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Abigail Stout
abbydstout@gmail.com

Diana Coetzee
diana1coetzee@gmail.com

Ute Römer
Georgia State University, uroemer@gsu.edu

"WE THE CITIZENS?": A CORPUS LINGUISTIC INQUIRY INTO THE USE OF "PEOPLE" AND "CITIZENS" IN THE FOUNDING ERA

Abigail Stout, Diana Coetzee, & Ute Römer*

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."[1] Employed as a tool to invalidate statutes[2] and also interpreted as a "truism,"[3] ultimately the Tenth Amendment has largely been regarded as an Amendment which 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?

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1. U.S. CONST. amend. X.
2. *See, e.g.*, New York v. United States, 505 U.S. 144, 156 (1992).
3. *See, e.g.*, United States v. Darby, 312 U.S. 100, 124 (1941).

This Article addresses the background and historical context of *the people* as used in the Tenth Amendment; prior research on the word *people* as used 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*.

I. Background and Historical Context

A. Legislative History of the Phrase "to the People" and the Tenth Amendment

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."[4] 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,"[5] Congress intentionally rejected and omitted the word "expressly" as a qualification of granted powers in the Tenth Amendment.[6]

Additionally, when originally proposed, the Tenth Amendment did not include the phrase "to the people" but concluded with "to the

4. U.S. CONST. amend. X.

5. ARTICLES OF CONFEDERATION of 1781, art. II.

6. Upon the Tenth Amendment's passage, both Houses of Congress refused to insert the word "expressly" before "delegated." MICHAEL J. GARCIA ET AL., CONG. RESEARCH SERV., THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, S. DOC. NO. 112-9, at 1777 (2017), https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017-10-11.pdf [https://perma.cc/LND2-AK5W]. Relatedly, in *McCulloch v. Maryland*, Chief Justice Marshall rejected the State of Maryland's invocation of the Tenth Amendment, despite the State's cited fears about the possible swallowing up of States' rights and its appeal to the Tenth Amendment in support of the claim that the power to create corporations was reserved by that Amendment to the States. *Id.* at 1778. 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.*

States respectively."[7] 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.[8] This idea was not completely original to him, however. When an earlier 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."[9] 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.[10]

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.[11] For example, the preamble of the Georgia Constitution began: "We, therefore, the representatives of the people, *from whom all power originates*, and for whose benefit

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7. Madison Resolution (June 8, 1789), *in* CREATING THE BILL OF RIGHTS: THE DOCUMENTARY RECORD FROM THE FIRST FEDERAL CONGRESS 11, 14 (Helen E. Veit et al. eds., 1991). 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." *Id.*

8. Richard J. Purcell, *Daniel Carroll, Framer of the Constitution*, 52 RECORDS AM. CATH. HIST. SOC'Y PHILA. 137, 143–44 (1941). Specifically, the Annals of Congress recounts:

> In connection with the offered [T]enth [A]mendment, that, "The powers not delegated by the Constitution nor prohibited to it by the States, are reserved to the States respectively," Daniel Carroll proposed 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.

9. Akhil Reed Amar, *The Consent of the Governed: Constitutional Amendment Outside Article V*, 94 COLUM. L. REV. 457, 493 (1994).

10. *Id.*

11. *See* GA. CONST. of 1777 pmbl.; *see also* N.J. CONST. of 1776 pmbl. ("[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. . . ."); S.C. CONST. of 1776 pmbl. ("[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 . . . .").

all government is intended . . . do ordain and declare . . . ."[12] The inclusion of "the people" indicated that Congress desired to acknowledge the people's role in the creation of and relationship to government as a whole. However, despite the addition of this language, it has had little to no impact on American jurisprudence.

B. Supreme Court Treatment of the Tenth Amendment

The Supreme Court's treatment of the Tenth Amendment has been inconsistent, fluctuating between a variety of interpretations.[13] One interpretation has been that the Tenth Amendment is a mere reminder that Congress may act only if it has express or implied authority.[14] 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.[15]

Although, in its early years, the Tenth Amendment 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.[16] After 1937, the Tenth Amendment then became a mere "reminder" that Congress may act only if there is express or implied authority.[17] In fact, in stark contrast to its mid-nineteenth to mid-twentieth century reign, "[f]rom 1937 until 1976, not [a] single

12. GA. CONST. of 1777 pmbl. (emphasis added).

13. *See Tenth Amendment and the Conf. of the States: Hearing Before the Subcomm. on the Constitution, Federalism, and Prop. Rights of the Comm. on the Judiciary*, 104th Cong. 31 (1995) [hereinafter *Tenth Amendment*].

14. *See, e.g.*, United States v. Sprague, 282 U.S. 716, 733–34 (1931) ("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 . . . ."). These "early years" lasted for approximately a century—from the death of Chief Justice Marshall until 1937. *Tenth Amendment*, *supra* note 13.

15. *See, e.g.*, New York v. United States, 505 U.S. 144, 156 (1992); *Tenth Amendment*, *supra* note 13.

16. GARCIA ET AL., *supra* note 6, at 1778.

17. *Tenth Amendment*, *supra* note 13.

federal law was declared unconstitutional as violating the [T]enth [A]mendment."[18]

From 1937 to 1976, the language in *United States v. Darby*—that "[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.[19] However, in 1976, the Court once again invoked the Tenth Amendment in *National League of Cities v. Usery* to declare a federal law that required state and local governments to pay their employees the minimum wage unconstitutional.[20] 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.[21] 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."[22]

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 decade later.[23] In *New York*, the Court held that the Low Level Radioactive

18. *Id.*

19. 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.

20. Nat'l League of Cities v. Usery, 426 U.S. 833, 852 (1976), *overruled by* Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985).

21. *Garcia*, 469 U.S. at 556–57; *Tenth Amendment*, *supra* note 13.

22. *Tenth Amendment*, *supra* note 13.

23. New York v. United States, 505 U.S. 144, 186 (1992); *Tenth Amendment*, *supra* note 13.

Waste Disposal Act, a statute that forced States to adopt laws and regulations to clean up nuclear waste or to take title to it, was unconstitutional.[24] It reasoned that Congress violates the Tenth Amendment when it conscripts state governments as its agents and forces them to enact laws or adopt regulations.[25] Notably, however, the Court did not overrule *Garcia*.[26]

Approximately five years later in *Printz v. United States*, the Supreme Court held that the Brady Handgun Violence Prevention Act's interim provision, which commanded the chief law enforcement officer of each local jurisdiction to perform background checks, was unconstitutional.[27] The Court reasoned in part that the constitutional scheme of "dual sovereignty" is a system in which States retain a "residuary and inviolable sovereignty," although States do surrender many powers to the federal government.[28] The Court also noted 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."[29]

In his dissenting opinion in the 2012 Affordable Care Act case, *National Federation of Independent Business v. Sebelius*, Justice Scalia wrote:

> 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

24. *New York*, 505 U.S. at 188.

25. *Id.*; *Tenth Amendment*, *supra* note 13.

26. *New York*, 505 U.S. at 160; *Tenth Amendment*, *supra* note 13.

27. Printz v. United States, 521 U.S. 898, 935 (1997).

28. *Id.* at 918–20.

29. *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 a limit on the federal government or congressional authority. *See* Murphy v. NCAA, 138 S. Ct. 1461, 1476 (2018). Notably, the anticommandeering doctrine remains silent on the "to the people" portion of Tenth Amendment, focusing strictly on federalism by recognizing the coexisting sovereignty of the federal and State governments without addressing the people's sovereignty at all. *Id.*

> 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.[30]

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 powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms."[31]

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. It has not engaged in any meaningful analysis of the "to the people" phrase in the Amendment's text or the seemingly apparent tri-party power structure of the Amendment.

II. Prior Research and Current Research Question

A. Prior Research

This Article originated from a research seminar paper written by Abigail Stout for a course taught by Clark Cunningham at the Georgia State University College of Law in Atlanta, Georgia. Diana Coetzee, then completing an M.A. in Applied Linguistics at Georgia State University,[32] was a research and teaching assistant to

30. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 647 (2012) (Scalia, J., dissenting).

31. *See Murphy*, 138 S. Ct. at 1476.

32. 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, and Ute Römer) specialize in this area.

Cunningham and assisted Stout with her linguistic research. We used the *Corpus of Founding Era American English* (*COFEA*)[33] 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, Farrand's Records, United States Statutes at Large, and Elliot's Debates.[34] The corpus consists of over 126,000 texts which make up over 136,800,000 words.[35]

Our spring research 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 because it designated the agent of the power. After delving more deeply into the corpus data, strong patterns emerged. Initial research found that whenever *delegate* (or its inflected forms *delegates* or *delegated*) was used in the context of *the people's power* or the *power of the people*, it was 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* was 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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33. *Corpus of Founding Era American English (COFEA)*, BYU L. CORPUS LINGUISTICS, https://lawcorpus.byu.edu [https://perma.cc/7BSZ-R3D8]. *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*, A.B.A. J. (Sept. 17, 2018, 8:00 AM), http://www.abajournal.com/news/article/new_web_platform_helps_users_research_meanings_of_words_used_in_constitutio [https://perma.cc/MEE5-WPEK]. Both the data in *COFEA* and basic online 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.

34. *See Corpus of Founding Era American English* (*COFEA*), BYU L.: L. & CORPUS LINGUISTICS, https://lcl.byu.edu/projects/cofea/ [https://perma.cc/WB8L TZNJ].

35. *Id.*

> In the social compact, or constitution of a nation, the powers of legislation are the first and supreme powers delegated by the people, who are the sovereign, and, of right, have and retain the controul of all the powers of government, in society, at pleasure . . . . So that, in the present case, though the constitution hath vested the president and senate of the United States, with the general power of making treaties; yet this power, at highest, is but a subordinate power and whenever assured or carried beyond the laws of the land, or to the subversion or infringement of the powers, by the people in social compact.[36]

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; wholly recall our delegated powers, or reform them so as to prevent such abuse; and punish those servants who have perverted powers, designed for our happiness, to their own emolument. We ought to be extremely cautious not to be drawn into dispute with regular government, by faction and turbulence, its natural enemies. Here, then, sir, there is no cause of alarm on this side; but on the other side, rejecting of government, and dissolving of the Union, produce confusion and despotism.
>
> But an objection is made to the form: the expression, We, the people, is thought improper. Permit me to ask the gentleman who made this objection, *who but the people can delegate powers? Who but the people have a right to form*

36. Proceedings at Lexington (Aug. 13, 1795), *in* 2 THE AMERICAN REMEMBRANCER; OR, AN IMPARTIAL COLLECTION OF ESSAYS, RESOLVES, SPEECHES, &C. RELATIVE, OR HAVING AFFINITY, TO THE TREATY WITH GREAT BRITAIN 34, 41 (Mathew Carey ed., Philadelphia, Henry Tuckniss 1795) (emphasis added).

> *government?* The expression is a common one, and a favorite one with me. The representatives of the people, by their authority, is a mode wholly inessential. If the objection be, that the Union ought to be not of the people, but of the state governments, then I think the choice of the former very happy and proper.[37]

An oration in the late 1790s also identifies the most familiar principle of liberty as being "*that power originates with the people*, and is subject to their modification." Relevantly, a political disquisition from 1775 states:

> ALL lawful authority, legislative, and executive, originates from the people. Power in the people is like light in the sun, native, original, inherent, and unlimited by anything human. In governors, it may be compared to the reflected light 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 responsible, while the people are answerable only to God; themselves being the losers, if they pursue a false scheme of politics. Of which more hereafter.
>
> *As the people are the fountain of power, so are they the object of government*, in such manner, 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 they may have answered.

