

The Burger Court Opinion Writing Database

Arizona v. Maricopa County Medical Society

457 U.S. 332 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

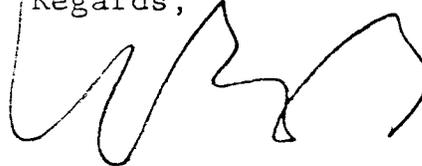
November 27, 1981

Re: No. 80-419 - Arizona v. Maricopa County Medical Society

Dear Lewis:

I suggest you undertake to draft a dispositive
Per Curiam on this case.

Regards,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 15, 1982

Re: No. 80-419 - Arizona v. Maricopa County Medical
Society

Dear Lewis:

You will recall my position at Conference was to "DIG" or affirm. I am in general agreement with a remand but I will, of course, give careful attention to what John writes, as I am sure you will also. This is another "sticky" case, and we appreciate your willingness to take on the "memo" assignment.

Regards,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

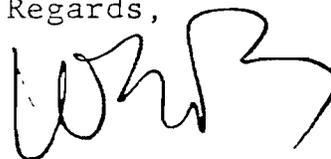
June 11, 1982

Re: 80-419 - Arizona v. Maricopa County Medical Society

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

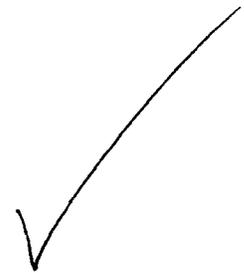
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To John R. & Te - Good!

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1982



Re: 80-419 - Arizona v. Maricopa County Medical Society

Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference

P.S. (LFP only) It might strengthen your point about the inadequacy of the record to insert in 5th line of Part V after "which" the following: "... this sparse record permits us to know."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 31, 1982

RE: No. 80-419 Arizona v. Maricopa County Medical
Society, et al.

Dear John:

I agree and will join if it becomes an opinion.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

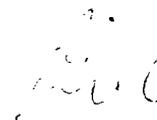
May 27, 1982

RE: No. 80-419 Arizona v. Maricopa County Medical
Society, et al.

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1981

80-419 - ARIZONA v. MARICOPA COUNTY
MEDICAL SOCIETY, ET AL.

Dear Chief,

I would not DIG. Lewis accurately
stated my position.

Sincerely yours,

Byron

The Chief Justice

cc: To Conference

dag

Supreme Court of the United States
Washington, D. C. 20543



CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1982

Re: 80-419 - Arizona v. Maricopa County
Medical Society

Dear Lewis:

I shall await John's dissent.

Sincerely yours,

Justice Powell

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1982

Re: 80-419 - Arizona v. Maricopa
County Medical Society

Dear Lewis,

I have spent considerable time on this case and have decided, contrary to my conference vote, that the Court of Appeals should be reversed.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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RECEIVED
SUPREME COURT OF THE UNITED STATES
JUSTICE BYRON R. WHITE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1982

80-419 - Arizona v. Maricopa County
Medical Society

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1981

Re: No. 80-419 - Arizona v. Maricopa County
Medical Society, et al.

Dear Chief:

I agree with your suggested order.

Sincerely,

JM.
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

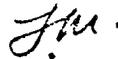
May 6, 1982

Re: No. 80-419 - Arizona v. Maricopa County
Medical Society

Dear John:

As between the memoranda, I agree with you.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

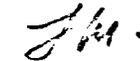
June 1, 1982

Re: No. 80-419 - Arizona v. Maricopa County
Medical Society

Dear John:

Please join me.

Sincerely,


T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

March 4, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 80-419 - Arizona v. Maricopa County Medical Society

Dear Lewis and John:

Will the one of you who ultimately "prevails" in this case please note that I took no part in its consideration or decision.

Sincerely,



Justice Powell
Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 24, 1981

80-419 Arizona v. Maricopa County

Dear Chief:

Possibly my notes are in error, but they show that the only firm votes for a DIG in this case were yours and Thurgood's. As presently advised, I continue to think that a DIG is inappropriate.

