



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

October 19, 2021

The Honorable Henry Kerner
Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505

Email: info@osc.gov

Re: Violations of the Hatch Act by Secretary of Energy Jennifer Granholm

Dear Mr. Kerner:

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Special Counsel investigate whether Secretary Granholm violated the Hatch Act by making political remarks while being interviewed in her official capacity.

FACTS. Jennifer Granholm is the Secretary of Energy, a federal agency within the executive branch, and thus is subject to the Hatch Act.¹ On October 6, 2021, Secretary Granholm was interviewed in her official capacity by Emily Tisch Sussman for a Marie Claire Instagram Live video.² The interview began with Granholm being introduced as “Energy Secretary Jennifer Granholm” and discussed Granholm’s official position in the federal government.³ However, the interview “then shifted to the importance of electing progressive Democrats to get through Biden’s spending agenda.”⁴

¹ 5 U.S.C. § 101 (identifying the Department of Energy as an executive department) and 5 U.S.C. § 105 (defining “executive agency” as an executive department, government corporation, or independent establishment).

² Emily Tisch Sussman, *In Conversation: Secretary Jennifer Granholm and Emily Tisch Sussman*, Marie Claire, Oct. 7, 2021, available at: <https://www.marieclaire.com/politics/a37897483/senator-jennifer-granholm-emily-tisch-sussman-instagram/>.

³ *Id.*

⁴ Matthew Foldi, *Granholm Grants Interview To Dem Megadonor Donald Sussman’s Daughter*, Washington Free Beacon, Oct. 14, 2021, available at: <https://freebeacon.com/biden-administration/granholm-grants-interview-to-dem-megadonor-donald-sussmans-daughter/>.

“Granholm acknowledged during the highly political interview that Sussman was putting her in an awkward position in which she might be violating the Hatch Act, which prevents administration officials from engaging in political activity.

‘I’m subject to something called the Hatch Act, which means I can’t advocate for people to call their Members of Congress,’ Granholm said. ‘If I weren’t subject to the Hatch Act, I’m sure you know I would be, but I am so I can’t do that.’

Granholm nevertheless urged listeners to elect more progressive Democrats in future elections.

‘The arguments in D.C. 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,’ Granholm said. Granholm then urged listeners of the podcast, which has fewer than 4,000 views on Instagram, to run for office themselves to push for progressive policies.

‘Continue to elect people, maybe you, think about running for office, you know,’ Granholm said.’⁵

LEGAL ANALYSIS. The Hatch Act prohibits executive branch employees from using their official authority or influence for the purpose of affecting the outcome of an election.⁶ Specific activities that are prohibited include: “(1) Using his or her official title while participating in political activity; (2) Using his or her authority to coerce any person to participate in political activity; and (3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.”⁷ “Political activity” is “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”⁸

The Hatch Act further prohibits most federal employees from engaging in political activity while on duty.⁹ However, another law applies to federal employees whose (1) duties continue outside the normal duty hours and while away from the normal duty post; and (2) are appointed by the President and confirmed by the Senate. They may engage in political activities if (1) done in their personal capacity and (2) the costs associated with the political activity are

⁵ *Id.*

⁶ 5 U.S.C. § 7322 (defining an “employee” as including “any individual, other than the President and Vice President, employed or holding office in an Executive agency other than the Government Accountability Office”); 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302(a) (“an employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election”).

⁷ 5 C.F.R. § 734.302(b).

⁸ 5 CFR § 734.101.

⁹ 5 U.S.C. § 7324(b)

not paid with money derived from the United States Treasury.¹⁰ For instance, in the case of an Executive Branch Department Secretary, they cannot make political remarks while appearing in their official capacity.¹¹

In the present case, Secretary Granholm appears to have violated the Hatch Act in her October 6, 2021 interview. She was speaking in her official capacity, with the Department of Energy seal placed behind her, and recognized herself that the Hatch Act applied to her conduct during the interview. Yet she advocated for a political party and the election of candidates of that political party. Throughout the interview she stated that she was a Democrat, Democrats had a “bare majority” in Congress, urged viewers to contact Members of Congress about policy issues she supported, and to elect more Democrats to Congress. In fact she essentially acknowledged that her statements were a violation of the Hatch Act, yet attempted to excuse her remarks with ‘if I wasn’t subject to the Hatch Act this is what I would say.’ Moreover, the Department of Energy affirmed her statements were made in her official capacity, claiming that she shared how Americans “can participate in our democracy.” Granholm’s statements did more than that— she advocated for precisely **how** citizens should participate in our democracy and that was by supporting a particular political party and its policies.

The Hatch Act is an important law that separates the federal government from politics. Not only does it prohibit federal employees from engaging in political activity in their official capacity, but it maintains the citizen’s trust in an ethical government and prevents the abuse of taxpayer funds. By using her official position to advocate for a political party and candidates, Secretary Granholm appears to have violated the statute. The Office of Special Counsel should immediately investigate and take any appropriate disciplinary action against Secretary Granholm.

Sincerely,

/s/ Kendra Arnold

Kendra Arnold

Executive Director

Foundation for Accountability & Civic Trust

¹⁰ *Id.*

¹¹ The Office of Special Counsel found the Department of Health and Human Services Secretary violated the Hatch Act when she made political remarks during a speech delivered in her official capacity. The remarks advocated for the election of a gubernatorial candidate and reelection of the President. U.S. Office of Special Counsel, *Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-12-1989 (Kathleen G. Sebelius)*, Aug. 23, 2012, available at: [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf).