

Starcher, J., dissenting:

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OF WEST VIRGINIA

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As the majority recognizes in footnote 4, the factual issue in the plaintiff’s case was “whether Ms. Minshall’s [female] gender was a factor in the defendant’s decision to discharge Ms. Minshall . . . and whether a jury should decide this case if there is a reasonable inference that Ms. Minshall’s gender was a factor. . . .”

And in footnote 7, the majority also recognizes that the plaintiff argued to the circuit court that the impermissible reason for the defendant’s action was the plaintiff’s status as a female homosexual -- as opposed to being a male homosexual.

So, the plaintiff properly presented the issue of whether there was gender discrimination -- as a matter of both fact and of law. What’s the problem, then?

Call me dense, but I can’t make heads or tails of the majority opinion’s reasoning. And it’s frankly a little troubling to be dissenting to something that I can’t seem to understand. But I will say that to even suggest that sexual preference discrimination is not gender-based is to ignore logic and to defy common sense.

Accordingly, I dissent.