

Broadway Actor's Race Discrimination Claims Sent Back to the Underworld in the Face of Producer's First Amendment Rights

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A federal court in New York has held that a Broadway musical's casting decisions—specifically replacing one actor with another actor of a different race—are shielded by the First Amendment from employment discrimination claims, in a decision that could have implications across the entertainment industry.

In *Moore v. Hadestown Broadway LLC*, the plaintiff, a Black woman, brought race discrimination and retaliation claims under federal and New York laws against her former employer, the producer of the Tony Award-winning musical *Hadestown*. The court dismissed the plaintiff's race discrimination claims, finding that the employment decisions at issue implicated *Hadestown Broadway LLC's* ("*Hadestown*") First Amendment rights.

As described in the plaintiff's complaint, *Hadestown* faced a backlash over conveying a perceived "white savior" narrative in its production featuring a white actor (playing Orpheus in an adaptation of the myth of Orpheus and Eurydice) rescuing the play's (all-Black) chorus from the underworld Hades; plaintiff was a member of the chorus. *Hadestown* allegedly sought to diversify its chorus roles to avoid conveying this unintentional "white savior" narrative. This diversification allegedly included terminating the plaintiff and replacing her with a white actor, the adverse employment action on which the plaintiff based her disparate impact discrimination claim.

The court found that *Hadestown's* Constitutional affirmative defense—specifically, that its casting decisions are shielded by the First Amendment—had merit, especially because the casting in this case actually "affected the story *Hadestown* was telling on-stage," and "decisions about what story to tell . . . fall squarely within the protection of the First Amendment." Therefore, *Hadestown's* casting decisions, even though they were employment decisions, were nonetheless "inherently expressive because they are tied to the story [*Hadestown*] intends to tell," specifically **not** a story about a white man rescuing a group of Black individuals.

While this holding has limited applicability to most industries, it has potentially significant implications for producers of theatrical, film, TV, and other productions that require casting choices and some

form of narrative expression. Even if playing the same role, casting actors from different backgrounds can have a significant impact on the ideas, emotions, and even narrative conveyed in a story, as shown in noted works such as the musical *Hamilton*. Even as race-conscious employment decisions have come under increased scrutiny since the Supreme Court's decision overturning affirmative action in higher education [last year](#), this ruling is an important reminder of the nuances involved in hiring, which can itself be a form of artistic expression.

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