

Go Glow, Inc. v. Simpson

In 2010, the Ames Legislature enacted the Ames Buy American Green Technologies Act. That statute requires all state and local government entities in Ames to purchase only green technologies manufactured in the United States using domestically sourced materials. In promulgating the statute, the Legislature noted that “U.S. businesses and U.S. workers deserve the opportunity to compete with foreign businesses and foreign workers on an equal footing.” Or in the words of the sponsor of the bill in the Ames Senate: “Nothing is more important to this country than reducing our dependence on foreign energy sources.”

While professors and union leaders debated whether the Ames Buy American Act is good public policy—whether it protects America’s workers and the nation’s security, or whether it is an economically disastrous protectionist measure—Go Glow, Inc. challenged the law’s constitutionality in federal court. Go Glow, an Ames corporation that provides renewable energy products for use in construction projects, was set to supply solar panels for the new student center at the University of Ames. Indeed, Go Glow’s bid was \$250,000 less than any other subcontractor’s. But when University official Sheila Simpson discovered that Go Glow manufactures its solar collectors in China using Chinese materials, she made clear that the University could not accept Go Glow’s panels under the Ames Buy American Act.

Finding itself shut out of Ames public contracts, Go Glow sued Simpson in her official capacity, alleging that the Ames Buy American Act is unconstitutional because it infringes on the federal government’s exclusive right to regulate foreign affairs and discriminates against foreign commerce in violation of the dormant Foreign Commerce Clause. The District Court granted summary judgment to the University, and the Court of Appeals for the Ames Circuit affirmed. The Ames Circuit concluded that the Ames Buy American Act had no more than an incidental or indirect effect on foreign affairs. And it further held that the University was entitled to discriminate against foreign commerce notwithstanding the restraints of the Foreign Commerce Clause because the University was acting as a participant in the market rather than as a sovereign regulator.

The Supreme Court granted Go Glow’s petition for certiorari on two questions:

1. Whether the Ames Buy American Green Technologies Act, Ames Rev. Stat. § 401, is invalid as an intrusion on the federal government’s foreign affairs power.
2. Whether the Ames Buy American Green Technologies Act, Ames Rev. Stat. § 401, is invalid under the dormant Foreign Commerce Clause.