm also discussed various policies that are of particular interest to women, and for which women had “marched” in the past, and how Congress is trying to pass legislation to enact some of those policies. The reporter then asked her, “How do we get involved in this moment to make sure we pass these things?” Secretary Granholm responded:

The good news is that that [sic] marching and that voting gave Democrats a bare majority, but a majority, in the House in the Senate. And again, I am using Democrats as a substitute for the policies that you believe in, the policies that you would like to see happen. And what I say to people all the time is the most important thing you can do is make your voice heard. Vote! Put people in who agree with you. The arguments in DC right now wouldn’t be as tough as they are if we had just a couple more, just a couple more senators that agreed with us or just a couple more members of the House. So, continue to be out there, continue to elect people. Maybe you think about running for office. Continue to be out there and engage and know that public policy really matters. It is how you do the greatest good for the greatest number. And the only way you get policy you want is by putting people in office. By hiring the right people. They work for you. You can hire them; you can fire them. Let’s hire a few more.

OSC has concluded that Secretary Granholm engaged in political activity when she gave this response promoting the electoral success of the Democratic Party. Specifically, when asked what viewers could do to ensure that certain legislation gets passed, Secretary Granholm began her answer by commenting that Democrats now have a majority in the House and the Senate, which is “good news.” And while she then attempted to backpedal by stating that she was using “Democrats as a substitute” for certain policies, at bottom she told listeners that they needed to vote for Democrats so that more Democrats would be elected to pass the legislation they wanted.

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Her attempt to backpedal does not change the meaning of her words or undo the fact that she was talking about the Democratic Party throughout her statement. Thus, because Secretary Granholm engaged in activity directed at the success of the Democratic Party during an interview she gave in her official capacity—she violated the Hatch Act’s use of official authority prohibition.

Although OSC concluded Secretary Granholm violated the Hatch Act, the evidence gathered during our investigation does not support the conclusion that it was a knowing violation. Specifically, OSC learned that, before the interview, she had not received significant training about the Hatch Act’s use of official authority prohibition. But we understand that since the Marie Claire interview, Secretary Granholm has received comprehensive Hatch Act training covering, among other things, the use of official authority prohibition.

Accordingly, we are closing our file in this matter with the issuance of a warning letter to Secretary Granholm. Secretary Granholm has been advised that if in the future she engages in prohibited political activity while employed in a position covered by the Hatch Act, we will consider such activity to be a willful and knowing violation of the law, which could result in further action.

Please contact me at (202) 804-7054 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Erica S. Hamrick". The signature is written in a cursive, flowing style.

Erica S. Hamrick
Deputy Chief, Hatch Act Unit