IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLAUDETTE CHAVEZ-HANKINS,
PAUL PACHECO, and MIGUEL VEGA,

Plaintiffs,

vs. No. 1:12-cv-00140

DIANNA J. DURAN, in her official Capacity as New Mexico Secretary of State and SUSANA MARTINEZ, in her Official capacity as Governor of New Mexico,

Defendants,

and

TIMOTHY Z. JENNINGS, in his official capacity as President Pro-Tempore of the New Mexico Senate, and BEN LUJAN, SR., in his official capacity as Speaker of the New Mexico House of Representatives, *et al.*,

Intervenors

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, OR IN THE ALTERNATIVE TO STAY

COME NOW Intervenors Timothy Z. Jennings, in his official capacity as President Pro-Tempore of the New Mexico Senate, and Ben Lujan, Sr., in his official capacity as Speaker of the New Mexico House of Representatives, by and through their attorneys, Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A., and Hinkle, Hensley, Shanor & Martin, LLP, and pursuant to Federal Rule of Civil Procedure 12(b)(1), and *Growe v. Emison*, 507 U.S. 25 (1993), move to dismiss, or in the alternative, to stay this matter.

I. INTRODUCTION

Plaintiffs filed this action on the heels of the New Mexico Supreme Court's decision in *Maestas & Egolf et al. v. Hon. James A. Hall*, N.M. Sup. Ct. Case No. 33, 386, on February 10, 2012. As detailed in Plaintiffs' complaint, redistricting necessary to satisfy the one-person-one-vote requirement of the United States and New Mexico Constitutions is underway in New Mexico's courts after the Governor vetoed the plan adopted by the Legislature. On February 10, 2012, the New Mexico Supreme Court rejected the redistricting plan for the New Mexico House of Representatives proposed by Governor Susana Martinez and Lieutenant Governor John Sanchez, and adopted by Judge Hall. The Supreme Court then remanded the matter to the district court, with specific instructions designed to ensure adoption of an acceptable new redistricting plan within a time that will allow the primaries scheduled for June to go forward.

Unsatisfied with the New Mexico Supreme Court's decision, the Republican Plaintiffs now effectively appeal to, and seek relief from, this Court, through this friendly lawsuit against the Governor and Secretary of State. Because redistricting is the responsibility of the state of New Mexico, however, this Court cannot interfere with the ongoing redistricting process, which is on track for timely completion. The Court must therefore stay this matter pending the outcome of the ongoing state-court redistricting effort under the abstention principle recognized in *Growe v. Emison*, 507 U.S. 25 (1993).

Moreover, this Court lacks jurisdiction to review the New Mexico Supreme Court's recent decision. There simply is no avenue of appeal to a federal district court from a decision of the New Mexico Supreme Court. Instead, the *Rooker-Feldman* doctrine precludes this Court from considering issues decided by the New Mexico Supreme Court, and any claims inextricably intertwined with those issues. This Court must accordingly dismiss this matter for lack of subject matter jurisdiction.

II. THE COURT MUST STAY THIS MATTER PENDING COMPLETION OF THE PARALLEL STATE COURT PROCEEDINGS.

The state of New Mexico is currently engaged in an effort to draw new districts for the New Mexico House of Representatives. That effort is, following the Governor's veto of the Legislature's redistricting plan, underway in New Mexico's courts. The New Mexico Supreme Court has recently decided key issues in the case, and has remanded the matter to the district court to adopt a new plan. This Court must decline to take any action in this proceeding during the pending state proceedings, in deference to the state court's redistricting efforts.

In *Growe v. Emison*, 507 U.S. 25 (1993), the United States Supreme Court expressed a policy of federal-court deference to a state's ongoing efforts to redistrict, and to parallel state-court proceedings in which the court has undertaken, or is about to undertake, a redistricting effort. *Growe* concerned the need to redraw congressional and legislative districts in Minnesota following the release of census data. *Id.* at 27. The plaintiffs filed an action in state court, asking the state court to redraw districts in the event the legislature did not do so. *Id.* A second group of plaintiffs subsequently filed a similar action in federal court. *Id.* at 28. While those actions were pending, the Minnesota legislature adopted a legislative redistricting plan. *Id.* at 28. When the legislative plan was delayed due to technical issues with the plan, the state court issued an order containing a preliminary legislative redistricting plan, which it planned to put into effect if the legislature did not act by a certain date. *Id.* at 29.

Before the state court issued its final legislative redistricting plan, however, the federal court stayed all proceedings in the state court, and enjoined the parties to the state court action from attempting to enforce or implement a redistricting plan. *Id.* at 30. That order was later vacated by the Supreme Court. *Id.*

Soon thereafter, redistricting plans were adopted by the legislature, but vetoed by the governor. *Id.* Following the governor's action, the state court continued to work on districting plans, issuing a final legislative plan, and holding hearings concerning a congressional plan. *Id.* at 30. But the state court was not ultimately able to implement its districting plans, due to more action by the federal court—the federal court issued an order adopting its own districting plan, and permanently enjoining implementation of other plans. *Id.* at 31.

Concluding that the federal court improperly interfered with the state's redistricting efforts, the Supreme Court observed that "the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Id.* at 34. According to the Court, "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court. Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Id.* (internal citation omitted).

Applying these principles, the Court held that the district court erred in not deferring to the state court's efforts to redraw districts. *Id.* at 34-37. In doing so, the Court noted that the federal court should have given the legislative plan adopted by the state court full faith and credit, and observed that it was clear that the state court would adopt a congressional plan in time for the upcoming election in the event the state legislature was unable to do so. *Id.* at 35-37. Because redistricting was being accomplished by the state there was, quite simply, no reason for the federal court to intervene. *See id.*

This court applied *Growe* in *Vigil v. Lujan*, 191 F.Supp.2d 1273 (D.N.M. 2001). *Vigil*, like *Growe*, concerned a failed redistricting attempt by the state. *Vigil* was pending at the same

time as a related state-court proceeding, in which the state court had been asked to redistrict in light of a failure of the Legislature and Governor to reach agreement on redistricting plans. *See id.* at 1273. The state court had already taken action to resolve the redistricting dispute, and had set deadlines giving the Legislature and the Governor a reasonable period of time in which to perform redistricting. The court in *Vigil* applied *Growe*, and decided to defer consideration of the matter because "the record [did] not appear to support a conclusion that the state legislature or judiciary is either unwilling or unable to adopt a redistricting plan in a timely manner." *Id.* at 1274-75.

Here, Plaintiffs ask the Court to redraw district lines so that elections will not proceed under the currently malapportioned districts. *See* Complaint, at 20, ¶¶ A-C. Plaintiffs consequently ask the Court to do exactly what currently in progress in the New Mexico courts. Yet, as in *Growe* and *Vigil*, it is clear that redistricting is being accomplished by the state in a timely matter. The New Mexico Supreme Court has just issued a decision, and there is no reason to suspect that the proceedings on remand will not be completed in a timely fashion. Quite the contrary, Judge Hall has set a strict briefing schedule, and has indicated that he will produce a final map on or before February 27, 2012. *See* Order Establishing Deadlines on Remand from the New Mexico Supreme Court (February 13, 2012), attached hereto as Exhibit A. Furthermore, the New Mexico Supreme Court has recently ordered simultaneous briefing on February 29, 2012 on any petitions for writ, with oral argument to be held on March 5, 2012.

Notably absent from Plaintiffs' Complaint is any allegation that redistricting will not be timely accomplished. Although Plaintiffs generally refer to time constraints and election deadlines, *see* Complaint, ¶ 64, they do not allege that the redistricting process underway in New Mexico's courts will not respect those time constraints and deadlines. Plaintiffs simply prefer to

have this Court redraw district lines following what they consider to be an unfavorable decision by the New Mexico Supreme Court. But redistricting is primarily the responsibility of the state of New Mexico. *See Growe*, 507 U.S. at 34 ("reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court"); *see also Perry v. Perez*, 181 L.Ed.2d 900, 905 (2012) ("Redistricting is primarily the duty and responsibility of the State.") (internal citation and quotation marks omitted).

Growe precludes Plaintiffs from asking this Court to intervene and interfere with the state's timely redistricting efforts. *See Growe*, 507 U.S. at 34. Indeed, federal-court interference is particularly inappropriate in light of the obvious effort by the New Mexico Supreme Court to outline redistricting guidelines to be applied by New Mexico's courts. *See* Supreme Court decision, attached hereto as Exhibit B, at 6-13 (outlining legal principles and guidelines to be applied by New Mexico courts). Accordingly, the Court must stay this action pending the conclusion of the state of New Mexico's timely redistricting process.[1]

III. THIS MATTER MUST BE DISMISSED UNDER THE *ROOKER-FELDMAN* DOCTRINE.

Plaintiffs' Complaint overtly invites this Court to review the New Mexico Supreme Court's recent decision. But that effort ignores the dual system of federal and state government. *Alden v. Maine*, 527 U.S. 706, 748 (1999) (observing that the branches of the federal government

[1] Once the proceedings in state court have concluded, because Plaintiffs are in privity with Republican parties to the state court proceedings, they will be barred from relitigating in this Court matters decided in state court. *See Taylor v. Sturgell*, 553 U.S. 880, 894-95 (2008) (Preclusion may apply to non-parties in some circumstances, including where the non-party's interests were represented in prior litigation, and where parties to an earlier action seek to relitigate in a separate action by way of a proxy); *Larsen v. Farmington Municipal Schools*, 2010-NMCA-094, ¶9, 148 N.M. 926, 929, 242 P.3d 493, 496 ("For a claim to be barred by collateral estoppel, (1) the party against whom collateral estoppel is asserted must have been a party in or in privity with a party to the original action; and (2) the two cases must have concerned the same ultimate issue or fact, which was (a) actually litigated, and (b) necessarily determined in the first suit.") (internal quotation marks omitted).

must treat the states "in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation."); *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970) ("[F]rom the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review in [the Supreme] Court of the federal questions raised in either system.").

The *Rooker-Feldman* doctrine "safeguards our dual system of government from federal judicial erosion." *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000). The doctrine is derived from two cases recognizing that district courts, having only original jurisdiction, lack subject matter jurisdiction to review decisions of state courts. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.") (internal citation omitted); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483, 485 (1983) ("We concur in the district court's finding that it is without subject matter jurisdiction to review a final order of the State Supreme Court denying a particular application for admission to the state bar. This rule applies even though, as here, the challenge is anchored to alleged deprivations of federally protected due process and equal protection rights.") (internal brackets and emphasis omitted); *see also Atlantic Coast Line*, 398 U.S. at 286 ("While the lower federal courts were given certain powers in the [Judiciary Act of 1789], they were not given any power to review directly cases from state courts, and they have not

been given such powers since that time."); 28 U.S.C. § 1257(a) (United States Supreme Court alone has jurisdiction to review decisions of the states' highest courts).

Since *Rooker* and *Feldman*, the United States Supreme Court has explained the scope of *Rooker-Feldman* abstention: the doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (3d. Cir. 2005).

To be barred under *Rooker-Feldman*, the claims asserted in federal court need not, however, be identical to those raised in state court. "[T]he Rooker-Feldman doctrine precludes lower federal courts from effectively exercising appellate jurisdiction over claims actually decided by a state court and claims inextricably intertwined with a prior state-court judgment." *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182 (10th Cir. 2010) (internal quotation marks omitted); *Feldman*, 460 U.S. at 315 n.16 ("If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the district court is in essence being called upon to review the state-court decision. This the district court may not do.").