My notes indicate that John and Bill Brennan would reverse, and hold that there was a conspiracy by competing doctors to fix prices.

I understood that Byron would remand without deciding whether there has been a per se violation or whether the rule of reason is applicable. As Byron put it, we need a more adequate record before deciding this case on its merits. Both Bill Rehnquist and I expressed views generally similar to those of Byron.

As we have only a seven member Court, there would be no Court opinion, unless you revert to your alternative vote which - as recorded in my notes - was to remand. You stated that summary judgment had been granted prematurely, and that the record before us is inadequate, a view that appears to be similar to that of Byron, Bill Rehnquist and mine.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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SUPREME COURT OF THE UNITED STATES

ARIZONA v. MARICOPA COUNTY
MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

No. 80-419. Argued November 4, 1981
Decided

PER CURIAM.

The writ of certiorari is dismissed as
improvidently granted.

Justice Blackmun and Justice O'Connor
took no part in the consideration or decision
of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 24, 1982

80-419 Arizona v. Maricopa County Medical Society

MEMORANDUM TO THE CONFERENCE:

There were four votes (only seven of us sat) to remand this case for a more fully developed factual record. I was requested to draft a Per Curiam to this effect.

The case is here in an unsatisfactory posture. The state filed the complaint alleging a violation of §1 of the Sherman Act, and moved for partial summary judgment on a per se theory. The District Judge denied the motion, holding that there was no per se violation and that the rule of reason should be applied. The DC concluded, however, that the evidence was insufficient to make a judgment on the merits, and - apparently seeking guidance - certified an appeal under §1292(b).

A panel of CA9 split three ways. Judge Sneed affirmed, agreeing with the DC that there was no per se violation. Judge Kennedy concurred in the affirmance, but made clear that he would leave open until the record was complete the question of a per se violation. Judge Larson dissented, agruing that a per se violation had been shown.

In these circumstances, if we remanded without affording some guidance, the DC would be in precisely the position it was prior to certifying the appeal. With three separate opinions from CA9, I suppose the DC simply would adhere to its view that there was no per se violation.

Accordingly, I have written a rather full memorandum that purports to give some guidance to the DC on remand. My memorandum would leave entirely open the ultimate decision of the case after a fully developed factual record enables the court to resolve the unanswered questions.

L.F.P.

L.F.P., Jr.

The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

Justice Powell

FEB 24 1982

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

STATE OF ARIZONA, PETITIONER, *v.* MARICOPA
COUNTY MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February —, 1982]

Memorandum of JUSTICE POWELL.

The question is whether a maximum price fixing agreement among physicians, as part of a health insurance arrangement, amounts to a *per se* violation of §1 of the Sherman Act. I would hold that the State of Arizona has not discharged its burden of proving a *per se* violation at this stage of the litigation and would remand for further factual development.

I

The Maricopa and Pima Foundations for Medical Care (the FMCs) are professional associations of physicians organized by the medical societies in their respective counties.¹ The

¹The medical societies are professional associations of physicians practicing in the particular county. The Pima County Medical Society has been dismissed from the case pursuant to a consent decree.

The Pima FMC is open to any Pima County area physician licensed in Arizona. 2 App. 282. The Maricopa FMC admits physicians who are members of their county medical society. 7(b) District Court Clerk's Record, Exhibit MF-122, p. 2.

The Maricopa FMC has a renewable one year term of membership. Initial membership may be for a term of less than a year so that a uniform annual termination date for all members can be maintained. 7(b) District Court Clerk's Record, Exhibit MF-122, p. 3. The Pima FMC has a renewable five year membership term. A voluntary resignation provision

4, 11

Footnotes renumbered

To The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

cc: Justice Powell

Circulated: _____

FEB 27 1982

Re-circulated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

STATE OF ARIZONA, PETITIONER, *v.* MARICOPA
COUNTY MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February —, 1982]

Memorandum of JUSTICE POWELL.

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pg 15

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Revised: MAR 1 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

STATE OF ARIZONA, PETITIONER, *v.* MARICOPA
COUNTY MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March —, 1982]

Memorandum of JUSTICE POWELL.

The question is whether a maximum price fixing agreement among physicians, as part of a health insurance arrangement, amounts to a *per se* violation of § 1 of the Sherman Act. I would hold that the State of Arizona has not discharged its burden of proving a *per se* violation at this stage of the litigation and would remand for further factual development.

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March 16, 1982

PERSONAL

80-419 Arizona v. Maricopa County Medical Society

Dear Chief:

Thank you for your note, and I understand, of course, why you are waiting to see what John writes even though you are "in general agreement" with me.

My understanding is that John thinks a per se violation already has been shown, and therefore he would reverse on the merits. This would be contrary to your vote at Conference to DIG or affirm.

Only seven of us are participating in this case, so that I will need you and Byron if there is to be a Court opinion. In the absence of a Court opinion here, the DC will have no idea how to decide the case on remand.

I write this note only to you. Byron is also awaiting John's dissent. If you are still "with me" when that is circulated, a prompt join note would be helpful.

Sincerely,

The Chief Justice

lfp/ss

Stylistic change throughout

1
3
11-17

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

STATE OF ARIZONA, PETITIONER, *v.* MARICOPA
COUNTY MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April —, 1982]

Memorandum of JUSTICE POWELL.

The question is whether a maximum price fixing agreement among physicians, as part of a health insurance arrangement, amounts to a *per se* violation of § 1 of the Sherman Act. I would hold that the State of Arizona has not discharged its burden of proving a *per se* violation at this stage of the litigation and would remand for further factual development.

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8
Stylistic changes

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

STATE OF ARIZONA, PETITIONER, *v.* MARICOPA
COUNTY MEDICAL SOCIETY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April —, 1982]

Memorandum of JUSTICE POWELL.

The question is whether a maximum price fixing agreement among physicians, as part of a health insurance arrangement, amounts to a *per se* violation of § 1 of the Sherman Act. I would hold that the State of Arizona has not discharged its burden of proving a *per se* violation at this stage of the litigation and would remand for further factual development.

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3
11

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: JUN 11 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

ARIZONA, PETITIONER *v.* MARICOPA COUNTY
MEDICAL SOCIETY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The medical care plan condemned by the Court today is a comparatively new method of providing insured medical services at predetermined maximum costs. It involves no coercion. Medical insurance companies, physicians, and patients alike are free to participate or not as they choose. On its face, the plan seems to be in the public interest.

The State of Arizona challenged the plan on a *per se* anti-trust theory. The District Court denied the State's summary judgment motion, and—because of the novelty of the issue—certified the question of *per se* liability for an interlocutory appeal. On summary judgment, the record and all inferences therefrom must be viewed in the light most favorable to the respondents. Nevertheless, rather than identifying clearly the controlling principles and remanding for decision on a completed record, this Court makes its own *per se* judgment of invalidity. The respondents' contention that the "consumers" of medical services are benefitted substantially by the plan is given short shrift. The Court concedes that "the parties conducted [only] a limited amount of pretrial discovery", *ante*, at 2, leaving undeveloped facts critical to an informed decision of this case. I do not think today's decision on an incomplete record is consistent with proper judicial resolution of an issue of this complexity, nov-

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5
8
stylistic changes

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 15 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

ARIZONA, PETITIONER *v.* MARICOPA COUNTY
MEDICAL SOCIETY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and
JUSTICE REHNQUIST join, dissenting.

The medical care plan condemned by the Court today is a comparatively new method of providing insured medical services at predetermined maximum costs. It involves no coercion. Medical insurance companies, physicians, and patients alike are free to participate or not as they choose. On its face, the plan seems to be in the public interest.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1981

Re: No. 80-419 Arizona v. Maricopa County

Dear Chief:

I find my notes corresponding very much with those which Lewis sets forth in his note to you of November 24th, and although I would be quite willing to dismiss the case as improvidently granted, I don't think that there are four of the seven participating Justices who agree on that result. I would be happy to join a short one-paragraph Per Curiam stating that the action of the District Court in either granting or denying a motion for partial summary judgment as to the applicability of the "per se" rule at the stage of the case it was made was premature, and remand the case for developments of a further record.

