

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Brian Merlen,  
Stamford

File No. 2021-045

**FINDINGS & CONCLUSIONS**

Complainant Brian Merlen, of the City of Stamford, State of Connecticut, brought this complaint per Connecticut General Statutes § 9-7b, alleging various law violations pertaining to his attempts, as a petitioning candidate, to force a Democratic primary for election to the US of House of Representatives for the 4<sup>th</sup> Congressional District in 2020. Further, Complainant alleged various violations pertaining to the Democratic convention held for choosing the Democratic candidate for such congressional district; for which he was a delegate. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Complainant alleged various violations by Congressman Jim Himes and others, regarding his petitioning candidacy for Federal office. More specifically, Complainant alleged that Representative Himes and others promised a quid pro quo to him if he chose to withdraw from his attempted primary challenge.
2. Additionally, Complainant alleged that he, as a delegate, was prevented by the Democratic State Central Committee (“DSCC”) from participating in a convention for endorsing a candidate for the US House of Representatives from the 4th congressional district.
3. The Commission limits itself to consideration of potential violations of state election laws as codified within Title 9, General Statutes and the statutory limits of its jurisdiction provided by § 9-7a.<sup>1</sup>
4. The Commission must determine whether it has jurisdiction over alleged violations pertaining to influencing a delegate’s vote at a state party convention, which is convened in part to nominate an individual for Federal office.

Background

5. By way of background, the DSCC held a convention to nominate and endorse a candidate for the US House of Representatives from the 4th Congressional District on May 9, 2020.<sup>2</sup>

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<sup>1</sup> Any allegations pertaining to potential violations of Federal elections laws, or alleged violations of laws otherwise outside of Title 9, General Statutes, are not treated within this disposition.

<sup>2</sup> The Commission notes that while Representative Himes was the named Respondent in this complaint there is no indication or claim that he participated with the DSCC and its hosting of the convention on-line.

6. Due to the Covid 19 pandemic, that convention was virtual and delegates participated and voted on-line from 8 a.m. through 11 a.m. on May 9, 2020. As a result of that convention Jim Himes was endorsed and Complainant did not make the ballot. Therefore, a primary was unnecessary and Jim Himes advanced to the general election on November 3, 2020.

7. Pertaining to his allegation, Complainant asserted:

*Since I was not cooperative with CT DNC by dropping out, they sent me a non working convention link and I was unable to take part in the primary election. No one would answer the phone or call me back in another attempt to shut me out nor return emails during the Democratic Party's convention. They waited until the last minute to make the convention online only and I suspect this was an effort to contain my ability to impact the convention. ...*

8. The threshold question for the Commission is whether it has jurisdiction where the DSCC held a convention to elect national committee members, presidential electors and state central committee members; and, if necessary, for that convention to call for a primary election for member of the US House for the 4<sup>th</sup> District.<sup>3</sup>

9. General Statutes § 9-364a, provides:

***Any person who influences or attempts to influence by force or threat the vote, or by force, threat, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum, convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be guilty of a class C felony.***  
[Emphasis added.]

10. The Commission finds that the DSCC held a statewide convention on May 9, 2020 to, in part, determine a candidate for the 4<sup>th</sup> US Congressional District for the November 3, 2020 election.

11. The Commission concludes that it has jurisdiction to determine whether or not a delegate who allegedly was blocked from voting at a virtual convention had his speech or vote influenced by corrupt means in violation of General Statutes § 9-364a.

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<sup>3</sup> If the Commission determines this question in the affirmative it then can make a determination on the facts, after investigation, whether a violation of Title 9, General Statutes occurred as alleged by Respondent.

12. As detailed herein, the Complainant alleged that: *[The DSCC] waited until the last minute to make the convention online only and I suspect this was an effort to contain my ability to impact the convention.*
13. Upon investigation, the Commission finds that due to the Covid 19 pandemic, that convention was virtual, and therefore delegates voted and participated on-line. The Commission further finds that information regarding the online convention was available and published in advance of the event on the DSCC website.
14. More specifically, the Commission finds that prior to the convention the DSCC had posted the following:

*Voting for the statewide Democratic convention will take place from 8 AM to 11 AM on Saturday, May 9th, 2020. Credentialed delegates can cast ballots at [ctdems.simplyvoting.com](http://ctdems.simplyvoting.com).*

*Voter IDs and passwords will be sent via email on Friday, May 8th and again on Saturday, May 9th before 8 AM.*

*Voters must vote before 11 AM.*

*If you are a State Convention delegate, received credentials via email, and have difficulty voting online, call (860) 560-1775 between 8 AM and 11 AM on Saturday, May 9th.*
15. The Commission finds that the DSCC preparation and facilitation of its May 9, 2020 on-line convention, including its publishing of the time and date in advance; as well as the posting of instructions and information for delegates to participate and vote online in prior to the May 9<sup>th</sup> event, does not support Complainant's contention that the decision to hold a virtual convention was at "the last minute." Therefore, the Commission finds that Complainant's claim regarding the DSCC's decision to have a virtual convention was not supported by the facts after investigation.
16. The Commission's turns to Complainant's claim that the DSCC hindered his ability to login in an effort to "contain his ability to impact the convention."
17. Upon investigation, the Commission finds that a witness to Respondent's efforts to login to the convention indicated that Respondent's original location and the weather on May 9, 2020 may have contributed to his difficulties logging in.



18. More specifically, the witness indicated that Complainant moved his equipment from outside to inside a public parking garage to get better connectivity; after which Respondent was able to login.
19. Further, the Commission finds that counsel for the DSCC was made aware of Respondent's difficulties logging in to the convention but did not receive a formal complaint from him regarding this issue. He also remembered May 9, 2020 as one with "weather and clouds," which resulted in the DSCC trouble-shooting for individuals to access the convention. He believes that likewise this could have contributed to Complainant's difficulties in logging in.
20. After investigation, the Commission finds that the facts do not support the finding that corrupt or other means were used to influence the speech or vote of Complainant as a delegate to the May 9, 2020 DSCC statewide convention as alleged.
21. The Commission therefore concludes that, based on these narrow and specific circumstances, Complainant's allegation pertaining a violation of General Statutes § 9-364a were unsubstantiated. Respondent's allegation is therefore dismissed.
22. The Commission determines that this complaint should be dismissed as the conclusion that an election law violation occurred was not supported by the evidence after investigation.

### ORDER

The following Order is recommended on the basis of the aforementioned findings:

That this matter is dismissed.

Adopted this 6<sup>th</sup> day of October, 2021 at Hartford, Connecticut.

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Stephen T. Penny, Chair  
By Order of the Commission

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