

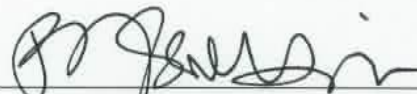
Written Testimony of B. Jessie Hill, J.D., Professor of Law and Associate Dean for Faculty Development and Research, Case Western Reserve University School of Law*

I am writing to express my grave concern over the potential appointment of Rick Hodges to the position of Director of Health. In my opinion, this appointment would be illegal, and it would endanger the finality and validity of future decisions made by the Director.

The position of Director of Health carries with it numerous statutorily mandated responsibilities pertaining to medicine and public health. Indeed, as the Tenth District Court of Appeals has recognized, the Director of Health is charged with exercising discretion "based on the scientific expertise required of his position." *State v. Kimpton*, No. 98AP-1048, 1999 WL 333310, at *4 (May 13, 1999). For this reason, Revised Code § 121.10 states that the Director of Health must be "[a] physician holding the degree of doctor of medicine from a medical college approved by the state medical board who, before assuming his duties, has been licensed to practice medicine in the state and who has had experience in pursuing some phase of medical practice" or "[a]n individual who has had significant experience in the public health profession." Ohio Rev. Code Ann. § 121.10 (West). It appears beyond cavil that Mr. Hodges meets neither requirement.

Because Mr. Hodges's appointment would clearly violate R.C. § 121.10, any decision he makes in his official capacity could be challenged by any party who is aggrieved by that decision. Because Mr. Hodges does not meet the requirements of R.C. § 121.10, his appointment is void *ab initio*, and he therefore lacks jurisdiction to execute any responsibilities delegated to him by statute. Thus, any actions he might take in his official capacity could be challenged by a disappointed party as being taken by a party without jurisdiction to do so. *See, e.g. National Labor Relations Board v. Noel Canning*, 134 S. Ct. 2550 (2014) (upholding a challenge brought by the losing party in a labor dispute on the grounds that three of the five members of the NLRB were invalid recess appointments); *cf. Patton v. Diemer*, 35 Ohio St. 3d 68, 70, 518 N.E.2d 941, 944 (1988) ("[A] judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*"). The appointment of Mr. Hodges could therefore draw into question the finality and legal validity of future actions taken by the Director of Health in his official capacity.

For these reasons, Mr. Hodges should not be confirmed to the position of Director of Health.



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* This testimony is provided in my personal capacity. It is not endorsed by Case Western Reserve University or CWRU School of Law.