

“We the Citizens?”

**A Corpus Linguistic Inquiry into the Use of “People” and “Citizens” in the Founding Era**

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**Abstract**

This article supplies an interdisciplinary approach to analyzing the use of the words *people* and *citizens* during the Founding Era. The Constitution uses both of these words to refer to individuals. Examining the two words, *people* and *citizens*, in Founding Era texts provides insights into potential differences in their use in the Constitution. Our research presents an exploratory phraseological analysis using corpus linguistics tools, paired with contextualized legal research. We specifically examined the collocates and the n-grams, or fixed phrases, surrounding the words *people* and *citizens*, using both the Corpus of Founding Era American English (*COFEA*) and a corpus consisting of the public papers of James Madison from Founders Online.

Using these sources allowed us to determine the contexts in which the words were used by people (including politicians) during this historical timeframe. This study allowed us to discover more about the “roles” that each party (i.e., *people* and *citizens*) played and the kinds of actions each party was associated with. These “roles” are reflected in the Constitution’s governmental structure through how the Framers used the terms. The results demonstrated that the phrases *by the people* and *by the citizens* were both frequently used to depict agency through passive constructions. When examining the phrases’ verb collocates through collocation and concordance analysis, it was found that *elected*, *chosen*, and *made* were used with both constructs (i.e., *elected by the people/citizens*, *chosen by the people/citizens*, and *made by the people/citizens*) but significantly more commonly so with *people* than with *citizens*.

These findings demonstrate that (1) *people* predominates over *citizens* in terms of governing in the Founding Era; (2) the actions of *people* – electing, choosing, and making – were wider in their scope than those of *citizens*; and, ultimately, (3) *people* were a ground up source of power, and those who established the Constitution.

## I. Introduction

The last amendment included in the Bill of Rights, the Tenth Amendment, states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>1</sup> Employed as a tool to invalidate statutes<sup>2</sup> and also interpreted as a “truism,”<sup>3</sup> ultimately the Tenth Amendment has largely been regarded as an Amendment that explicitly secures what the Constitution sets forth in its structural framework: that the United States government is a federalist system, meaning that it is one of shared powers between the national government and state governments. However, a closer examination of the Amendment reveals that a portion of the Tenth Amendment—specifically, its last three words, “to the people”—is conspicuously absent from the Supreme Court’s treatment and analysis of the Amendment. Additionally, *people* is not the only reference to individuals in the Constitution. The Constitution is written in terms of *people* and *citizens*, which generates the question: how were those two words used differently during the Founding Era?

This Article addresses the background and historical context of *the people* as used in the Tenth Amendment; prior research that was done on the word *people* in the Tenth Amendment and the research question for this Article; the corpus methodology for analyzing this research question; and a comparative analysis of the words *people* and *citizens*.

## II. Background and Historical Context

### a) *Legislative History of the Phrase “To the People” and the Tenth Amendment*

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<sup>1</sup> U.S. Const. amend. X.

<sup>2</sup> See, e.g., *New York v. United States*, 112 S.Ct. 2408 (1992).

<sup>3</sup> See e.g., *United States v. Darby*, 312 U.S. 100, 124 (1941).

The Tenth Amendment's text provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."<sup>4</sup> The Amendment originates from the Articles of Confederation. Although the Articles of Confederation stated, in relevant part, that "[e]ach state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States,"<sup>5</sup> Congress intentionally rejected and omitted the word "expressly" as a qualification of granted powers in the Tenth Amendment.<sup>6</sup>

Additionally, when originally proposed, the Tenth Amendment did not include the phrase "to the people" but concluded with "to the States respectively."<sup>7</sup> The phrase "to the people" was added after Daniel Carroll, a delegate from Maryland, proposed the addition on the floor of the House of Representatives.<sup>8</sup> This idea was not completely original to him, however. When an earlier

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<sup>4</sup> U.S. Const. amend. X.

<sup>5</sup> Articles of Confederation art. II.

<sup>6</sup> Upon the Tenth Amendment's passage, both Houses of Congress refused to insert the word "expressly" before "delegated." James Madison, Debates in the House of Representatives (June 8, 1789), reprinted in Creating the Bill of Rights: The Documentary Record from the First Federal Congress 11, 14 (Helen E. Veit et al. eds., 1991).

In *McCulloch v. Maryland*, Chief Justice Marshall rejected the State of Maryland's invocation of the Tenth Amendment, despite its cited fears about the possible swallowing up states' rights and referred to the Tenth Amendment to allay these apprehensions in support of the claim that the power to create the corporations was reserved by that amendment to the states. TENTH AMENDMENT RESERVED POWERS, Authenticated U.S. Government Information, 1778 (<https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017-10-11.pdf>). Stressing the fact that the amendment, unlike the cognate section of the Articles of Confederation, omitted the word "expressly" as a qualification of granted powers, Justice Marshall declared that its effect was to leave the question of "whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend upon the fair construction of the whole instrument." *Id.*

<sup>7</sup> Specifically, "[James] Madison's original Tenth Amendment proposal stated, 'The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the states respectively.'" James Madison, *supra* note 10, 14.

<sup>8</sup> Richard J. Purcell, *Records of the American Catholic Historical Society of Philadelphia*, Vol. 52, No. 3 (Sep. 1941), 137–160 (<https://www.jstor.org/stable/pdf/44209394.pdf>).

Specifically, the Annals of Congress recounts:

In connection with the offered tenth amendment, that, "The powers not delegated by the Constitution nor prohibited to it by the States, are reserved to the States respectively," Daniel Carroll proposed

version of the Tenth Amendment was under discussion, Thomas Tudor Tucker, a delegate from South Carolina, “proposed to amend the proposition, by prefixing to it ‘all powers being derived from the people.’ He thought this a better place to make this assertion than the introductory clause [i.e. Preamble] of the constitution, where a similar sentiment was proposed by the committee.”<sup>9</sup> Although Tucker’s addition was ultimately not included in the Tenth Amendment, this sentiment was still achieved through Carroll’s floor amendment, which added the Tenth Amendment’s last three words.<sup>10</sup>

This inclusion of *the people* into the Tenth Amendment was also a nod to what many state constitutions, and thus many United States Senators and Representatives who were in the First Congress crafting the Bill of Rights, acknowledged and understood: that power originates with the people.<sup>11</sup> For example, the preamble of Georgia’s Constitution began: “We, therefore, the representatives of the people, *from whom all power originates*, and for whose benefit all government is intended . . . do ordain and declare . . .” The inclusion of *the people* indicated that Congress desired to acknowledge the people’s role in the creation and relationship of government as a whole. However, despite the addition of this language, it has had little to no impact on the American jurisprudence.

*b) Supreme Court Treatment of the Tenth Amendment*

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that there be added "or to the people." Herein Carroll gave pledge of his belief in states' rights and his recognition of the people of the states.

*Id.*

<sup>9</sup> Amar, *supra* note 5.

<sup>10</sup> See *id.*

<sup>11</sup> See Ga. Const. of 1777 pml. (emphasis added); See also S.C. Const. of 1776, pml. (“[S]ome mode [of government] should be established by common consent, and for the good of the people, the origin and end of all governments . . .”); N.J. Const. of 1776, pml. (“[A]ll the constitutional authority ever possessed by the kings of Great Britain over these colonies, or their other dominions, was, by compact, derived from the people, and held of them, for the common interest of the whole society.”).