37. 3 The Debates in the Convention of the Commonwealth of Virginia on the Adoption of the Federal Constitution, *in* THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 1, 37 (Jonathan Elliot ed., Philadelphia, J.B. Lippincott Co. 2d ed. 1836) [hereinafter THE DEBATES] (emphasis added).

> As *the people are the fountain of power*, and object of government, so are they the last resource, when governors betray their trust.[38]

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 these results of the *COFEA* analysis, which indicated that people were the source and delegators of power, we turned to the inquiry of identifying what specific powers were exclusively reserved to the people, if any.

One such power is the people's 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, James Otis—a 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. "[T]hough, 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*

38. 1 JAMES BURGH, POLITICAL DISQUISITIONS: OR, AN ENQUIRY INTO PUBLIC ERRORS, DEFECTS, AND ABUSES 3–4 (London, E. & C. Dilly 1774) (emphasis added).

> *when they find the legislative act contrary to the trust reposed in them*." For all power given, with trust for the attaining an end, 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 anybody, even of their legislators whenever they shall be so foolish, or so wicked, as to lay and carry on designs, against the liberties and properties of the subject*.[39]

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*.[40]

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

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39. JAMES OTIS, THE RIGHTS OF THE BRITISH COLONIES ASSERTED AND PROVED 33–34 (2d ed., Boston, n. pub. 1765) (emphasis added).

40. Letter from Noah Webster, Jr. to Thomas Jefferson (Dec. 12, 1790), *in* 18 THE PAPERS OF THOMAS JEFFERSON 153, 154 (Julian P. Boyd ed., 1971) (emphasis added), https://founders.archives.gov/documents/Jefferson/01-18-02-0106 [https://perma.cc/KLH4-M7AA].

> *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 they 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.[41]

Some have argued that this elective power of the people was a better protector of the people's rights than a bill of rights. For example, during the debates surrounding the Constitution's adoption, Edmond 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.[42]

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:

41. 5 ANNALS OF CONG. 478 (1855) (emphasis added).
42. THE DEBATES, *supra* note 37, at 298.

> "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 chuse 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 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."[43]

43. IRA ALLEN, A VINDICATION OF THE CONDUCT OF THE GENERAL ASSEMBLY OF THE STATE OF VERMONT, HELD AT WINDSOR IN OCTOBER, 1778 26–28 (Arlington, Alden Spooner 1779) (emphasis added).

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 one of the people's seemingly-retained power—their elective 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,[44] 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 twenty-first century American rhetoric, which often refers to *citizens*—rather than *people*—as those who effectuate the voting.[45] 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 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."[46] However, the Bill of Rights—widely viewed as the protector of individual rights and

44. *Workshop on Law and Linguistics*, CLARKCUNNINGHAM.ORG, http://www.clarkcunningham.org/Workshop-Law-Linguistics.html [https://perma.cc/YYY9-B5TZ] (last visited Oct. 21, 2019).

45. *See, e.g.*, Wendy Weiser & Douglas Keith, *The Actually True and Provable Facts About Non-Citizen Voting*, TIME (Feb. 13, 2017), https://time.com/4669899/illegal-citizens-voting-trump/ [https://perma.cc/2PP2-RWJN].

46. U.S. ATTORNEY'S OFFICE - DIST. OF MINN., KNOW YOUR RIGHTS 23 (2011), https://www.justice.gov/sites/default/files/usao-mn/legacy/2011/09/16/MN%20Civil%20Rights%20FINAL.pdf [https://perma.cc/7EX7-2GQW]; *Our Government: Elections & Voting*, WHITE HOUSE, https://www.whitehouse.gov/about-the-white-house/elections-voting/ [https://perma.cc/VDB6-ARWM] (last visited Oct. 21, 2019).

liberties—does not use the word *citizen* or *citizens*.[47] Instead, these rights are secured to the *people*, as the term appears in the First, Second, Fourth, Ninth, and Tenth Amendments.[48] This divergent use of *people* in some instances and *citizens* in other instances in the Constitution led us 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?

