

# The Burger Court Opinion Writing Database

## *United States v. Testan*

424 U.S. 392 (1976)

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

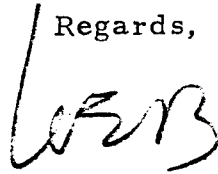
February 27, 1976

Re: 74-753 - U. S. v. Testan

Dear Harry:

I join your opinion dated February 24.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 11, 1976

RE: No. 74-753 United States v. Testan

Dear Harry:

I am happy to join your opinion but may I make a suggestion concerning footnote 8. The second sentence stating that the 1972 amendment indicated congressional recognition that federal employees before the amendment were "without remedy" for wrongful failure to be promoted is a question I suggest that we probably will have to confront in No. 74-768 Brown v. General Services Administration, which is being argued in the week of March 1. Since that sentence does not appear necessary to the decision, would it not be advisable to delete it?

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 12, 1976

RE: No. 74-753 United States v. Testan

Dear Harry:

Thank you for your note of February 12. The substitution of the proposed sentence for the one deleted is entirely satisfactory to me.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 11, 1976

No. 74-753, U. S. v. Testan

Dear Harry,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 19, 1976

Re: No. 74-753 - United States v. Testan

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 19, 1976

Re: No. 74-753 -- United States v. Testan

Dear Harry:

Please join me.

Sincerely,

*T.M.*

T. M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall ✓  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Souter

From: Mr. Justice Blackmun

Original: 2/10/76

Revised: \_\_\_\_\_

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-753

United States, Petitioner,	} On Writ of Certiorari to the
v.	
Herman R. Testan and	
Frances L. Zarrilli.	} United States Court of Claims.

[February —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This is a suit for reclassification of federal civil service positions and for backpay. It presents a substantial issue concerning the jurisdiction of the Court of Claims and the relief available in that tribunal.

## I

The plaintiff-respondents, Herman R. Testan and Frances L. Zarrilli, are trial attorneys employed in the Office of Counsel, Defense Personnel Support Center, Defense Supply Agency, in Philadelphia. They represent the Government in certain matters that come before the Armed Services Board of Contract Appeals of the Department of Defense. Their positions are subject to the Classification Act, 5 U. S. C. § 5101 *et seq.*, and they are presently classified at civil service grade GS-13.

In December 1969 respondents, through their Chief Attorney, requested their employing agency to reclassify their positions to grade GS-14. The asserted ground was that their duties and responsibilities met the requirements for the higher grade under standards promulgated by the Civil Service Commission in General Attorney Series GC-905-0. In addition, they contended that their



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 12, 1976

Re: No. 74-753 - United States v. Testan

Dear Bill:

Thank you for your note of February 11 with its suggestion that the second sentence of footnote 8 on page 15 of the proposed opinion be deleted. The suggestion is a welcome one and the sentence will come out. What do you think, however -- just in order to preserve the connection -- of replacing the sentence with the following:

"The nature of that explicit waiver of sovereign immunity is presently before the Court. See Brown v. General Services Administration, 507 F.2d 1300 (CA 2 1974), cert. granted 421 U.S. 987 (1975)."

Sincerely,

*Harry*

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 2/17/76

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-753

United States, Petitioner,	} On Writ of Certiorari to the		
v.		United States Court of	
Herman R. Testan and			Claims.
Frances L. Zarrilli.			

[February —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

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February 20, 1976

Re: No. 74-753 - United States v. Testan

Dear Byron:

I have given some consideration to what you and I discussed yesterday. I believe our respective clerks have come to some agreement on what is acceptable. In any event, I am asking the printer to run another draft. I hope that what you see on the end of page 8 and the top of page 9 will meet with your approval.

Sincerely,

HAB

Mr. Justice White

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 2/24/76

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-753

United States, Petitioner,	} On Writ of Certiorari to the		
v.		United States Court of	
Herman R. Testan and			Claims.
Francis L. Zarrilli.			

[February —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

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Washington, D. C. 20543 ✓

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 11, 1976

No. 74-753 United States v. Testan

Dear Harry:

Please join me.

Sincerely,

*Lewer*

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 19, 1976

Re: No. 74-753 - United States v. Testan

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference