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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO,)	Case No. 2010 CR 00800
)	
Plaintiff,	)	JUDGE WILLIAM H. WOLFF, JR.
)	
vs.	)	MOTION FOR LEAVE TO FILE
	)	REPLY BRIEF, <i>INSTANTER</i>, IN
	)	SUPPORT OF JOINT MOTION OF
	)	ANTHONY M. CAFARO, SR.,
ANTHONY M. CAFARO, SR., <i>et al.</i>,	)	THE CAFARO COMPANY,
	)	OHIO VALLEY MALL COMPANY,
	)	THE MARION PLAZA, INC.
Defendants.	)	AND FLORA CAFARO TO
	)	DISMISS INDICTMENT

Now come Defendants Anthony M. Cafaro, Sr., The Cafaro Company, Ohio Valley Mall Company, The Marion Plaza, Inc. and Flora Cafaro, by and through their undersigned counsel, and respectfully request leave to file, *instanter*, the attached Reply Brief in support of their Joint Motion to Dismiss Indictment, filed November 16, 2010.

In their Joint Motion to Dismiss, the Defendants contend that the counts against them must be dismissed pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Ohio Constitution, and Rule 7(B) of the Ohio Rules of Criminal Procedure because they do not afford the Defendants with constitutionally-adequate notice of the charges against them, enable them to plead an acquittal or conviction in bar of future prosecutions for the same offenses, and include a plain, concise and definite written statement of the essential facts constituting the offenses charged.



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The State of Ohio's Brief in Opposition to Defendants' Joint Motion to Dismiss presents certain legal arguments that are inconsistent with Ohio law and require a further response by the Defendants. Among other things, the State's Brief improperly blurs the important distinction between a defendant's right to *constitutionally-sufficient notice* and the right to a bill of particulars setting forth the *specifics of the offense*, and further argues that the Supreme Court's seminal decision in *Russell v. United States*, 369 U.S. 749 (1962), holding that indictment is insufficient unless it "contains the elements of the offense intended to be charged" and "sufficiently apprises the defendant of what he must be prepared to meet" is somehow inapplicable to these proceedings.

The Defendants' response to the State's Brief in Opposition is more completely set forth in the attached Reply Brief which is incorporated as if fully restated herein. The Defendants further request that the attached Reply Brief be deemed filed of record upon the Court's granting of this Motion.

Respectfully submitted,

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