

# The Burger Court Opinion Writing Database

*J.W. Bateson Co. v. United States ex rel.  
Board of Trustees of National Automatic  
Sprinkler Industry Pension Fund*

434 U.S. 586 (1978)

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

December 10, 1977

Re: 76-1476 - J.S. Bateson Co., Inc. v.  
U.S. ex rel

MEMORANDUM TO THE CONFERENCE:

My vote is to reverse.

Regards,

WSB

Wm  
Brennan  
Dec 77

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

(4)

CHAMBERS OF  
THE CHIEF JUSTICE

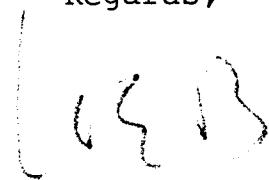
January 5, 1978

Dear Thurgood:

Re: 76-1476 Bateson v. United States

I join.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

January 23, 1978

RE: No. 76-1476 J.W. Bateson Co. v. U.S. ex rel. Board  
of Trustees of the National Automatic  
Sprinkler Industry Pension Fund, et al.

Dear John:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,

Mr. Justice Stevens

cc: The Conference

✓

Supreme Court of the United States  
Washington, D. C. 20543  
②

CHAMBERS OF  
JUSTICE POTTER STEWART

January 3, 1978

Re: No. 76-1476, J. W. Bateson Co. v.  
Board of Trustees

Dear Thurgood,

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

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

P.S.

Supreme Court of the United States

Washington, D. C. 20543

(5) ✓

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 12, 1978

Re: 76-1476: J. W. Bateson Co., Inc.  
v. U. S. ex rel. Board  
of Trustees

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1476

J. W. Bateson Company, Inc.,  
et al., Petitioners,  
*v.*

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[January 3, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Miller Act, 49 Stat. 793, as amended, 80 Stat. 1139, 40 U. S. C. § 270a *et seq.*, a prime contractor on a federal construction project involving over \$2,000 must post a payment bond to protect those who have a direct contractual relationship with either the prime contractor or a "subcontractor." The issue in this case is whether the term "subcontractor," as used in the Act, encompasses a firm that is technically a "sub-subcontractor."

The material facts are not in dispute. Petitioner J. W. Bateson Co. entered into a contract with the United States for construction of an addition to a hospital and provided a payment bond signed by Bateson's president and by representatives of petitioner sureties. Bateson, the prime contractor, subcontracted with Pierce Associates for a portion of the original work, and Pierce in turn subcontracted with Colquitt Sprinkler Co. for the installation of a sprinkler system, one of the items specified in the contract between Bateson and the United States. Under a collective-bargaining agreement with respondent Road Sprinkler Fitters Local Union No. 669, Colquitt was obligated to pay over amounts withheld from

10 JAN 1978

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-1476**

J. W. Bateson Company, Inc.,  
et al., Petitioners,

*v.*

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[January —, 1978]

**MR. JUSTICE MARSHALL** delivered the opinion of the Court.

Under the Miller Act, 49 Stat. 793, as amended, 80 Stat. 1139, 40 U. S. C. § 270a *et seq.*, a prime contractor on a federal construction project involving over \$2,000 must post a payment bond to protect those who have a direct contractual relationship with either the prime contractor or a "subcontractor." The issue in this case is whether the term "subcontractor," as used in the Act, encompasses a firm that is technically a "sub-subcontractor."

The material facts are not in dispute. Petitioner J. W. Bateson Co. entered into a contract with the United States for construction of an addition to a hospital and provided a payment bond signed by Bateson's president and by representatives of petitioner sureties. Bateson, the prime contractor, subcontracted with Pierce Associates for a portion of the original work, and Pierce in turn subcontracted with Colquitt Sprinkler Co. for the installation of a sprinkler system, one of the items specified in the contract between Bateson and the United States. Under a collective-bargaining agreement with respondent Road Sprinkler Fitters Local Union No. 669, Colquitt was obligated to pay over amounts withheld from

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P. 6

25 JAN 1978

*Recitation*

**3rd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-1476**

J. W. Bateson Company, Inc.,  
et al., Petitioners,  
*v.*

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[February —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Miller Act, 49 Stat. 793, as amended, 80 Stat. 1139, 40 U. S. C. § 270a *et seq.*, a prime contractor on a federal construction project involving over \$2,000 must post a payment bond to protect those who have a direct contractual relationship with either the prime contractor or a "subcontractor." The issue in this case is whether the term "subcontractor," as used in the Act, encompasses a firm that is technically a "sub-subcontractor."

The material facts are not in dispute. Petitioner J. W. Bateson Co. entered into a contract with the United States for construction of an addition to a hospital and provided a payment bond signed by Bateson's president and by representatives of petitioner sureties. Bateson, the prime contractor, subcontracted with Pierce Associates for a portion of the original work, and Pierce in turn subcontracted with Colquitt Sprinkler Co. for the installation of a sprinkler system, one of the items specified in the contract between Bateson and the United States. Under a collective-bargaining agreement with respondent Road Sprinkler Fitters Local Union No. 669, Colquitt was obligated to pay over amounts withheld from

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 3, 1978

Re: No. 76-1476 - J. W. Bateson Co. v. United States  
ex rel. Board of Trustees

Dear Thurgood:

At the end of your opinion, will you please note that  
I took no part in the consideration or decision of this case.

Sincerely,

*Harry*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 4, 1978

(3)

No. 76-1476 Bateson v. United States

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 3, 1978

Re: No. 76-1476 - Bateson Co. v. Board of Trustees

Dear Thurgood:

Please join me.

Sincerely,

*WR*

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 12, 1977

Re: 76-1476 - Bateson v. U.S. ex rel. Board of  
Trustees of the National Automatic  
Sprinkler Industry Pension Fund

Dear Bill:

Yes, I will be happy to prepare a dissent.

Respectfully,



Mr. Justice Brennan

• Wm Brennan  
Dec 77

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 3, 1978

Re: 76-1476 - Bateson v. United States ex rel.  
Board of Trustees of the National Automatic  
Sprinkler Industry Pension Fund et al.

Dear Thurgood:

Although you have written a most persuasive opinion, I would still like to try my hand at a dissent taking the position that the coverage should extend to all persons who perform labor on the project.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stevens

**JAN 20 1978**

Circulated:

Recirculated:

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1476

J. W. Bateson Company, Inc.,  
et al., Petitioners,

v.

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[February —, 1978]

MR. JUSTICE STEVENS, dissenting.

Reading the word "subcontractor" as narrowly as the Court does creates a system of protection for construction workers that I cannot believe Congress intended. It drives a wedge between employees working side-by-side on tasks equally vital to "the prosecution of the work." 40 U. S. C. § 270a (a)(2). Under the Court's reading, those who work for the general contractor or for a "first-tier" subcontractor are protected by the bond; those who work for other subcontractors are unprotected.

The Court's construction of the statute derives strong support from the statement in the Committee reports distinguishing between "sub-subcontractors" and "more remote relationships." Nevertheless, I am persuaded that contrary evidence of congressional intent outweighs the isolated statement upon which the Court's decision primarily rests. I shall therefore first explain why I think the Act protects every person who has supplied labor or material in the prosecution of the work provided for in the prime contract. Thereafter, I shall explain why I believe the excerpt from the Committee reports does not compel a contrary conclusion.

P. (

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

From: Mr. Justice Stevens

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

3rd DRAFT

Recirculated: JAN 26 1978

## SUPREME COURT OF THE UNITED STATES

No. 76-1476

J. W. Bateson Company, Inc.,  
et al., Petitioners,

v.

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[February —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN  
joins, dissenting.

Reading the word "subcontractor" as narrowly as the Court does creates a system of protection for construction workers that I cannot believe Congress intended. It drives a wedge between employees working side-by-side on tasks equally vital to "the prosecution of the work." 40 U. S. C. § 270a (a)(2). Under the Court's reading, those who work for the general contractor or for a "first-tier" subcontractor are protected by the bond; those who work for other subcontractors are unprotected.

The Court's construction of the statute derives strong support from the statement in the Committee reports distinguishing between "sub-subcontractors" and "more remote relationships." Nevertheless, I am persuaded that contrary evidence of congressional intent outweighs the isolated statement upon which the Court's decision primarily rests. I shall therefore first explain why I think the Act protects every person who has supplied labor or material in the prosecution of the work provided for in the prime contract. Thereafter, I shall explain why I believe the excerpt from the Committee reports does not compel a contrary conclusion.

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

From: Mr. Justice Stevens

Circulated:

Recirculated: Jan 31 78

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-1476

J. W. Bateson Company, Inc.,  
et al., Petitioners,

v.

United States ex rel. Board of  
Trustees of the National Au-  
tomatic Sprinkler Industry  
Pension Fund et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[February —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN  
joins, dissenting.

The Court's narrow reading of the word "subcontractor" creates a system of protection for construction workers that I cannot believe Congress intended. It drives a wedge between employees working side-by-side on tasks equally vital to "the prosecution of the work." 40 U. S. C. § 270a (a)(2). Under the Court's reading, those who work for the general contractor or for a "first-tier" subcontractor are protected by the bond; those who work for other subcontractors are unprotected.

The Court's construction of the statute derives strong support from the statement in the Committee reports distinguishing between "sub-subcontractors" and "more remote relationships." Nevertheless, I am persuaded that contrary evidence of congressional intent outweighs the isolated statement upon which the Court's decision primarily rests. I shall therefore first explain why I think the Act protects every person who has supplied labor or material in the prosecution of the work provided for in the prime contract. Thereafter, I shall explain why I believe the excerpt from the Committee reports does not compel a contrary conclusion.