The Supreme Court's treatment of the Tenth Amendment has been inconsistent, fluctuating between a pendulum of interpretations.<sup>12</sup> On one end, one interpretation has been that the Tenth Amendment is a mere reminder that Congress may act only if it has express or implied authority.<sup>13</sup> In contrast, on the other end of the spectrum, the Supreme Court has also interpreted the Tenth Amendment to reserve a zone of activities to the states and prohibit Congress from intruding into this zone, even when it is exercising its legislative power pursuant to Article I of the Constitution.<sup>14</sup>

Although the Tenth Amendment, in the early years, was “frequently invoked to curtail powers expressly granted to Congress, notably the powers to regulate commerce, to enforce the Fourteenth Amendment, and to lay and collect taxes,” this view was abandoned in 1937.<sup>15</sup> After 1937, the Tenth Amendment then became the mere “reminder” that Congress may act only if there is express or implied authority.<sup>16</sup> In fact, in stark contrast to its mid-nineteenth to mid-twentieth century reign, “[f]rom 1937 until 1976, not [a] single federal law was declared unconstitutional as violating the tenth amendment.”<sup>17</sup>

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<sup>12</sup> See (1996). TENTH AMENDMENT AND THE CONFERENCE OF THE STATES. *The Tenth Amendment and the Conference of the States hearing before the Subcommittee on the Constitution, Federalism, and Property Rights of the Committee on the Judiciary, United States Senate, One Hundred Fourth Congress, first session. March 24, 1995.* 31.

([https://lawproxy.gsu.edu:2078/HOL/Page?men\\_tab=srchresults&handle=hein.cbhear/cbhearings8115&id=35&size=2&collection=congrec&terms=tenth%20amendment&termtype=phrase&set\\_as\\_cursor=0](https://lawproxy.gsu.edu:2078/HOL/Page?men_tab=srchresults&handle=hein.cbhear/cbhearings8115&id=35&size=2&collection=congrec&terms=tenth%20amendment&termtype=phrase&set_as_cursor=0)) (hereinafter “Tenth Amendment”).

<sup>13</sup> See e.g., “The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified.” *United States v. Sprague*, 282 U.S. 716, 733 (1931); These “early years” lasted for approximately a century—from the death of Chief Justice Marshall until 1937. Tenth Amendment *supra* note 16, at 31.

<sup>14</sup> See, e.g., *New York v. United States*, 112 S.Ct. 2408 (1992); Tenth Amendment *supra* note 16, at 31.

<sup>15</sup> TENTH AMENDMENT RESERVED POWERS *supra* note 10, at 1778.

<sup>16</sup> Tenth Amendment *supra* note 16, at 31.

<sup>17</sup> *Id.*

From 1937 to 1976, the language in *United States v. Darby*, in which the Court declared “[t]he amendment states but a truism that all is retained which has not been surrendered,” perhaps best summed up the Court’s view on the Tenth Amendment.<sup>18</sup> However, in 1976, the Court once again invoked the Tenth Amendment in *National League of Cities v. Usery*, where the Court declared a federal law that required state and local governments to pay their employees the minimum wage unconstitutional, relying on the Tenth Amendment to do so.<sup>19</sup> However, this reemergence of the Tenth Amendment’s power was short lived. Approximately a decade later, after the Supreme Court and lower courts struggled to define the content of the Tenth Amendment, the Court expressly overruled *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority*, declaring that the Tenth Amendment would not be used as a basis for invalidating federal legislation.<sup>20</sup> The Court reasoned that it had “proven impossible to define a zone of activities reserved to the states and, in addition, the interests of states were adequately protected in the national political process.”<sup>21</sup>

Despite its seemingly settled position, the Supreme Court employed the Tenth Amendment as a basis for declaring a federal law unconstitutional in *New York v. United States* less than a

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<sup>18</sup> *United States v. Darby*, 312 U.S. 100, 124 (1941). In full, the Court stated:

“The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.”

*Id.*

<sup>19</sup> *National League of Cities v. Usery*, 426 U.S.C. 833 (1976).

<sup>20</sup> *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985); Tenth Amendment *supra* note 16, at 31.

<sup>21</sup> Tenth Amendment *supra* note 16, at 31.

decade later.<sup>22</sup> In *New York*, the Court held that the Low Level Radioactive Waste Disposal Act was unconstitutional in forcing states to adopt law and regulations to clean up nuclear wastes or to take title to them, reasoning that Congress violates the Tenth Amendment when it conscripts states and forces them to enact laws or adopt regulations.<sup>23</sup> Notably, however, the Court did not overrule *Garcia*.<sup>24</sup>

Approximately five years later in *Printz v. U.S.*, the Supreme Court held that the Brady Handgun Violence Prevention Act's interim provision commanding that the chief law enforcement officer of each local jurisdiction perform background checks was unconstitutional.<sup>25</sup> The Supreme Court reasoned in part that the system of "dual sovereignty" set up in the constitutional scheme was a system in which states retained a "residuary and inviolable sovereignty," although states did surrender many powers to the federal government.<sup>26</sup> The Court reasoned that the power of the federal government would be augmented "immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States."<sup>27</sup>

Ultimately decided on Commerce Clause grounds, *National Federation of Independent Business v. Sebelius*, the 2012 Affordable Care Act case, also recognized that:

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<sup>22</sup> New York, 112 S.Ct. at 2408; Tenth Amendment *supra* note 16, at 31.

<sup>23</sup> New York, 112 S.Ct. at 2408; Tenth Amendment *supra* note 16, at 31.

<sup>24</sup> New York, 112 S.Ct. at 2408; Tenth Amendment *supra* note 16, at 31.

<sup>25</sup> *Printz v. U.S.*, 521 U.S. 898, 919–20 (1997).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 922. This reasoning also implicates the "anticommandeering doctrine," which was pioneered in *New York v. United States* and is simply one way the court has represented the recognition of the limit on the federal government or congressional authority. *See Murphy v. National Collegiate Athletic Assn.*, 584 U.S. \_\_ (2018). Notably, the anticommandeering doctrine remains silent on the "to the people" portion of Tenth Amendment, instead focusing strictly on federalism and recognizing the dual sovereignty of the federal and state governments but not addressing the people's sovereignty at all.

What is absolutely clear, affirmed by the text of the 1789 Constitution, by the Tenth Amendment ratified in 1791, and by innumerable [Supreme Court] cases . . . is that there are structural limits upon federal power—upon what it can prescribe with respect to private conduct, and upon what it can impose upon the sovereign States. Whatever may be the conceptual limits upon the Commerce Clause and upon the power to tax and spend, they cannot be such as will enable the Federal Government to regulate all private conduct and to compel the States to function as administrators of federal programs.<sup>28</sup>

Similarly, in 2018, *Murphy v. NCAA* recognized that the “legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated power. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms.”<sup>29</sup>

Significantly, in all of the Supreme Court’s inconsistency in applying the Tenth Amendment, it has strictly and exclusively focused on the Tenth Amendment as an instrument for federalism: the relationship between the federal government and the states. The *to the people* phrase in the Amendment and any focus on the people’s role in the Amendment or in the larger picture of this seemingly tri-party relationship in the Tenth Amendment has been met with resounding silence by the Court.

### **III. Prior Research and Current Research Question**

#### *a) Prior Research*

This Article originated from a research seminar paper written by Abby Stout for a course taught by Clark Cunningham at the Georgia State University College of Law in Atlanta, Georgia. Diana Coetzee, then completing an MA in Applied Linguistics at Georgia State University,<sup>30</sup> was

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<sup>28</sup> National Federation of Independent Business v. Sebelius, 567 U.S. 519, 647 (2012).

<sup>29</sup> See *Murphy v. NCAA*, 584 U.S. \_ (2018).

<sup>30</sup> One of the research and teaching foci of the GSU Department of Applied Linguistics and ESL (<http://alsl.gsu.edu>) is Corpus Linguistics. Four of the graduate faculty members in the department (Viviana Cortes, Scott Crossley, Eric Friginal, Ute Römer) specialize in this area.

a research and teaching assistant to Cunningham and assisted Stout with her linguistic research. The Corpus of Founding Era American English (*COFEA*)<sup>31</sup> was used for a majority of the research both in the original paper and this expanded study. *COFEA* includes six sources dating from 1760-1799: Evans Early American Imprints, Founders Online, HeinOnline, Farrands, United States at Large, and Elliots. The corpus consists of over 126,000 texts which make up over 136,800,000 words.

The spring research that Coetzee and Stout worked on was particularly focused on the linguistic and legal relationship between *power* and *people* in the Tenth Amendment, especially when viewed in light of the political theories that influenced the Framers and the federalism concepts that are embedded in the Constitution. Through this initial research, we discovered that the verb *delegate* was a significant word in the Tenth Amendment as it designated the agent of the power. After delving more deeply into the corpus data, strong patterns emerged. What was found through the initial research was that whenever *delegate* (or its inflected forms *delegates* or *delegated*) is used in the context of the people's power or power of the people, it is almost exclusively used in the context of the people delegating power. Significantly, based on *COFEA* data, power was never delegated *to the people*. Oftentimes, this delegation of power from the people is to the government, for the government's formation and authority to act. Some examples from the dataset are helpful in illustrating this point. One source recounts:

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<sup>31</sup> *Corpus of Founding Era American English* (BYU Law Law & Corpus Linguistics), <https://lawcorpus.byu.edu>. *COFEA* was created by the J. Reuben Law School at Brigham Young University. See Stephanie Frances Ward, *New web platform helps users research meanings of words used in Constitution, Supreme Court Opinions*, ABA JOURNAL (Sep. 17, 2018). Both the data in *COFEA* and basic on-line search tools are freely available at: <https://lawncl.byu.edu/> Access to *COFEA* requires registration using a Google or Gmail account to guard against hacking.

In the social [compact], or constitution of a nation , the powers of legislation are [  
t]he first and [supreme] powers [delegated]  
by the people , who are the sovereign , and , of right , have and retain the [control  
] of all the [powers] of [government], in society , at pleasure . . .  
So that , in the present case , though the [constitution]  
hath vefied the president and senate of the United States , with the general power  
of making treaties ; yet this power , at highefl , is but a subordinate powers and w  
henever affurned or carried beyond the laws of the land , or to the subversion or in  
fringement of the powers , by the people in social [compact].<sup>32</sup>

In the records of The Debates in the Several State Conventions on the Adoption of the Federal Constitution, Edmund Pendleton, a leader at the Convention and later the first Chief Justice of Virginia, stated:

Who shall dare to resist the people ? No , we will assemble in Convention ; wholl  
y recall our delegated powers , or reform them so as to prevent such abuse ; and p  
unish those servants who have perverted powers , designed for our happiness , to t  
heir own emolument . We ought to be extremely cautious not to be drawn into dis  
pute with regular government , by faction and turbulence , its natural enemies . He  
re , then , sir , there is no cause of alarm on this side ; but on the other side , rejecti  
ng of government , and dissolving of the Union , produce confusion and despotis  
m . But an objection is made to the form : the expression , We , the people , is tho  
ught improper . Permit me to ask the gentleman who made this objection , *who bu  
t the people can delegate powers ? Who but the people have a right to form gover  
nment ?* The expression is a common one , and a favorite one with me . The repre  
sentatives of the people , by their authority , is a mode wholly inessential . If the o  
bjection be , that the Union ought to be not of the people , but of the state govern  
ments , then I think the choice of the former very happy and proper.<sup>33</sup>

An oration in the late 1790s also identifies the most familiar radical principle of liberty as being “*that power originates with the people*, and is subject to their modification.”<sup>34</sup>

Relevantly, a political disquisition from 1775 states:

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<sup>32</sup> American Remembrancer; or, an Impartial Collection of Essays, Resolves, Speeches, &c. Relative, or Having Affinity, to the Treaty with Great Britain (1795) (HeinR329) (emphasis added). The spelling has been updated, as indicated by the brackets, for the reader’s better understanding convenience.

<sup>33</sup> Elliot’s Debates, Vol. 3 (elliots.v3.section8.txt) (emphasis added).

<sup>34</sup> An oration, pronounced at Worcester, on the fourth of July, 1798; the anniversary of the independence of the United States of America. / By Samuel Austin, A.M. (1798) (evans.N25156) (emphasis added).

The People the Fountain of Authority , the Object of Government , and last Resou rce . *ALL lawful authority , legislative , and executive , originates from the people . Power in the people is like light in the sun , native , original , inherent , and unli mited by any thing human .* In governors , it may be compared to the reflected ligh t of the moon ; for it is only borrowed , delegated , and limited by the intention of the people , whose it is , and to whom governors are to consider themselves as res ponsible , while the people are answerable only to God ; themselves being the los ers , if they pursue a false scheme of politics . Of which more hereafter . *As the pe ople are the fountain of power , so are they the object of government ,* in such ma nner , that where the people are safe , the ends of government are answered , and where the people are sufferers by their governors , those governors have failed of the main design of their institution , and it is of no importance what other ends the y may have answered . *As the people are the fountain of power , and object of go vernment , so are they the last resource , when governors betray their trust .<sup>35</sup>*

These and other numerous examples, along with distinct patterns in the corpus, provide support for the proposition that whenever *people* and *power* appeared near each other, the ultimate governmental-related power resided in the people.

Following the results of the *COFEA* analysis which indicated that people were the source and delegators of power, the next logical task—in light of the text of the Tenth Amendment, which reserves power to “the States respectively, or to the people”—is to identify what specific powers were exclusively reserved to the people, if any.

One such identified power appears to be the people’s elective power. Related to elective power, many of the *COFEA* texts seem to suggest that the people’s elective powers are a way to indirectly assert their own sovereign powers and hold their legislators politically accountable. This political accountability appears to be largely aimed at protecting the people’s individual rights, including protecting themselves against an infringement on their individual liberty. For example,

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<sup>35</sup> Political disquisitions; or, An enquiry into public errors, defects, and abuses. Illustrated by, and established upon facts and remarks, extracted from a variety of authors, ancient and modern. : Calculated to draw the timely attention of government and people, to a due consideration of the necessity, and the means, of reforming those errors, defects, and abuses; of restoring the constitution, and saving the state. / By J. Burgh, gentleman; author of the Dignity of human nature, and other works. ; Volume the first [-third and last]. (1775) (evans.N10941) (emphasis added).

James Otis, famous political activist and Massachusetts legislator, wrote the following in 1764, many years before the Constitutional Convention, expressly invoking famous political philosopher John Locke on the subject:

I shall close this introduction with a passage from Mr. Locke . " Tho ' , says he , in a constituted common wealth , standing upon its own basis , and acting according to its own nature , that is , acting for the preservation of the community , there can be but one supreme power which is the legislative , to which all the rest are and must be subordinate ; yet the legislative being only a fiduciary power , to act for certain ends , *there remains still , " in the people , a supreme power to remove , or alter , the legislative when they find the legislative act contrary to the trust reposed in them .*" For all power given , with trust for the attaining an end , being limited by that end , whenever that end is manifestly neglected , or opposed , the trust must necessarily be forfeited , and the power devolve into the hands of those who gave it , who may place it anew where they shall think best , for their safety and security . *And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body , even of their legislators when ever they shall be so foolish , or so wicked , as to lay and carry on designs , against the liberties and properties of the subject .*<sup>36</sup>

Another writing from Noah Webster to Thomas Jefferson in 1790 is also illuminating:

That every right claimed by a citizen of a free government is liable to vary with circumstances ; except what rest wholly on the moral law ; that therefore every right , created by political law , should be always subject to be modified by the power that created it , viz . the will of the state , which is always the will of the delegation . — *That in short , the election and organization of the body which is to express the will of the state , is the only power which the people and a convention can exercise , and the only power which an ordinary legislature can not .*<sup>37</sup>

Roger Griswold, a Connecticut Congressman, Governor, and Connecticut Supreme Court Judge recognized in the Fourth Congress:

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<sup>36</sup> The rights of the British colonies asserted and proved. By James Otis, Esq; ; [Four lines in Latin from Virgil] (1764) (evans.N07655) (emphasis added).

