

No. 18-1134

In the
Supreme Court of the United States

VIRGINIA HOUSE OF DELEGATES & M. KIRKLAND COX,
SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES,
APPELLANTS,

v.

GOLDEN BETHUNE-HILL, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF VIRGINIA*

STATE APPELLEES' MOTION TO DISMISS

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The named defendants in the court below—appellees Virginia State Board of Elections, Virginia Department of Elections, James B. Alcorn, Christopher E. Piper, Clara Belle Wheeler, and Singleton B. McAllister (state officials)—move to dismiss the appeal filed by appellants-intervenors Virginia House of Delegates and M. Kirkland Cox because the appellants-intervenors lack standing to appeal.¹

◆

ARGUMENT

For the reasons explained in our motion to dismiss, merits-stage brief, and at oral argument in *Virginia House of Delegates v. Bethune-Hill* (No. 18-281), the appellants-intervenors lack standing to initiate an appeal to this Court. To be sure, the time for filing a notice of appeal from the district court’s final order has not yet run and will not expire until after the due date for this motion.² But the state officials have not filed—

¹ Under this Court’s Rule 18.2, the state officials are still “parties” and thus “entitled to file documents in this Court.” “But status as a ‘party’ does not equate with status as an appellant,” and the Court has already rejected the idea that that Rule permits a party who lacks standing to “piggyback” on the standing that would have been possessed by a party who elected not to appeal. See *Diamond v. Charles*, 476 U.S. 54, 63–64 (1986) (discussing then-Rule 10.4).

² The district court’s final order was entered on February 14, 2019. J.S. App. 40. Section 2101(b) of Title 28, United States Code, provides that a notice of appeal from such an order must be filed within 60 days, which would be April 15, 2019. This Court’s Rule 18.6 states that a motion to dismiss must be filed “[w]ithin 30 days after the case is placed on this Court’s docket,” which happened here on March 1, 2019.

and will not be filing—a notice of appeal in this case. Accordingly, this Court lacks jurisdiction and the appeal should be dismissed.



CONCLUSION

The appeal should be dismissed for lack of jurisdiction.

Respectfully submitted.

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