

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, :

v. : Criminal No. 93-0391

WILLIAM JOHN TROY, III, et al. :

Accused. :

**MOTION OF WILLIAM JOHN TROY, III TO DISMISS INDICTMENT
ON THE GROUNDS THAT NINTH AND TENTH AMENDMENTS TO THE UNITED
STATES CONSTITUTION PROHIBIT PUNISHMENT OF CRIMES WITHOUT VICTIMS
AS A VIOLATION OF THE RIGHT RETAINED BY THE PEOPLE, TO BE FREE
FROM CRIMINAL PROSECUTION FOR POSSESSING A SUBSTANCE HAVING
RELATIVELY HARMLESS EFFECTS ON THE USER, OTHER PERSONS OR SOCIETY**

COMES NOW the accused, William John Troy, III, by counsel, and moves this Honorable Court to dismiss the indictment against him on the grounds that the Ninth Amendment requires this Court to declare 21 U.S.C. §841(a)(1), as it applies to marijuana, unconstitutional on its face, and as applied, constitutes a denial and disparagement of a right retained by the people which the government has no authority under the Tenth Amendment to infringe. Mr. Troy states the following grounds for this motion.

1. Mr. Troy is charged, along with Higinio Avilez and Mohammed Basher Al-Talib, in a three-count indictment. Count 1 alleges that each of the accused conspired to possess with the intent to distribute and to distribute 1,000 pounds of marijuana. In the second count of the indictment it is alleged that each of the accused attempted to possess with intent to distribute 50 kilograms of marijuana.

2. The historical foundation and legislative history of the Ninth and Tenth Amendments, as well as rules of statutory

interpretation, support the proposition that they were included in the Constitution to afford substantive protection for unenumerated rights which are retained by the people. Judicial application of the Ninth Amendment since its enactment provides precedent for a substantive interpretation. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed.2d 510 (1965) (Goldberg, J., concurring).

3. The standard to be applied in determining whether the activity or behavior constituting victimless crimes are protected by the Ninth and Tenth Amendments should be whether the act or behavior to be regulated causes harm to persons other than the actor.

4. Since the latest scientific evidence establishes that marijuana is a relatively harmless drug having no detrimental effects on the individual users or society, the right to possess marijuana, regardless of one's intent, is a right retained by the people under the Ninth and Tenth Amendments.

WHEREFORE, for the above reasons and those to be more fully set forth in a forthcoming memorandum of law, the accused prays that this Court grant this motion and enter an Order dismissing the indictment against him.

Respectfully submitted,

WILLIAM JOHN TROY, III
By Counsel

Counsel for the Accused:

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