

Justin Wedeking, Online Appendix for “Supreme Court Litigants and Strategic Framing”
Verifying the Content of Prevailing and Alternative Frames

It is possible to determine the content of the three issue frames. After the analysis described in the appendix is carried out, factor scores are estimated for the 225 words in the analysis, and words that score higher than 1 standard deviation above their respective factor mean are selected. The result is a collection of words that load highly on each factor. These words are shown graphically in Figure A1 in a 3-Dimensional plot, where factors are treated as dimensions. Figure A1 shows the words that are distinguishable for each factor. Seven words (court, law, privacy, right, sexual, state, statute) emerged as significant on all three factors, and thus are important for all three frames and represents part of the “common” language. Words that are not central to any frame are not shown in the graph, but would appear on the lower left side where the textbox “omitted words” appears. Diamonds represent words scoring high on only the first factor, those three words are “sodomy,” “constitutional,” and “decision.” Solid triangles represent words scoring high on only the second factor are “home,” “private,” “interest,” and “section.” The cluster of solid circles represents words that scored high on the third factor. Words that scored high on two factors are also marked in the graph. Overall, three clusters emerge in the 3-D plot, with some overlap, which suggests the possibility that some words may be crucial in reframing a debate because those words enable speakers to shift the focus of an argument onto another dimension.

[Supplemental Figure A1 and Table A1 about here]

To better distill the meaning of the three frames, the central theme or argument was ascertained by reading each document. If words are important for each frame, those words should appear in the document’s main argument. Additionally, examining the central words in

their surrounding context should provide additional validity for the content of each frame. Table A1 contains the text selections that were deemed to best capture the main argument of each document. For the first factor, examining the arguments in Table A1 in conjunction with the words from Figure A1 suggests that the prevailing frame is whether there is a constitutional right to sodomy? Other points of emphasis are the lower court decision, and the sodomy statute. Table A1 also shows that some frames have a pro and con valence, as illustrated by which side the party advocates for (either affirm or reversal). For example, the briefs either suggested there is “no constitutional right to sodomy” or said the sodomy statute infringes upon Hardwick’s constitutional rights. There are similarities between the arguments made by the second and third factors, but the second frame appears to make a generalized right to privacy argument, emphasizing the home. The argument for the third frame appears to be one-sided (urging affirm) and emphasizes extending privacy rights in the context of engaging in sex or sexual activity. There is also a public health argument that appears in one brief and the word health is important for this factor in Figure A1.

Table A1 Verbatim Excerpts from Documents that Highlight Central Point(s) of Texts in *Bowers v. Hardwick* (Documents are denoted by first party listed on brief)

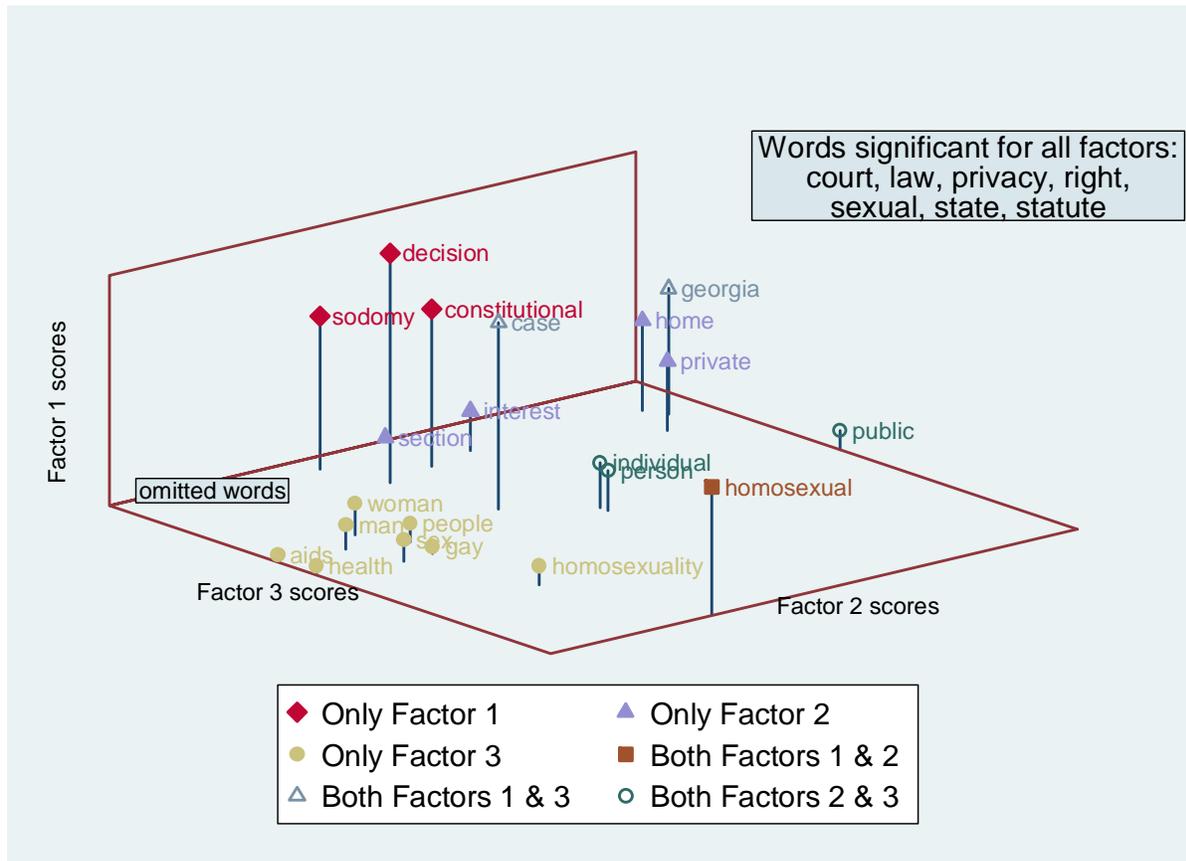
Document	Preferred Outcome	Verbatim Excerpt(s)
Documents that load on 1st Factor		
Amicus: National Organization for Women (NOW)	Affirm	The court below correctly determined that Georgia's sodomy statute affected respondent's constitutional right to privacy and was thus to be scrutinized under the "compelling state interest" standard.
Amicus: Association Bar of City of New York	Affirm	The Eleventh Circuit correctly determined that the right to freedom from unwarranted governmental intrusion into protected zones of privacy warrants remand of this case for trial.
Amicus: Catholic League (also argued that Hardwick lacked standing)	Reverse	Homosexuals' engagement in sodomy is not part of the right to privacy protected by the United States Constitution.
Amicus: Rutherford Institute	Reverse	The principal issue before this Court is whether the Georgia sodomy statute violates the constitutional right of privacy recognized in <i>Griswold v. Connecticut</i> .
Lower Court Majority (also loads on 2 nd factor)	* see below	The Georgia sodomy statute infringes upon the fundamental constitutional rights of Michael Hardwick.
Petitioner Brief on Merits	Reverse	[T]he court below seriously erred in judicially creating a fundamental right of privacy to engage in homosexual sodomy, and by finding constitutional protection for this perceived right.
Petitioner Certiorari Petition (made 2 arguments)	Reverse	The Decision Below Conflicts Directly With The Decision Of The Court Of Appeals For The District Of Columbia In <i>Dronenburg v. Zech</i> By Erroneously Concluding That <i>Doe v. Commonwealth's Attorney</i> Does Not Constitute Binding Precedent.
		The Court Below Erred In Concluding That Georgia's Sodomy Statute Infringes Upon Fundamental Constitutional Rights Of Homosexuals And By Requiring The State To Show A Compelling Interest To Support Its Constitutionality, Thus Raising Significant And Recurring Questions As To The Ability Of The States To Regulate Private Conduct.
Petitioner Reply Brief	Reverse	Respondent misconceives the test for determining application of the right of privacy. Only fundamental rights, implicit in the concept of ordered liberty, are protected by this right of privacy.
Respondent Oppose Grant of Certiorari Brief	Affirm	The decision of the Eleventh Circuit as to both the meaning of this Court's summary affirmance in <i>Doe v. Commonwealth's Attorney</i> and the constitutional standard by which Georgia's sodomy statute must be reviewed is eminently correct, and requires no review by this Court.