"The 'inextricably intertwined' prong of the doctrine bars a claim that was not actually decided by the state court but where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (internal quotation marks omitted); *see also Kenman Engineering v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002) (overruled in part on other grounds by *Lance v. Dennis*, 509 U.S. 459, 465 (2006) ("[W]e approach the [inextricably-

intertwined] question by asking whether the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress. If it did, Rooker-Feldman deprives the federal court of jurisdiction.").

"Under either the 'actually decided' or the 'inextricably intertwined' prong, the principle is the same: '[a] party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Brown & Root*, 211 F.3d at 198 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)).

This case falls squarely within the scope of *Rooker-Feldman*. In particular, it has been "brought by state-court losers complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of [that] judgment[]." *See Exxon Mobil*, 544 U.S. at 284.

Although the named Plaintiffs in this action are not named parties to the ongoing state proceedings, they are represented by the same attorneys who represent Republican parties to the state proceedings. *See* State Court Docket, attached hereto as Exhibit C (listing David A. Garcia. Patrick J. Rogers, and Paul M. Kienzle as attorneys of record for Republican parties[2]). And in reality, Plaintiffs are merely new representatives chosen to pursue the interests of the Republican parties to the state proceedings. In fact, Mr. Rogers and Mr. Garcia, acting on behalf of their state-court clients, asked the New Mexico Supreme Court to uphold the adoption of Governor Martinez's plan. *See* James Plaintiffs' Opening Brief (NMSC), attached hereto as Exhibit D, at 33-35; Sena & Legislative Plaintiffs' Opening Brief (NMSC), attached hereto as Exhibit E, at 13. Mr. Garcia's clients even joined in Governor Martinez's briefing to

[2] Mr. Rogers and Mr. Kienzle represent in the ongoing state action Jonathan Sena, Don Bratton, and Caroll Leavell. Mr. Kienzle also represents Gay Kernan, Mr. Garcia represents Day Devon, Marge Teague, Monica Youngblood, Judy McKinney, John Ryan, and James Conrad.

the New Mexico Supreme Court. *See* Governor Susana Martinez's Brief in Response to Maestas/Egolf Petitioners' Brief in Chief, attached hereto as Exhibit F (joined by James Plaintiffs).

Moreover, the position Plaintiffs take in this action is the same one announced by Governor Martinez following issuance of the Supreme Court's decision. *Compare* Susana Martinez's Facebook Post (February 11, 2012), attached hereto as Exhibit G ("Unfortunately, 4 Democratic justices on the NM Supreme Court reversed the State House redistricting decision made by a Democratic judge they previously appointed. Apparently, the trial judge who previously ruled in our favor was not partisan enough, as the Democratic justices are now asking him to draw a new map that creates more Democratic districts to guarantee their majority for the next decade. . . . It's a stunningly partisan decision that orders a judge to draw a redistricting map that puts political considerations ahead of the equal protection rights of New Mexicans."), *with, e.g.* Complaint, ¶¶ 45, 54. Governor Martinez herself even suggested an effort to seek federal review of the New Mexico Supreme Court's decision. See Exhibit G ("It's a disappointing decision, but I remain confident that the final redistricting map will be a fair one, even if the federal court is forced to step in to protect the constitutional rights of New Mexicans.").