III. Methodology

To answer this research question, we conducted a comparative analysis of *people* and *citizens* and their respective linguistic patterns 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.[49] 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.

We used a combination of corpus-linguistic research methods in this study. First, we determined the frequencies of the words *people* and *citizens*. We then extracted collocations of the 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 (commonly referred to as "n-grams" or "word clusters") that the search terms often occur in. In a subsequent qualitative analysis,

47. U.S. CONST. amends. I–X.

48. U.S. CONST. amends. I, II, IV, IX, X.

49. *About Founders Online*, FOUNDERS ONLINE, https://founders.archives.gov/about [https://perma.cc/TM78-ZSNU] (last visited Oct. 21, 2019). 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%). *Id.*

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), 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*[50] (*COCA*). In *COCA*, *people* has a frequency of 1,743.3 per million words (976,270 instances), whereas *citizens* has a frequency of 65.1 per million words (36,467 instances). This shows that, during both time periods, *people* was used considerably more frequently than *citizens*, although this difference is even 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).[51] 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"[52] as they capture what is typical in the language (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.[53]

From our previous discussions of agency, we can see that both *people* and *citizens* frequently collocate with the word *by*, which

50. *The Corpus of Contemporary American English*, ENGLISH-CORPORA.ORG, https://www.english-corpora.org/coca/ [https://perma.cc/7XB9-82PA] (last visited Dec. 15, 2019).

51. *See generally* JOHN SINCLAIR, CORPUS, CONCORDANCE, COLLOCATION (1991).

52. MICHAEL STUBBS, WORDS AND PHRASES: CORPUS STUDIES IN LEXICAL SEMANTICS 221 (2001).

53. Ruth Breeze, *Part-of-Speech Patterns in Legal Genres: Text-Internal Dynamics from a Corpus-Based Perspective*, *in* CORPUS-BASED RESEARCH ON VARIATION IN ENGLISH LEGAL DISCOURSE 79, 80 (Teresa Fanego & Paula Rodríguez-Puente eds., 2019).

could lead us to find what action is conducted *by* each group. In order to do so, however, we 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*

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

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 enabled us to observe, within the relevant genre, longer phrases that the search terms *people* and *citizens* frequently occur in—something that is not possible in *COFEA*, which does not have an n-gram tool. The public papers of James Madison were relevant to the search query because Madison has been referred to as the "master builder of the Constitution."[54]

54. MAX FARRAND, THE FRAMING OF THE CONSTITUTION OF THE UNITED STATES 196 (1913).

Table 2 lists the thirty-five 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 fifty-three 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 (21.06 per million words), whereas *by the citizens* only occurs 417 times (3.05 per million words).

Table 2: Top 35 n-grams with "people" and "citizens" in *COFEA*

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	**by the people**	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	14.53	135	my fellow citizens
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 states	76	7.1	67	to our citizens
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	**by the citizens**
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	to the citizens of the

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 span 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*

by the people				**by the citizens**			
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 listed 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" [55] and "should be nominated by the citizens."[56] Forms of the verb *have* were also found in passive constructions (e.g., *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 verb 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*,

55. Power of Congress to Overrule the Executive Veto (Sept. 12, 1787), *in* 10 THE PAPERS OF JAMES MADISON 166, 166 (Robert A. Rutland et al. eds., 1977), https://founders.archives.gov/documents/Madison/01-10-02-0118 [https://perma.cc/8392-VCSC].

56. 1 MARY WOLLSTONECRAFT, AN HISTORICAL AND MORAL VIEW OF THE ORIGIN AND PROGRESS OF THE FRENCH REVOLUTION; AND THE EFFECT IT HAS PRODUCED IN EUROPE 481 (London, 1794).

exercised, *carried*, *recovered*, *led*, and *regarded* appeared only in the top twenty-five 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.

IV. Analysis: Verb Case Studies

Out of the top twenty-five 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 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 *elected by the people* was more commonly used 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.