Sincerely,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 1, 1982

Re: No. 80-419 Arizona v. Maricopa County

Dear Lewis:

I am in substantial agreement with the third draft of your memorandum and will join it if it becomes an opinion of the Court.

Sincerely,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1982

Re: No. 80-419 Arizona v. Maricopa County Medical
Society

Dear Lewis:

Please join me in your dissent.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 23, 1981

Re: 80-419 - Arizona v. Maricopa County

Dear Chief:

If there is a Court for the disposition you propose, I will be writing in dissent.

Respectfully,



The Chief Justice

Copies to the Conference

✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 26, 1982

Re: 80-419 - Arizona v. Maricopa County

Dear Lewis:

The analysis in your memorandum is somewhat puzzling. If the maximum price fixing arrangement is illegal per se--as I believe it is--I do not understand how any of the three justifications can save it. If you are saying that an arrangement is not a "price fixing" agreement that deserves per se condemnation if the participants are motivated by any purpose except stifling competition, not much will remain of the per se doctrine. In any event, I intend to adhere to the position I took in Conference and will be writing in dissent as soon as I can.

Respectfully,



Justice Powell

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

ARIZONA, PETITIONER *v.* MARICOPA
COUNTY MEDICAL SOCIETY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March —, 1982]

Memorandum of JUSTICE STEVENS.

The State of Arizona moved for summary judgment on the issue of liability. Its position was that the respondents' un rebutted allegations, even if true, were insufficient as a matter of law to avoid the application of the *per se* rule against horizontal price fixing. The State maintains that position before this Court. If the State is correct, then it is entitled to reversal of the Court of Appeals' judgment and to entry of partial summary judgment.

The respondents' brief, the Court of Appeals' majority opinion, and JUSTICE POWELL'S memorandum have identified a number of genuine issues of fact in this case. For every factual issue that might require a trial for its resolution, however, there is a preliminary legal question about the relevance of that issue. If we decide the preliminary legal question adversely to the respondents, then there is no need to decide the corresponding factual issue.

First. The issue of fact is whether the restraint that purports to be a maximum price fixing agreement is actually a masquerade for an agreement to fix specific prices and to progressively increase the market price for medical services. The issue of law is whether maximum price fixing agreements are *per se* unlawful.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: MAY 26 '82

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-419

**ARIZONA, PETITIONER v. MARICOPA COUNTY
MEDICAL SOCIETY ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether § 1 of the Sherman Act, 15 U. S. C. § 1, has been violated by an agreement among competing physicians setting, by majority vote, the maximum fees that they may claim in full payment for health services provided to policyholders of specified insurance plans. The United States Court of Appeals for the Ninth Circuit held that the question could not be answered without evaluating the actual purpose and effect of the agreement at a full trial. 643 F. 2d 553 (1980). Because the undisputed facts disclose a violation of the statute, we granted certiorari, 450 U. S. 979 (1981), and now reverse.

I

In October 1978 the State of Arizona filed a civil complaint against two county medical societies and two "foundations for medical care" that the medical societies had organized. The complaint alleged that the defendants were engaged in an illegal price fixing conspiracy.¹ After the defendants filed

¹ The complaint alleged a violation of § 1 of the Sherman Act as well as of the Arizona antitrust statute. The state statute is interpreted in conformity with the federal statute. 643 F. 2d, at 554, n. 1. The State of Arizona prayed for an injunction but did not ask for damages.

Supreme Court of the United States
Washington, D. C. 20543

October 14, 1981

Dear Chief:

Applying the standard of 28 U.S.C. Section 455(a) and (b)(5), I have disqualified myself from participating in 80-0419, Arizona v. Maricopa County Medical Society.

Sincerely,



Sandra D. O'Connor

The Chief Justice

cc: The Conference
Clerk of the Court