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Free to Be Biased?

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Last week, [two black men filed suit](#), alleging that they faced discrimination when applying for the lead role on ABC's "The Bachelor." "Never, [in] over 10 years and a combined total of 23 seasons of 'The Bachelor' and 'The Bachelorette,' has either show ever featured a single person of color ... in the central role of the bachelor or bachelorette," their complaint charges.

According to research conducted in 2006, actors of color were limited to between 0.5 percent and 8.1 percent of roles.

Meanwhile, casting notices for HBO's "Girls" and an [Acura](#) commercial designated certain roles for certain races. Set in diverse New York City, "Girls" — like "Seinfeld," "Friends" and "Sex and the City" before it — features an all-white cast. Few casting ads are open to all ethnicities. According to research conducted in 2006, [actors of color were limited to 0.5 percent to 8.1 percent of roles](#), depending on their racial background, and could compete with white actors for the 8.5 percent of roles available to whites and nonwhites alike.

Five years later, little has changed.

The question is whether the law should play a role in casting, or whether, under the license of "artistic freedom," producers may cater to the preferences of the majority. Similar questions have surfaced in other contexts, and the law's response has been clear and emphatic. When opponents of integration in the 1960s argued that legalized and mandated race-mixing, whether in public schools or private bedrooms, impinged on freedom of association, the Supreme Court disagreed, striking down laws prohibiting integration and interracial marriage. Later, in *Palmore v. Sidoti*, a white man sought custody of his daughter because her white mother married a black man. Though the court recognized "the reality of private biases" that lie beyond the law's reach, it concluded that the law could not "directly or indirectly, give them effect."

If producers of "The Bachelor" fear "private biases" against interracial relationships, perhaps the law should intervene. But a more pragmatic appeal might also suffice. The producers should note that ABC broadcasts back-to-back depictions of interracial romance on "[Modern Family](#)" and "[Happy Endings](#)" — and when it comes to ratings, "Modern Family" trounces "The Bachelor."

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