The United States Supreme Court has left open the possibility that there could be circumstances in which *Rooker-Feldman* may apply against a party not named in the state-court proceedings. *See Lance v. Dennis*, 546 U.S. 459, 466 n.2 (2006) ("In holding that *Rooker-Feldman* does not bar the plaintiffs here from proceeding, we need not address whether there are *any* circumstances, however limited, in which *Rooker-Feldman* may be applied against a party not named in an earlier state proceeding -- *e.g.*, where an estate takes a *de facto* appeal in a

district court of an earlier state decision involving the decedent."). The circumstances at issue here are a special set requiring application of the doctrine to parties not named in the state proceeding. The Republican parties to the state-court proceedings have openly expressed an intent to "appeal" to this Court, and cannot attempt to do so by naming new parties to represent their interests. The Republican parties to the state-court proceedings, frankly, had a wide selection of possible plaintiffs from which to choose. To decline to apply *Rooker-Feldman* based on the fact that the representatives selected to be plaintiffs in this action are not named parties to the state proceedings would ignore the realities of this litigation in favor of an artificial distinction.

If *Rooker-Feldman* can be avoided merely by naming as a plaintiff another Republican dissatisfied with the New Mexico Supreme Court's decision, the purposes underlying the doctrine will be entirely ignored—the parties to the state court proceedings could have any number of chances to improperly seek appellate review in this Court. Mindful of the Supreme Court's caution in *Lance* concerning liberal application of principles of preclusion to the *Rooker-Feldman* doctrine, Intervenors observe that the Supreme Court has recognized that the policy of giving parties their own day in court does not allow parties to select new individuals to do what they cannot do. *See Taylor v. Sturgell*, 553 U.S. 880, 894-95 (2008). Thus, a non-party who controlled the litigation, or who was adequately represented by a party will be bound by a judgment. *See id.* And of particular significance, "a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy." *Id.* at 895. This is in effect what Plaintiffs are doing here. The Republican parties to the state-court proceeding could not seek appellate review of the New Mexico Supreme Court's decision in this Court, and presumably aware that this Court lacks jurisdiction to review the New Mexico Supreme Court's decision, have selected

new plaintiffs to pursue this matter. Plaintiffs are in actuality, however, the state-court losers[3], and should be treated as such for purposes of the *Rooker-Feldman* doctrine.

Moreover, Plaintiffs are complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of [that] judgment[].” *See Exxon Mobil*, 544 U.S. at 284. Indeed, Plaintiffs’ complaint is replete with allegations concerning alleged errors made by the New Mexico Supreme Court. *See, e.g.* Complaint, ¶ 41 (“The Supreme Court Order simply got it wrong factually, and as a matter of law and proper procedure.”); *id.* ¶ 45 (“The [Supreme Court] Order requires the District Court to violate the one-person one-vote principle.”); *id.* ¶ 46 (criticizing one of the Supreme Court’s remand instructions as vague); *id.* ¶ 52 (“The Supreme Court’s Order mandating a decrease in Republican districts, which relies upon the erroneous performance figures, is another error that itself creates a significant and improper partisan bias.”); ¶ 54 (“The Supreme Court in its Order has directed the District Court to come up with a plan more favorable to Democrats.”); *id.* ¶ 55 (“Not only did the New Mexico Supreme Court order Judge Hall to minimize municipality splits at the expense of what should be the paramount goal of population equality, it also unconstitutionally instructed him to relegate to secondary importance the one person, one vote mandate in favor of the majority’s view of ‘partisan neutrality.’”); *id.* ¶ 62 (remand “instructions violate the United States and New Mexico Constitutions and misapply the Voting Rights Act”); *id.* ¶ 66 (“The Supreme Court has given the District Court instructions,

[3] In the event Plaintiffs argue that the *Rooker-Feldman* doctrine should not apply because they have not yet “lost” given the Supreme Court’s remand to the New Mexico District Court for further proceedings, as detailed above, this matter must be stayed during the pendency of the state-court proceedings. If the Court concludes that this matter is not yet sufficiently final for the *Rooker-Feldman* doctrine to apply, it should stay this matter, and following the conclusion of proceedings in state court, apply the *Rooker-Feldman* doctrine if Plaintiffs attempt to further pursue this matter.

erroneous as a matter of law, which cannot fail to achieve a desired partisan result, and violate the one person, one vote principle.").

