

# Denied jobs, blacks in Iowa test new bias theory

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By The Associated Press RYAN J. FOLEY (Associated Press)



Photo credit: AP | In this Feb. 10, 2012 photo, [Des Moines](#) lawyer Thomas Newkirk looks over files from a class-action lawsuit that tests the theory of "implicit bias" against blacks in [Iowa state](#) government, in Des Moines, [Iowa](#). After years of litigation, a judge will soon decide whether to grant thousands of black employees and job applicants monetary damages for hiring practices used by every agency of Iowa state government that they say has disadvantaged them for decades. (AP

Photo/Charlie Neibergall)

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IOWA CITY, Iowa - (AP) -- After years of litigation, a judge will soon decide whether to grant thousands of black employees and job applicants monetary damages for hiring practices used by every agency of Iowa state government that they say has disadvantaged them for decades.

Experts say the case is the largest class-action lawsuit of its kind against an entire state government's civil service system, and tests a legal theory that social science and statistics alone can prove widespread discrimination.

The plaintiffs -- up to 6,000 African-Americans passed over for state jobs and promotions dating back to 2003 -- do not say they faced overt racism or discriminatory hiring tests in Iowa, a state that is 91 percent white. Instead, their lawyers argue that managers subconsciously favored whites across state government, leaving blacks at a disadvantage in decisions over who got interviewed, hired and promoted.

Judge Robert Blink's decision, expected in coming weeks, could award damages and mandate changes in state personnel policies or dismiss a case that represents a growing front of discrimination litigation.

Similar cases against local governments have failed because proving broad bias is extraordinarily difficult, with a myriad of possible factors to explain disparities, said David Friedland, a California human resources consultant who is an expert on discrimination in hiring. Success in Iowa could encourage similar lawsuits elsewhere, he said.

"If they are successful in getting the court to agree to that, it probably will come up more," Friedland said. "A monetary award in a case like this is likely to be pretty substantial. ... It will be interesting to see how it comes out."

University of Washington psychology professor Anthony Greenwald, an expert on implicit bias who testified on behalf of the plaintiffs, said the decision would be one of the first of its kind because similar cases against corporations have usually been dismissed or settled before trial.

"The decision will be important. It will be certainly looked at outside of Iowa," he said.

Scholars and employment lawyers have shown a growing interest in implicit bias in the last several years, after Greenwald and other scientists developed the Implicit Association Test to test racial stereotypes. Their research found an inherent preference for whites over blacks -- in up to 80 percent of test-takers and among many people who do not consider themselves racist.

The theory hit a legal obstacle last year when the U.S. Supreme Court disqualified a class-action lawsuit against Wal-Mart's pay and promotion practices for women. The court found the class was too broad and failed to challenge a specific hiring practice as discriminatory.

Lawyers defending the state have cited that decision in asking Blink to dismiss the case. But the high court's decision did not specifically reject the theory of implicit bias, and dissenting Justice Ruth Bader Ginsburg wrote that such claims can be allowed.

Class attorney Thomas Newkirk said the science and other evidence that shows disadvantaged groups such as blacks face employment discrimination in subtle ways "is becoming overwhelming."

"Clearly, the problem is not in Iowa alone, but we believe Iowa is the exactly the right place to ask society to take control of this important issue fairly for all races, and to seek a better future for all as a result," he said.

During a monthlong trial last fall, experts called by the plaintiffs' lawyers testified that blacks are hired at lower rates than whites with similar qualifications and receive less favorable evaluations and lower starting salaries. An employment consultant hired by the administration of Gov. Tom Vilsack, who served from 1999 to 2007, warned of hiring disparities between whites and minorities in a report issued after he left office.

Vilsack's successor, Democratic Gov. Chet Culver, issued an executive order requiring agencies to improve the diversity of the workforce. State officials called that evidence of progress, but class lawyers argued it turned out to be ineffective because rules meant to prevent bias still were not followed.

Republican Gov. Terry Branstad said last fall his administration had ensured agencies were following uniform rules to stop any abuse -- but a top state employment official testified days later he'd seen no substantive changes to hiring practices in years. Blacks represented 2.9 percent of the state's population in 2010 and 2.4 percent of the state workforce.

Among those who testified was Charles Zanders, of Waterloo, who was passed over for an interview for a position with the Iowa Communications Network in 2008 despite having worked 29 years in the telecommunications industry.

"I was very angry at that time and felt like I'd been stepped on," Zanders, 60, said.

In a brief submitted in December, plaintiffs' lawyers sought lost wages of about \$67 million minus what they earned in the meantime. But in court documents, Newkirk said it was even more important that Blink order changes in the way state officials train managers, screen candidates and track disparities in hiring.

Lawyers working for Attorney General Tom Miller, a Democrat, argued that the plaintiffs failed to show bias across state government.

"The record simply does not support Plaintiffs' charge that some monolithic, immutable force of bias infected the decisions made by every department, at every step, for every job, for every year of the class period," they wrote in a final brief last month.

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