<sup>37</sup> "To Thomas Jefferson from Noah Webster, Jr., 12 December 1790," *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/01-18-02-0106>. [Original source: *The Papers of Thomas Jefferson*, vol. 18, 4 November 1790–24 January 1791, ed. Julian P. Boyd. Princeton: Princeton University Press, 1971, pp. 153–154.] (emphasis added).

*All laws originate from the people . The laws enacted by the Legislature are nothing more than the expression of their will . And shall not the people have the power to annul , by one agent , those laws , which the ) have established by other agents ? The hands of the people are not tied ; the same right which gave them the power to make statutes by a Legislature , gives them the power of repealing those statutes by Treaty , whenever they find it useful so to repeal them .<sup>38</sup>*

Some have argued that this elective power of the people was a better protector of people's rights than a Bill of Rights. For example, during the debates surrounding the Constitution's adoption, Pendleton stated:

While we are in pursuit of checks, and balances, and proper security in the delegation of power, we ought never to lose sight of the representative character. By this we preserve *the great principle of the primary right of power in the people*; and should deviations happen from our interest, the spirit of liberty, in future elections, will correct it--a security I esteem far superior to paper bills of rights. When the bands of our former society were dissolved, and we were under the necessity of forming a new government, we established a constitution founded on the principle of representation, preserving therein frequency of elections, and guarding against inequality of suffrage.<sup>39</sup>

Finally, Ira Allen, one of the founders of the state of Vermont, stated the following in a Lockean-influenced address to the Vermont General Assembly:

*"That all power being originally inherent in, and consequently derived from the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them." . . . I readily grant that all governmental power was in the people before they formed any mutual compacts; but by reason of vile and vicious men, it became necessary to have some known rules or form of government, to protect the virtuous, and punish the vicious. In order to form such rules or laws, as people were numerous and scattered, it became necessary to choose and send representatives, in order to which, individuals must give up to their representatives their natural right of legislation, for such term of time as should be mutually agreed, on such representatives proceeding to form any laws or mode of government, they would act by the authority of the people; and should the people, after the publication of such mode of government or law, by their own voluntary consent, accept of the same, there cannot be the least doubt but that they would be bound by such constitution or law; and in erecting an executive*

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<sup>38</sup> Annals of the Congress of the United States 1st Congress to 18th Congress, 1st Session (1789-1924) (1790) (HeinR189) (emphasis added).

<sup>39</sup> Elliot's Debates, Vol 3 (elliots.v3.section13.txt).

branch of government, the people would give up to such magistrates as they should elect, their natural right of executive power, for the more easy and convenient exercise of the same, and for their common good, for such term of time, and in such manner as should be specified in such constitution or law as they should mutually assent to. It is to be observed that “*all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.*”<sup>40</sup>

These example texts demonstrate the strong sentiment in the Founding Era that the power originates from and ultimately belongs to the people who then relinquish it to the government once a government is established. However, a significant caveat to this relinquishment of power is the people’s seemingly retained power, as manifested through the election process to hold legislators and other government officials accountable to the populous.

*b) Current Research Question*

Upon an invitation to revise our spring seminar paper and present interdisciplinary approaches to answering legal questions at the Georgia State Law & Linguistics workshop<sup>41</sup>, we sought to develop a research question that could build upon the research performed in the spring. It struck us that, unlike typical modern day speech, the language of the Founding Era captured in *COFEA* often referred to the *people* as being the group of individuals electing officials. This is contrary to 21st century American rhetoric, which often refers to *citizens*—rather than *people*—as those who effectuate the voting.<sup>42</sup> In fact, the right to vote is often viewed as one of the most characteristic and basic rights associated with citizenship; the United States Attorney’s Office has

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<sup>40</sup> A vindication of the conduct of the General Assembly of the state of Vermont, held at Windsor in October, 1778, against allegations and remarks of the protesting members; : with observations on their proceedings at a convention held at Cornish, on the 9th day of December 1778. / By Ira Allen. Arlington, 9th Jan. 1779. (1779) (evans.N12806) (emphasis added).

<sup>41</sup> <http://www.clarkcunningham.org/Workshop-Law-Linguistics.html>

<sup>42</sup> See, e.g., Wendy Weiser & Douglas Keith, *The Actual True and Provable Facts About Non-Citizen Voting*, TIME, <https://time.com/4669899/illegal-citizens-voting-trump/> (Feb. 13, 2017).

called it “one of the defining elements of a representative republic” and the White House calls it “[o]ne of the most important rights of American citizens.”<sup>43</sup> However, the Bill of Rights—widely viewed as protector of individual rights and liberties—does not use the word *citizen* or *citizens*. Instead, these rights are secured to the *people*, as the term appears in the First, Second, Fourth, Ninth, and Tenth Amendments. This divergent use of *people* in some instances and *citizens* in other instances in the Constitution led the authors to the following research question: During the Founding Era, how were the words *people* and *citizens* used differently, especially in terms of constructs that convey agency?

#### IV. Methodology

To answer this research question, a comparative analysis of *people* and *citizens*, and their respective linguistic patterns, was conducted using two corpora. We worked with both the online version of *Cofea* and a corpus composed of the public papers of James Madison available from Founders Online, consisting of 10,729,712 words. While earlier texts written by James Madison are included in *Cofea*, the Madison corpus goes beyond *Cofea* in that it also includes texts from Founders Online that extend into the 1800s.<sup>44</sup> Using two corpora enabled us to carry out more detailed analyses of the linguistic patterns around *people* and *citizens*. We normalized the frequencies of all results to 1 million, which allowed us to compare findings across corpora.

A combination of corpus-linguistic research methods was used in this study. First, we determined the frequencies of the words *people* and *citizens*. We then extracted collocations of the

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<sup>43</sup> <https://www.justice.gov/sites/default/files/usao-mn/legacy/2011/09/16/MN%20Civil%20Rights%20FINAL.pdf>; *Our Government Elections & Voting*, WHITEHOUSE.GOV. <https://www.whitehouse.gov/about-the-white-house/elections-voting/> (last visited Oct. 4, 2019).

<sup>44</sup> *About Founders*, Founders Online (National Archives), <https://founders.archives.gov/> Founders Online contains 27,639,683 words, distributed as follows: Washington Papers 12,044,694; Adams Papers 7,274,489; Hamilton Papers 3,895,699; Franklin Papers 2,578,518; Jefferson Papers 1,726,603; and Madison Papers 119,680. About 70% of the words in Founders come from either the Washington Papers (44%) or the Adams Papers (26%).

search terms (i.e., words that frequently occur in the immediate lexical context of the search terms). We also retrieved lists of fixed recurring phrases (often referred to as “n-grams” or word clusters) that the search terms often occur in. In a subsequent qualitative analysis, multiple instances of selected high-frequency clusters containing people and citizens were studied in their larger textual context in concordances. This concordance analysis allowed us to see how *people* and *citizens* were used in Founding Era texts and what meanings they were associated with.