Plaintiffs even specifically ask this Court to "[d]eclare that the New Mexico Supreme Court's February 1[0], 2012 Order violates the Constitutional requirements for redistricting of state legislative bodies by a court, as would any redistricting plan adopted in accordance with the Order," *id.* at 20, ¶ E. That claim is plainly barred by *Rooker-Feldman*—Plaintiffs claim the Supreme Court's decision has caused them injury, for which they seek redress in this Court. *See Kenman*, 314 F.3d at 476 (claims are barred by *Rooker-Feldman* if plaintiff alleges that the state-court judgment caused the injury for which the federal plaintiff seeks redress).

Furthermore, while Plaintiffs have generally asserted a one-person-one-vote claim based on the current state of malapportioned districts, that claim is dependent on the notion that the New Mexico Supreme Court wrongly decided the issues before it. *See Brown & Root,* 211 F.3d at 198 ("The 'inextricably intertwined' prong of the doctrine bars a claim that was not actually decided by the state court but where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it."). Plaintiffs cannot circumvent *Rooker-Feldman* to effectively seek review of a state-court decision by simply pleading a federal constitutional claim, especially when that federal constitutional issue was considered in the state court. *See Feldman*, 460 U.S. at 485 (district court lacks jurisdiction to review state supreme court's decision denying bar application, even where "the challenge is anchored to alleged deprivations of federally protected due process and equal protection rights").

This Court denied a similar attempt by disappointed parties to a state-court redistricting proceeding in *Vigil. v. Lujan & Padilla v. Johnson,* Nos. CV-01-1077 and CV 01-1081. *See* February 22, 2002 Order, attached hereto as Exhibit H. In *Vigil*, as here, redistricting following

the decennial census was performed in New Mexico state court. The New Mexico District Court adopted a redistricting plan for the New Mexico House of Representatives. Parties to the state-court proceeding who were disappointed by the plan adopted by the state court, filed motions in this Court, asking the Court to declare the plan adopted by the state court unconstitutional due to an alleged violation of the one-person-one-vote principle. *See id.* at 4. The movants were concerned in particular about the state court's determination that it was not bound by a standard imposed on federal court-ordered plans. *See id.* at 4 n.3. Seeking review of that determination, the movants asked this Court to adopt a "lawful" redistricting plan. *Id.* at 4.

Recognizing that the movants were impermissibly seeking federal-district-court review of a state-court decision, however, this Court soundly dismissed the disappointed parties' challenge to the state-court judgment under the *Rooker-Feldman* doctrine. *See id.* at 5-7. The Court noted that the doctrine prohibits "a party losing in state court . . . from seeking what in substance would be appellate review of a state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Id.* at 6 (quoting *Johnson v. DeGandy*, 512 U.S. 997, 1005-1006). Then, applying this principle, the Court held: "the Rooker-Feldman doctrine deprives us of jurisdiction because the motions before us undoubtedly constitute collateral attacks on the state court's judgment and are 'inextricably intertwined' with it." *Id.*

This action is virtually indistinguishable from the similar effort by the disappointed movants in *Vigil* during the last round of redistricting for the New Mexico House of Representatives. As in *Vigil*, after losing in state court, the Republicans ask this Court to do what it cannot do—declare the state court's decision unconstitutional. Furthermore, as in *Vigil*, Plaintiffs' challenge is to the state-court's determination of applicable redistricting standards.

See, e.g. Complaint, ¶¶ 51, 55-56, 62. This type of collateral attack did not work in 2002, and does not work in 2012. This Court lacks subject matter jurisdiction to review the New Mexico Supreme Court's decision, and therefore, must dismiss this matter under the *Rooker-Feldman* doctrine.

IV. CONCLUSION

For the foregoing reasons, the Court should dismiss this matter under the *Rooker-Feldman* doctrine, or at a minimum, stay this matter in deference to the ongoing state redistricting proceedings.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2012, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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