

STATE OF WISCONSIN SUPREME COURT

**In the Matter of the Rehabilitation of:
SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION**

**Appeal of the United States of America:
Appeal No. 2011AP987**

**MOTION FOR WAIVER OF THE FEE
FOR FILING A PETITION FOR REVIEW**

The United States, the appellant in the above-captioned appeal, through its counsel Richard Humphrey and Anthony T. Sheehan, moves for the waiver of the provision in Wis. Stat. § 809.25(2)(a)(1), requiring the payment to the Clerk of this Court of a \$195 fee in connection with the filing of a Petition for Review. The reasons for this motion are as follows.

1. This is in connection with a Petition for Review by the United States of America seeking review of the final judgment of the Court of Appeals, District IV, dismissing the United States' appeal for lack of jurisdiction. Wis. Stat. § 809.25(2)(a)(1) requires the payment to the Clerk of this Court of a \$195 fee in connection with the filing of a Petition for Review.

2. Under the Supremacy Clause of the Constitution, U.S. Const. Art. VI, cl. 2, the operations of the federal government are exempt from state regulation. *See Hancock v. Train*, 426 U.S. 167, 178–80 (1976). In this regard, the Supreme Court of the United States has held that where “governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation,” the United States enjoys its inherent freedom as sovereign to be free from state regulation and taxation. *Mayo v. United States*, 319 U.S. 441, 446–48 (1943); *see also Sperry v. Florida*, 373 U.S. 379, 403–04 (1963) (individual licensed to prepare patent applications could not be required to become member of state bar, because that would interfere with federal power over patent rights).

3. Under this analysis, the fee requirement of Wis. Stat. § 809.25(2)(a)(1), when imposed upon the United States for filing a Petition for Review, effectively constitutes a “money exaction[] the payment of which, if [it is] enforceable, would be required

before executing a function of government. Such a requirement is prohibited by the supremacy clause.” *Mayo*, 319 U.S. at 447.

For the foregoing reasons, we respectfully request that the Court waive the fee requirement of Wis. Stat. § 809.25(2)(a)(1) in this case.

Respectfully submitted,

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Dated: May 31, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of June, 2011, a true and correct copy of the foregoing document (lacking only the signature of Richard D. Humphrey) will be served upon all opposing counsel listed in the opinion of the Court of Appeals, District IV, via First Class Mail, with postage prepaid, in envelopes addressed as stated on the attached list. A courtesy copy will also be sent to all counsel on the e-mail list compiled by the Circuit Court for Dane County, Wisconsin.

/s/ Anthony T. Sheehan

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