Initially, we searched *COFEA* to determine the frequencies of each term. We found that *people* has a frequency of 886.4 per million words (118,325 instances in *COFEA*), while *citizens* has a frequency of 199.2 per million words (26,585 instances). To compare these figures to current use, we looked up both items in the 560-million word Corpus of Contemporary American English<sup>45</sup> (*COCA*). *People* has a frequency of 976,270 in *COCA* (1,743.3 per million words), whereas *citizens* occurs with only 36,467 times (65.1 per million words). This shows that during both time periods, *people* was considerably more frequently used than *citizens* but that this difference is more pronounced in contemporary American English than in texts produced by the Founders.

To further compare these two words, we extracted frequency-sorted lists of their collocates (words that occur within five words to the left and to the right of each term).<sup>46</sup> Table 1 shows the ten most frequent collocates of both search terms, *people* and *citizens*. *The*, *of*, *and*, *to*, *by*, and *their* are frequent linguistic neighbors of both terms. In corpus linguistics, a general underlying assumption is that “repeated events are significant”<sup>47</sup> as they capture what is typical in the language

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<sup>45</sup> Davies, Mark. 2008-. The Corpus of Contemporary American English: 450 million words, 1990-present. <<https://www.english-corpora.org/coca/>> (30 September 2019)

<sup>46</sup> Sinclair, J. (Ed.) (1991). *Corpus, Concordance, Collocation*. Oxford, UK: Oxford University Press

<sup>47</sup> Stubbs, Michael (2001). Words and Phrases. *Corpus Studies in Lexical Semantics*. Oxford: Blackwell. pp.221.

(or in a specific subset of it). Frequency in a specialized corpus affords apparent evidence that a form, if repeated, is significant in that corpus of texts.<sup>48</sup>

From our previous discussions of agency, we can see that both *people* and *citizens* frequently collocate with the word *by*, which could lead us to find what action is conducted by each group. In order to do so, we however need to look beyond single words that co-occur with our search terms and examine the larger context and longer sequences that contain them, with a particular focus on verbs that specify what is “done” by the people or citizens.

**Table 1:** Top 10 collocates of “citizens” and “people” in *COFEA*

Citizens	People						
Collocate	Frequency	Per Mio	Range	Collocate	Frequency	Per Mio	Range
the	26,699	200.0	4,396	the	133,675	1,001.4	12,951
of	24,160	180.1	4,591	of	76,759	575.0	10,999
and	9,795	73.4	2,594	and	42,089	315.3	7,166
to	9,523	71.3	2,809	to	41,607	311.7	8,301
our	4,098	30.7	1,506	a	22,892	171.5	5,344
states	3,733	27.9	1,132	in	22,633	169.5	5,916
their	2,973	22.3	1,242	that	17,824	133.5	5,143
fellow	2,953	22.1	1,403	by	11,549	86.5	3,742
by	2,792	20.9	1,105	are	10,772	80.7	3,976
or	2,783	20.9	809	their	10,267	76.9	3,358

In a next analytic step, we loaded the James Madison corpus from Founders Online into the offline concordance tool *AntConc*, which allowed us to generate lists of n-grams, or fixed sequences of *n* words, ranging from three to five words (i.e., 3- to 5-grams), which contain *people* and *citizens* in any position (e.g., *the people of, citizens of the United States*). This process allowed us to observe longer phrases that the search terms, *people* and *citizens*, frequently occur in, in the relevant genre, as *COFEA* does not have an n-gram tool. The public papers of James Madison

<sup>48</sup> Breeze, Ruth. (2019). Part-of-speech patterns in legal genres: Text-internal dynamics from a corpus-based perspective. In Teresa Fanego & Paula Rodríguez-Puente (Ed.), *Corpus-based Research on Variation in English Legal Discourse* (pp.79-103). Amsterdam: John Benjamins Publishing Company.)

were relevant to the search query as Madison, a major player in drafting the Constitution, has even been referred to as the “master builder of the Constitution<sup>49</sup>. ”

Table 2 lists the 35 most frequent n-grams containing *people* and *citizens* in the James Madison corpus. We see that both *by the people* and *by the citizens* are among the most frequently used phrases in this corpus and that, with 262 instances, *by the people* is considerably more frequent than *by the citizens* which occurs 53 times in this *COFEA* subcorpus. We then searched for both phrases in the entire *COFEA* and found that *by the people* has a frequency of 2,882 (21.6 per million words) in *COFEA* whereas *by the citizens* occurs 417 times (3.1 per million words).

**Table 2:** Top 35 n-grams with “people” and “citizens” in the *James Madison Corpus*

People				Citizens			
Frequency	Per Mio	Range	n-gram	Frequency	Per Mio	Range	n-gram
1555	144.9	1034	of the people	694	64.7	575	citizens of the
940	87.6	717	the people of	537	50.0	446	the citizens of
423	39.4	348	to the people	391	36.4	338	citizens of the united
380	35.4	300	people of the	389	36.3	336	citizens of the United states
318	29.6	260	the people of the	326	30.4	287	of our citizens
262	24.4	189	<b>by the people</b>	259	24.1	224	the citizens of the
259	24.1	220	of the people of	236	21.9	218	of the citizens
206	19.2	187	that the people	162	15.1	133	our fellow citizens
196	18.3	185	the people in	156		135	my fellow citizens
					14.53		
173	16.1	154	people of this	144	13.4	133	of the citizens of
156	14.5	142	the people of this	138	12.9	128	the citizens of the united
139	12.9	127	to the people of	136	12.7	117	citizens of the u
133	12.4	124	the people are	123	11.5	109	citizens of this
128	11.9	123	the people to	118	10.9	107	to the citizens
125	11.6	109	the American people	99	9.2	87	of our fellow citizens
119	11.1	99	the people at	86	8.1	79	to the citizens of
117	10.9	99	people of the United	79	7.4	71	of American citizens
114	10.6	97	people of the united	76	7.1	67	to our citizens

<sup>49</sup> Max Farrand, *The Framing of the Constitution of the United States* 196 (1913).

111	10.3	99	the people, and	75	7.0	71	the citizens of this
101	9.4	84	people at large	74	6.9	67	our own citizens
101	9.4	89	the people of the united	73	6.8	66	U.S. citizens
98	9.1	81	the people at large	72	6.7	66	of my fellow citizens
93	8.7	91	of the people in	70	6.5	63	to citizens of
90	8.4	82	among the people	66	6.2	66	his fellow citizens
89	8.3	77	of the people of the	66	6.2	59	of its citizens
88	8.2	73	people of America	64	5.9	60	of the citizens of the
82	7.6	76	and the people	60	5.6	57	of citizens of
81	7.5	78	people in the	59	5.5	51	the citizens of the U
80	7.4	66	the people of America	59	5.5.	54	to the citizens of the
78	7.3	72	body of the people	58	5.4	52	class of citizens
78	7.3	74	that the people of	57	5.3	56	your fellow citizens
75	7.0	64	on the people	56	5.2	54	their fellow citizens
73	6.8	69	the people have	53	4.9	51	<b>by the citizens</b>
70	6.5	63	of our people	51	4.8	48	fellow citizens of
66	6.2	54	representatives of the people	48	4.5	43	of its citizens

Subsequently, these phrases, *by the people* and *by the citizens*, underwent an even closer examination. We first extracted verb collocates that occur in the left-hand context of both n-grams from *COFEA*. The top twenty-five verb collocates, in a context span of up to six words to the left (6L) of each phrase, are listed in Table 3 below. They include all words, in this collocate position, that are labeled as verbs or verb forms in *COFEA*.