(Table A2 continued)		Documents that load on 2nd factor
Amicus: American Jewish Congress	Affirm	American Jewish Congress believes that before government may regulate intimate sexual association occurring in the privacy of the home, it must demonstrate a compelling justification of public needs, not merely a demonstration by the legislature of the moral beliefs of a majority of the voters.
Amicus: Attorney General of NY	Affirm	The Georgia statute criminalizing private sexual acts intrudes upon personal privacy and can be sustained only upon a demonstration that it is narrowly drawn to further a compelling state interest.
Amicus: Concerned Women for America	Reverse	This right of privacy argument has no historical merit or foundation in the Constitution. The right of privacy anchors at an elusive harbor in the Constitution. NOTE: this amicus appears to want to make an argument consistent with the first factor, but devotes a significant portion of their argument to refuting the generalized right to privacy argument. The evidence of sodomy argument, "The unanimous verdict of American history is that state legislatures have the constitutional power to criminalize sodomy... No "right to sodomy" lurks in the texts or penumbras of the Constitution."
Amicus: National Gay Rights Advocates	** see below	The question is whether the State, using moral indignation as its justification, may intrude into personal relationships and invade people's homes to criminalize private consensual adult sexual conduct.
Respondent Brief on Merits	Affirm	This case is thus about the very core of that "most comprehensive of rights and the right most valued by civilized man," namely, "as against the Government, the right to be let alone."
Documents that load on 3rd factor		
Amicus: American Psychological Assoc (made 2 arguments)	Affirm	The Georgia statute implicates fundamental privacy interests that are basic to marital relationships and to nonmarital heterosexual and homosexual relationships.
		The Georgia statute disserves the legitimate objectives of improving the public health and individual mental health.
Amicus: Lambda Legal Defense and Education Fund	Affirm	The Eleventh Circuit correctly ruled that the right to privacy embraces both the decision to engage in private sexual activity, including oral and anal sexual contact, and the choice of an adult sexual partner, including one of the same sex.
Amicus: Lesbian Rights Project	Respondent	It is no coincidence that the federal constitutional right to privacy has been developed in large measure in cases concerning personal decision about sex.
Amicus: Presbyterian Church	Affirm	Our Constitution, our traditions as a people, and this Court's prior decisions declare that the intimate association of consenting adults in the privacy of the home is a constitutionally protected activity.

* Lower court partially/mostly favored respondent

** Respondent preferred sodomy law to be struck down

Figure A1 3-Dimensional Plot of Significant Words for the *Bowers v. Hardwick* Texts



Note: Significant words have factor score estimates one standard deviation greater than the mean of the respective factor. Words with estimated factor scores associated with all dimensions are listed in a text box on the upper-right hand corner of the figure. Words that were not distinguishable based on their estimated factor score are not shown, but would appear as a cluster in the lower left of the graph where the text box “omitted words” appears. The figure was created with the “scat3” program in Stata (Cox, no date).