IN THE SUPREME COURT OF VIRGINIA

HELEN MARIE TAYLOR, *et al.*,	)	
	)	
Appellants,	)	
	)	
v.	)	Record No. 210113
	)	
RALPH S. NORTHAM, *et al.*,	)	
	)	
Appellees.	)	
	)	

RESPONSE TO APPELLANTS' MOTION FOR CLARIFICATION

More than 15 months ago, the Governor announced that he would exercise his authority as the Commonwealth's chief executive to relocate the statue of Robert E. Lee from its place of prominence on Richmond's Monument Avenue. Since then, the General Assembly has concurred, and this Court has agreed that the Commonwealth had full authority to act all along. In doing so, this Court did more than just affirm the circuit court's judgment on the merits. The Court stated plainly that the prior injunction pending appeal was dissolved "immediately," just as the Commonwealth requested in its brief. Opinion at 26, *Taylor v. Northam*, Record No. 210113 (Sept. 2, 2021) (Op.). Now, more than five full days after the Court issued its opinion,

Appellants ask for "clarification" about the meaning of this Court's opinion. Because the meaning of the Court's opinion is clear, no clarification is needed, and Appellants' motion should be denied.

1. Last Thursday, this Court issued a unanimous decision affirming the circuit court's judgment in favor of Appellees. The Court specifically held that "all of [Appellants'] claims are without merit." Op. at 26. In its opinion, the Court also addressed the injunction pending appeal that had been imposed by the circuit court. The final sentence of the Court's opinion reads, in full: "Accordingly, we will affirm the judgment of the circuit court and *immediately* dissolve all injunctions imposed by the circuit court." Op. at 26 (emphasis added).

2. Following the Court's decision—and no longer bound by an injunction—Appellees proceeded with necessary preparations to remove the statue and protect public safety. Given the size and scale of the monument and its location in downtown Richmond, removing the statue is a difficult and complex undertaking. The Commonwealth has undertaken significant planning, cost, and expense to remove the statue safely, and operations have already begun for the statue to be removed tomorrow, Wednesday, September 7, 2021.

3. Appellants waited until today—five days after this Court issued its opinion—to file a "Motion for Clarification" about the meaning of the Court's order. Appellants' late-breaking request to further delay the Commonwealth's lawful exercise of its political authority should be rejected.

The plain language of the Court's opinion makes clear that the previous injunction was dissolved "immediately" upon the issuance of that decision. The Court did not state that the injunction would be dissolved at some indefinite point in the future once a mandate had been issued or the period for any rehearing or further appeal had expired. Instead, the Court stated clearly that the injunction was "immediately" no longer in effect. Op. at 26. And the Court was well within its authority in doing so, as Virginia Code § 8.01-631(D) authorizes "the appellate court having jurisdiction over the appeal" to "modif[y] or vacate[]" an injunction entered by the circuit court in this exact situation. Va. Code Ann. § 8.01-631 (describing "an injunction" granted by "the trial court" "during the pendency of the appeal"). That authority is separate and apart from this Court's authority to affirm lower court decisions. See Va. Code Ann. § 8.01-681.

4. Appellants' interpretation to the contrary would read a critical word out of this Court's opinion entirely. For the word "immediately" to have any meaning, the prior injunction pending appeal had to be dissolved upon issuance of the Court's opinion, not "when the clerk of this Court certifies the mandate to the circuit court," Mot. at 1, as Appellants would have it. Accord *Black's Law Dictionary* (11th ed. 2019) (defining "immediate" as "[o]ccurring without delay; instant"). In effect, Appellants ask this Court to hold that the opinion does not actually mean what it says. But "[a] court of record speaks only through its written orders," *Hill v. Hill*, 227 Va. 569, 578 (1984), and the Court's opinion plainly stated that the dissolution of the injunction took effect "immediately." Op. at 26.