**Table 3:** Top 25 verb collocates to the left of the phrases “by the people” and “by the citizens” in COFEA

Collocate	Frequency	Per mio	Range	Collocate	Frequency	Per mio	Range
be	621	4.7	396	be	110	0.82	75
chosen	470	3.5	285	chosen	29	0.22	19
was	263	2.0	182	is	29	0.22	29
elected	224	1.7	162	was	26	0.19	26
is	205	1.5	159	are	22	0.16	20
are	190	1.4	141	been	15	0.11	15
been	183	1.4	145	held	15	0.11	13
were	162	1.2	127	enjoyed	14	0.10	13
made	83	0.60	71	sustained	14	0.10	12
appointed	82	0.60	69	made	12	0.09	11
being	80	0.59	69	paid	11	0.08	9

had	73	0.55	64	owned	10	0.08	9
paid	51	0.38	40	exercised	9	0.07	9
given	43	0.32	37	appointed	8	0.06	6
has	36	0.27	35	being	8	0.06	8
held	33	0.25	30	carried	8	0.06	8
received	29	0.22	22	elected	8	0.06	7
supported	29	0.22	28	were	8	0.06	8
enacted	28	0.21	20	given	6	0.04	6
approved	27	0.20	22	recovered	6	0.04	6
established	26	0.19	25	has	5	0.03	5
taken	25	0.18	24	led	5	0.03	5
considered	24	0.17	23	received	4	0.02	4
delegated	24	0.17	22	regarded	4	0.02	4

The verbs seen in Table 3 include various forms of the verb *to be* in both the *by the people* and *by the citizens* lists. Through a closer examination of concordance lines, we found that this prevalence of *to be* was largely due to the use of passive constructions *to be + past participle + by the people/citizens*, as illustrated by “now to be elected by the people”<sup>50</sup> and “should be nominated by the citizens.”<sup>51</sup> Forms of the verb *have* were also found in passive constructions (i.e., *have + been + past participle + by the people/citizens*), though these were in the perfect aspect, which expresses a completed action. Overall, a passive construction is often used when the action should be highlighted, instead of the doer or agent.

Further overlaps in the top verb collocates of both phrases *by the people* and *by the citizens* included the lexical verbs forms: *chosen, made, held, elected, appointed, paid, given, and received*. These verbs provide insights into what it is that is typically done by both people and citizens. Exclusive to *by the people* were the verbs *supported, enacted, approved, established, taken, considered, and delegated*, which was the verb of interest in our initial work on the topic. On the other hand, the verb forms *enjoyed, sustained, owned, exercised, carried, recovered, led, and*

<sup>50</sup> <https://founders.archives.gov/documents/Madison/01-10-02-0118>

<sup>51</sup> <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N22635;rgn=main;view=text;idno=N22635.0001.001>

*regarded* appeared only in the top 25 collocate list for *by the citizens*. These results on dominant verb collocations for *by the people* and *by the citizens* prompted us to further inspect the concordance lines and legal contexts of some of the verbs that occurred in both lists.

## V. Analysis: Verb Case Studies

Out of the top 25 verb forms listed in Table 3, we qualitatively analyzed *elected*, *chosen*, and *made* because they were frequent collocates of both *by the people* and *by the citizens*. In the following sections, we will discuss the results of this more detailed contextual analysis.

### a. *Verb Case Study I: Elected*

As indicated in Table 3, *elected* frequently appears within six words to the left of the phrases *by the people* and *by the citizens*. There were only five search results for the exact phrase *elected by the citizens*. In contrast, the phrase *elected by the people* yielded 153 search results, making it over thirty times more frequent than *elected by the citizens*. This indicates that it was considerably more common to use *elected by the people*, rather than *elected by the citizens* in the Founding Era. The five search results for the phrase *elected by the citizens*, with abbreviated concordance line context to the left and right, are summarized in the chart below.

	<u>Context Left</u>	<u>Elected by the citizens</u>	<u>Context Right</u>
(1)	These officers , it is true , are	elected by the citizens	, but they niuft by law be ele ~ ed , as well as the deputies to the biennial parliament or juntit general
(2)	The deputies	Elected by the citizens	of Mecklenburg Lunenburg , Brunswick and Greensville to report to the President of the United States their Opinions of the Treaty
(3)	The Senators are to be chosen by eight electors , four whereof to be	elected by the citizens	of the Eastern , and four by the citizens of the Western precinct , which electors shall have the same qualifications as...
(4)	... for he , though born in a foreign country , had been	elected by the citizens	of this country to transact their Legislative business for many years...
(5)	We the Deputies of the District of Brunswick	elected by the citizens	thereof for this express purpose , do respectfully report the Opinions of our Constituents as follow...

As seen in the chart above, some of the entities that were associated with *elected by the citizens* included *officers* and *deputies* as in “[t]hese officers . . . elected by the citizens”<sup>52</sup> and “[t]he deputies Elected by the Citizens.”<sup>53</sup> Another example that resulted from this search was:

To George Washington President of the United States Sir We the *Deputies of the District of Brunswick elected by the Citizens* thereof for this express purpose, do respectfully report the Opinions of our Constituents as follow...<sup>54</sup>

Although these three examples—concordance lines (1), (2), and (5) from the chart above—provide a few instances in which *elected by the citizens* was used in an explicitly government-related context, largely in these search results, *elected by the citizens*, does not emphasize a governmental or political theme. In several of the concordance lines—such as concordance lines (3) and (4), for example—*elected* seems to be used in the sense of “making a choice,” rather than with reference to a formal, organized method of voting an official into office. For example, the “deputies Elected by the Citizens”—referred to *supra*—appear to be referred to in the context of being chosen to perform a task (namely, choosing to report their “Opinions” on a certain treaty to the president of the United States) rather than the context of the deputies being elected in a true election.<sup>55</sup> Then, in another concordance line, it appears the same deputies are referred to and described—in light

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<sup>52</sup> *Defence of the Constitutions of Government of the United States of America, against the Attack of M. Turgot in His Letter to Dr. Price, Dated the Twenty-Second Day of March, 1778* (3rd ed.) (HeinR287)

<sup>53</sup> *To George Washington From Brunswick District, VA., Citizens, 24 August 1795*, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Washington/05-18-02-0384> (fndrs.washington.05-18-02-0384).

<sup>54</sup> *To George Washington From Brunswick District, VA., Citizens, 24 August 1795*, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Washington/05-18-02-0384> (fndrs.washington.05-18-02-0384).

<sup>55</sup> The concordance line specifically reads: The deputies Elected by the Citizens of Mecklenburg Lunenburg , Brunswick and Greensville to report to the President of the United States their Opinions of the Treaty of Amity and Commerce Lately Concluded at London between John Jay and Lord Grenville , Met at Brunswick Courthouse on the 24th day of August 1795 . To wit . Lewis Burwell , Major General Hopkins , William Delony , Thomas Field , William Cowan , Henry Stokes , Peter Garland , Waddy Street , Philip W. Jackson , Thomas Claiborne , William Ruffin , Charles B. Jones , William Stokes , Thomas Washington , Thomas Cocke , Joseph Wilkins , John Goodwin , William Wilkins , and John Rosser .

of being “elected by the Citizens . . . for this express purpose”—as fulfilling that task and giving their opinions on the treaty to the president.<sup>56</sup> Any mention of federal or local officials, like Senators, Congress members, the President of the United States, or any state elected officials, is noticeably absent from the concordance lines for a phrase one might expect to include such officials.

In contrast, a reference to officials like the president, members of Congress, state governors, and state legislatures being *elected by the people* appeared at least once in approximately 71 out of the total 153 concordance lines examined. For example, James Monroe, member of the Virginia convention for the ratification of the Constitution and later the fifth President of the United States, when providing observations on the Constitution, wrote:

But although the *legislative branch shall be elected by the people* , and amenable to them alone for their conduct , yet as the state sovereignties though qualified , will still remain , and of course the state spirit , in contradiction to a foederal one , from necessity be more or less in | fluential in its councils , we should turn our attention to the other branches of the govern | ment , as our firm resource .<sup>57</sup>

In the Virginia ratification debates, Monroe further stated:

Let us begin with the House of Representatives, which is the most democratic part; *The representatives are elected by the people*; but what is the responsibility? At the expiration of the time for which they are elected, the people may discontinue them[.]<sup>58</sup>

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<sup>56</sup> The concordance line specifically reads: “To George Washington President of the United States Sir We the Deputies of the District of Brunswick elected by the Citizens thereof for this express purpose , do respectfully report the Opinions of our Constituents as follow , that at a time when a Matter of Great and public Concern is under consideration , they deem it their Right , and in this Instance their Duty , to express their Sentiments thereupon.” To George Washington From Brunswick District, VA., Citizens, 24 August 1795, *Founders Online*, <https://founders.archives.gov/documents/Washington/05-18-02-0384> (fndrs.washington.05-18-02-0384).

<sup>57</sup> James Monroe, *Some Observations on the Constitution, &c.*, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N16546;rgn=main;view=text;idno=N16546.0001.001> (last visited October 4, 2019).

<sup>58</sup> *The Debates in the Several State Conventions on the Adoption of the Federal Constitution [Elliot's Debates, Volume 3] Tuesday, June 10, 1788*, ELLIOT'S DEBATES, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(ed00311\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(ed00311))) (last visited October 4, 2019) (elliots.v3.section11.txt) ; see also “If it should be urged — that the members of the Congress are elected by the people — that their fears

Robert Goodloe Harper, a South Carolina Congressman and then a Maryland Senator, delivered the following speech:

To this I answer , Mr. Chairman , in the first place , that we have a security in the responsibility of the *President* . *He is elected by the people* , and elected every four years .<sup>59</sup>

Further, James Madison, an active participant in the Constitutional Convention and fourth President of the United States, wrote in a letter that the legislature should:

“. . . consist of two branches : the first elected by the people of the several States , the second by the first of a number nominated by the State Legislatures ” , ( a mode of forming a Senate regarded as more just to the large States , than the equality which was yielded to the small States by the compromise with them but not material in any other view .<sup>60</sup>

A stark contrast from the way *elected by the citizens* was used in the context of the concordance lines, *elected by the people* occurs much more frequently in the context of an actual election setting. In addition to the frequency of its use in this setting—especially in contrast to the infrequency that *elected by the citizens* is used in an actual election setting—the type of official referred to as being

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become vacant after a short term ; and that this is a sufficient security for the liberties of America . I answer , it is by no means a sufficient security . When the members of the congress are once elected , they become invested with absolute unrestrained power.” *LETTERS OF PAPINIAN: IN WHICH The Conduct, present State and Prospects, OF THE AMERICAN CONGRESS, ARE EXAMINED. A CORRECT EDITION, with a PREFACE & EMENDATIONS*, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N12895;rgn=main;view=text;idno=N12895.0001.001>

(last visited October 4, 2019) (evans.N12895).

<sup>59</sup> *Mr. Harper's Speech ON THE FOREIGN INTERCOURSE BILL, IN REPLY TO Mr. Nicholas and Mr. Gallatin. DELIVERED IN THE COMMITTEE OF THE WHOLE OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, On Friday the second of March, 1798*, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N25493;rgn=main;view=text;idno=N25493.0001.001> (last visited October 4, 2019) (evans.N25493) (emphasis added).

<sup>60</sup> *The Records of the Federal Convention of 1787 [Ferrand's Records, Volume 3] CCCXCCII. James Madison to John Tyler, FARRAND'S RECORDS*, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(fr003415\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(fr003415))) (last visited October 4, 2019) (farrands.v3.section415.txt).

elected in the context of these two phrases greatly differs as well. While the *citizens* were referred to as electing officers and deputies, the *people* were electing the President and members of Congress.

b. *Verb Case Study II: “Chosen”*

Another verb form that frequently appeared in the context (6L) of the n-grams by *the people* and by *the citizens* was *chosen*. The exact phrase *chosen by the people* yielded in 266 search results while *chosen by the citizens* resulted in 11 search results. Although *chosen by the citizens* did include phrases which refer to “councilmen . . . chosen by the citizens”<sup>61</sup>; “the establishment of Constitutions *chosen by the citizens* of the respective Colonies” after “[t]he dissolution of the Colonial governments, at the time of the declaration of Independence,”<sup>62</sup>; and “Sheriffs and Coroners shall at the times and places of elections of representatives, be *chosen by the citizens* of each county,”<sup>63</sup> these usages are far and few between when compared to the numerous instances and characteristic way the phrase *chosen by the people* appears to be used. For instance, elected

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<sup>61</sup> THE AMERICAN UNIVERSAL GEOGRAPHY, OR, A VIEW OF THE PRESENT STATE OF ALL THE Empires, Kingdoms, States, and Republics IN THE KNOWN WORLD, AND OF THE UNITED STATES OF AMERICA IN PARTICULAR, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N19780;rgn=main;view=text;idno=N19780.0001.001> (last visited October 4, 2019) (evans.N19780) (emphasis added).

<sup>62</sup> AN ORATION Delivered at LENOX, the 4th July, 1793, the Anniversary of American Independence. By ELISHA LEE, Esq. STOCKBRIDGE: Printed by LORING ANDREWS. M, D, CCXCIII, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N19690;rgn=main;view=text;idno=N19690.0001.001> (last visited October 4, 2019) (evans.N19690).

<sup>63</sup> THE CONSTITUTIONS OF THE SIXTEEN STATES WHICH COMPOSE THE CONFEDERATED REPUBLIC OF AMERICA, ACCORDING TO THE LATEST AMENDMENTS. TO WHICH ARE PREFIXED, THE DECLARATION OF INDEPENDENCE; ARTICLES OF CONFEDERATION; THE DEFINITIVE TREATY OF PEACE WITH GREAT-BRITAIN; AND THE CONSTITUTION OF THE UNITED STATES, with all the Amendments. Boston: Printed by MANNING & LORING, For S. HALL, W. SPOTSWOOD, J. WHITE, THOMAS & ANDREWS, D. WEST, E. LARKIN, W P. & L. BLAKE, and J. WEST. 1797, EVANS EARLY AMERICAN IMPRINT COLLECTION, <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N24939;rgn=main;view=text;idno=N24939.0001.001> (last visited October 4, 2019) (evans.N24939) (emphasis added).

officials are regularly referred to as being *chosen by the people*. For example, one source wrote the following circa 1798:

[T]hat in cases of an abuse of the delegated powers the *members of the general government , being chosen by the people* , a change by the people would be the constitutional remedy ; but , where powers are assumed which have not been delegated , a nullification of the act is the rightful remedy[.]<sup>64</sup>

Founding Father and later third President of the United States, Thomas Jefferson, wrote:

The . . . *house of Representatives shall be composed of persons chosen by the people* annually on the [1st day of October] and shall meet in General assembly on the [15th day of November] following.<sup>65</sup>

Additionally, the following was written in the First Congress:

*The President and members of Congress are all chosen by the people* . The Government is theirs , and in their hands , as clay is in the hands of the potter,<sup>66</sup>

The Constitution , as had already been observed , places the power in the House of originating money bills . The principal reason why the Constitution had made this distinction was , *because they were chosen by the people* , and supposed to be best acquainted with their interests and ability . In order to make them more particularly acquainted with these objects , the democratic branch of the Legislature consisted of a greater number , and were chosen for a shorter period , so that they might revert more frequently to the mass of the people.<sup>67</sup>

George Nicholas, a member of the Virginia Ratification Convention stated:

Their numbers will weigh in choosing the President , *as he is elected by electors chosen by the people* in proportion to their numbers.<sup>68</sup>

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<sup>64</sup> *Jefferson's Fair Copy*, [Before 4 October 1798], FOUNDERS ONLINE, <https://founders.archives.gov/documents/Jefferson/01-30-02-0370-0003> (last visited October 4, 2019).