5. Not only does Appellants' interpretation lack any support in the text of the opinion, it is also inconsistent with these proceedings. In their brief, Appellees anticipated concerns about the timing of the statue's removal once the Court issued its decision. See Br. of Appellees at 72–73 (Apr. 19, 2021). Appellees noted that, if they were to prevail, questions might arise about whether the injunction pending appeal would terminate "immediately upon issuance of this Court's decision or

whether the injunction will remain in effect during the month-long period plaintiffs would have to seek rehearing, the months-long period plaintiffs would then have to seek review by the U.S. Supreme Court, and the even longer period that Court would take to rule on any such request." *Id.* at 72 (citations omitted). In light of that possibility, Appellees specifically asked this Court to "take care to forestall any such questions" by both affirming the circuit court's judgment on the merits and also "mak[ing] it unambiguously clear that the . . . injunction [pending appeal] is *immediately dissolved* and that the Commonwealth may, finally, remove the Lee statue from its current location[.]" *Id.* at 72–73 (emphasis added).

The Court did just that—and used the exact language the Commonwealth requested—by holding that it "will affirm the judgment of the circuit court and *immediately dissolve* all injunctions imposed by the circuit court." Op. at 26 (emphasis added). Under the plain language of the Court's order, the injunction pending appeal terminated at the moment the Court handed down its decision last Thursday. The "clarification" Appellants request is thus both wrong and unnecessary.

6. Appellants' reliance on Rules 5:36 and 5:37 to argue otherwise is misplaced. See Mot. at 2. To be sure, once "there can be no further proceedings" before this Court, Rule 5:36 provides that the clerk "must forward its mandate promptly to the clerk of the circuit court." Va. Sup. Ct. R. 5:36(a). And, once a party files written notice of its intent to apply for rehearing, Rule 5:37 provides that the clerk "must withhold certification of the mandate" until any such petition has been addressed. Va. Sup. Ct. R. 5:37(b). But when and how the clerk transmits the Court's final judgment to a lower court has nothing to do with its separate authority to modify or vacate injunctions pending appeal. See Va. Code Ann. § 8.01-631(D); see also *Ferrara v. Commonwealth*, 299 Va. 438, 447 (2021) (noting courts' authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases").

Nor do Appellants cite any authority for the proposition that *no* order of the Supreme Court may take effect until a mandate has issued. That may be true in some circumstances, for example, where this Court reverses a permanent injunction, and the circuit court's *final judgment* may remain in place until this Court's mandate has been issued. Even if

that were clear under the Rules, however, it is not the case here: Appellees prevailed below, and the circuit court's final judgment was in their favor. This Court issues orders of all types on a regular basis that take effect on their own terms—absent the issuance of a mandate—including the Court's prior order in this case denying the Commonwealth's earlier motion to vacate the injunction pending appeal before the petition for appeal had been filed. See Order (Dec. 18, 2020) (heard before "All the Justices" and signed by the Chief Justice).

Appellants' cursory attempt to invoke concerns about "due process and equal protection" conflates the dissolution of the injunction pending appeal with the denial of their rehearing petition. Mot. at 2. Absent an injunction, Appellants are still free to file a petition for rehearing (though Appellees are not aware of any good-faith basis for doing so). At that point, the Court would of course be free to consider any petition in the ordinary course, and to the extent the Court decides its prior decision was in error, Appellants could seek potential compensatory and/or injunctive relief. But Appellants' suggestion that a petition for rehearing necessarily *requires* an injunction for the duration of those proceedings finds no support in this Court's practices or procedures.

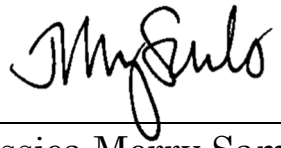
CONCLUSION

This Court has already recognized that the "continued display of the Lee Monument communicates principles that many believe to be inconsistent with the values the Commonwealth currently wishes to express." Op. at 22. As a result, every single day that the statue remains standing inflicts harm across the Commonwealth—both on an individual level, and more broadly by undermining our system of democratic governance.

Because the Court's decision dissolving the injunction "immediately" is unambiguous in its meaning, no further clarification is necessary. Appellants' motion should therefore be denied. In the alternative, to the extent the motion is granted, any clarification should state that the injunction pending appeal was dissolved "immediately" upon the issuance of the Court's decision as stated in its opinion.

Respectfully submitted,

RALPH S. NORTHAM, *et al.*
Defendants-Appellees

By: 

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September 7, 2021

CERTIFICATE OF SERVICE

I certify that on September 7, 2021, a copy of the foregoing has been filed electronically with the Court and mailed and emailed to counsel listed below:

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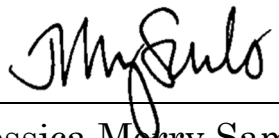

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