<sup>65</sup> *Third Draft by Jefferson*, [Before June 1776], FOUNDERS ONLINE, <https://founders.archives.gov/documents/Jefferson/01-01-02-0161-0004> (last visited October 4, 2019) (fndrs.jefferson.01-01-02-0161-0004).

<sup>66</sup> Annals of the Congress of the United States 1st Congress to 18th Congress, 1st Congress, 1st Session (1789-1924) (Hein R184).

<sup>67</sup> HeinR185; Annals of the Congress of the United States 1st Congress to 18th Congress, 1st Session (1789-1924).

<sup>68</sup> *The Debates in the Several State Conventions on the Adoption of the Federal Constitution [Elliot's Debates, Volume 3]* Friday, June 13, 1788, ELLIOT'S DEBATES, [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(ed00314\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(ed00314))) (last visited October 4, 2019) (elliots.v3.section14.txt).

Thus, although both *chosen by the people* and *chosen by the citizens* appear in political, governmental, or even elected official type contexts, *chosen by the people* appears to be the dominant choice in this context based on the frequencies of the two phrases in the corpus. Although they may be used in similar contexts, their frequencies indicate what the actual preferred language use might have been in the Founding Era. This supports a broader view of the meaning of *citizen* or *citizenship* and suggests that the meaning of citizenship was not so closely tied to officials being *chosen* or *elected* by the people that the word citizen was only or predominantly used in those contexts.<sup>69</sup>

c. *Verb Case Study III: “Made”*

Finally, *made* was another verb form that collocated (6L) with *by the people* and *by the citizens*. The exact phrase *made by the people* resulted in 39 search results while *made by the citizens* occurred 7 times. The following chart summarizes all of the “items” that are in the phrase *made by the citizens*:

<u>Left Context: “Item” being <i>made by the citizens</i></u>	<u>Made by the Citizens</u>	<u>Right Context</u>
A noble stand	<i>was made by the citizens</i>	of Dublin
[T]he captures of our vessels	<i>was made by the citizens</i>	of France
[N]o small tumult	[was] <i>made by the citizens</i>	of the order of the twelve
The contracts”	were <i>made by the citizens</i>	of their own free will, and if the French government never . .
That the [election] of [electors], for the purpose of choosing the president and vice-president of the United States	will] be <i>made by the citizens</i>	of this ( late, qualified to vote for members of the houses of delegates
That . . . [election] of representatives . . . in the [Congress] of the United States	[shall be] <i>made by the citizens</i>	of this Rate qualified to vote for [members] of the house of delegates
[I]f the same declarations and assurances are made by you, which it is required		should be <i>made by the citizens</i> to be assembled at Redstone

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<sup>69</sup> This also supports the idea that the original meaning of the work citizen in the Constitution did not necessarily encompass all forms of political participation or involvement—like voting.

The left column provides the object or item being referred to as *made by the citizens*. The right column completes the thrust of the sentence or idea around the *made by the citizens* phrase to provide further context for the left column. As exhibited by the left column, two objects or nouns out of the seven search results are government-related.<sup>70</sup> Thus, this government-related category constitutes approximately 28.5 percent of the total instances that the exact phrase *made by the citizens* is used.

Turning to the other relevant phrase, *made by the people* refers to a government-related concept eleven out of the thirty-nine search results. Notably, this represents roughly 28 percent of the total instances in which the phrase *made by the people* is used. An *election* that is *made by the people* appears six times in the search results; the *Constitution* is referred to as *made by the people* twice in the search results; the *government* is referred to as *made by the people* once; *laws* are referred to in the context of being *made by the people* once; and “*the choice of the [Governor]*” was referred to as being *made by the people* once in the search results. For example, James Madison:

“. . . was of the opinion that the appointment of the Members to the first branch of the national Legislature ought to be *made by the people* for two reasons , -- one was that it would inspire confidence , and the other that it would induce the Government to sympathize with the people .<sup>71</sup>

Although the frequencies of the two phrases are different—with *made by the people* occurring more frequently than *made by the citizens*—the contexts in which the two phrases were

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<sup>70</sup> Specifically: “That the [election] of [electors], for the purpose of choosing the president and vice-president of the United States” and “That . . . [election] of representatives . . . in the [Congress] of the United States”

<sup>71</sup> *The Records of the Federal Convention of 1787 [Farrand's Records, Volume I]* YATES Thursday, May 31st, 1787, FERRAND'S RECORDS, [https://memory.loc.gov/cgi-bin/query/r?ammem/llaw:@field\(DOCID+@lit\(fr00131\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/llaw:@field(DOCID+@lit(fr00131))) (last visited October 4, 2019) (emphasis added).

used are comparable<sup>72</sup> and the share with which each phrase was used in a government-related context was strikingly similar (with both representing approximately 28 percent of the search results for each word). Although these observations may indicate that the two phrases—and, in turn, words—are similar to each other, this does not necessarily mean that the two words can be used interchangeably. The more expansive and diverse government-related words which appeared with the phrase *made by the people* in the concordance lines would indicate that it was a more frequently used and that it constituted a more expansive and all-encompassing phrase than *made by the citizens*.<sup>73</sup>

## VI. Conclusion

Our findings indicate that, ultimately, the *people* predominates over *citizens* in terms of governing in the Founding Era. Although these findings are limited to our narrow inquiry and analysis into some of the verbs that appeared with one particular type of phrase (*by the people* and *by the citizens*), it appears that the actions of the *citizens*—especially actions such as electing, choosing, and making—were of a lesser scope and frequency than the actions of the *people* associated with the same verb constructs. Our earlier research established that in the Founding Era, the people are a ground up source of power. The research in this Article further supports that proposition. This comports with political philosophies which were influential in the Founding Era, like the social compact theory, which posits that the people are the ones who establish the Constitution and consensually give up their inherent power to form and participate in an organized

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<sup>72</sup> For example, each one included an “election” as an object that was *made by the citizens* or *people*.

<sup>73</sup> Specifically, while the government-related noun that appeared in the concordance lines with the phrase *made by the citizens* was “election”—which appeared twice—the following were government-related items that appeared in the concordance lines with the phrase *made by the people*: (1) an “election” (appearing six times in the search results); (2) the “Constitution” (appearing twice in the search results); (3) the “government” (appearing once in the search results); (4) “laws” (appearing once in the search results); and (5) “the choice of the [Governor]” (appearing once in the search result).

civil government. Once that government is formed, the people become citizens and are subject to the government's power. In essence, the people create the government, and the government creates the citizens. However, the people remain the ultimate source of power. These "roles" are thus reflected in the Constitution's governmental structure through how the Framers used terms like *people* and *citizens*. This background provides insight into how these two terms were used differently in the Founding Era, shedding light on why "We the People"—rather than "We the Citizens"—"do ordain and establish this Constitution for the United States of America."