	Context Left	**Elected by the citizens**	**Context Right**
(1)	These officers, it is true, are	elected by the citizens	, but they must by law be elected, as well as the deputies to the biennial parliament or junta 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"[57] and "[t]he deputies Elected by the Citizens."[58] Another example in this search

57. 3 JOHN ADAMS, 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, at 19 (Philadelphia, Budd & Bartram 1797), https://babel.hathitrust.org/cgi/pt?id=nyp.33433081600698&view=1up&seq=11 [https://perma.cc/CX7N-3QTN].

58. Letter from Brunswick District, Va., Citizens to George Washington (Aug. 24, 1795), *in* 18 THE PAPERS OF GEORGE WASHINGTON 588, 588 (Carol S. Ebel ed., 2015), https://founders.archives.gov/documents/Washington/05-18-02-0384 [https://perma.cc/LN3B-KA9P].

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 . . . ."[59] 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. However, at least 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 in reference to a formal, organized method of voting an official into office. For example, the "deputies Elected by the Citizens"—referred to above—appear to denote a 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 a context of the deputies being elected in a true election.[60] Then, in another concordance line, it appears the same deputies are referred to and described—in light of being "elected by the Citizens . . . for this express purpose"—as fulfilling that task and giving their opinions on the treaty to the President.[61] Any mention of federal or local officials

59. *Id.* (emphasis added).

60. *Id.* 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.

Id.

61. *Id.* 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[.]

Id.

like members of Congress, the President of the United States, or state elected officials, which a twenty-first century American might expect to appear in the context of an election by the citizens, is noticeably absent from the concordance lines.

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, a 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 federal one, from necessity be more or less influential in its councils, we should turn our attention to the other branches of the government, as our firm resource.[62]

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[.]"[63] Robert Goodloe Harper, a South Carolina congressman and then a Maryland

62. James Monroe, Some Observations on the Constitution, &c. (May 25, 1788), *in* 1 THE WRITINGS OF JAMES MONROE 307, 328 (Stanislaus Murray Hamilton ed., New York, G. P. Putnam's Sons 1898) (emphasis added).

63. THE DEBATES, *supra* note 37, at 219; *see also* Charles Inglis, Letter IX : To the People of North America, *in* LETTERS OF PAPINIAN 107, 121 (New York, Hugh Gaine 1779), https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;view=text;idno=N12895.0001.001;rgn=div1;node=N12895.0001.001:15 [https://perma.cc/XS3S-YTTB] ("If it should be urged—that the members of the Congress are elected by the people—that their fears 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].").

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."[64]

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.[)][65]

A stark contrast from the way *elected by the citizens* was used in 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 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*

64. 7 ANNALS OF CONGRESS 1167 (1851) (emphasis added).

65. 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, app. at 525 (Max Farrand ed., 1911) (emphasis added).

by the citizens did include phrases that refer to "councilmen . . . *chosen by the citizens*";[66] "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"; [67] and "Sheriffs and Coroners shall, at the times and places of elections of Representatives, be *chosen by the citizens* of each county,"[68] these usages are fewer when compared to the numerous instances and characteristic way the phrase *chosen by the people* appears to be used. For instance, elected 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[.][69]

66. JEDIDIAH MORSE ET AL., 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 AMERICAN IN PARTICULAR 552 (Boston, Isaiah Thomas & Ebenezer T. Andrews 3d ed. 1796) (emphasis added).

67. ELISHA LEE, AN ORATION DELIVERED AT LENOX, THE 4TH JULY, 1793, THE ANNIVERSARY OF AMERICAN INDEPENDENCE. BY ELISHA LEE, ESQ. 14 (Stockbridge, Loring Andrews 1793), https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N19690;rgn=main;view=text;idno=N19690.0001.001 [https://perma.cc/8HU3-5ZTF].

68. 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. 164 (Boston, Manning & Loring 1797), https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;q1=N24939;rgn=main;view=text;idno=N24939.0001.001 [https://perma.cc/KS49-SJTM] (emphasis added).

69. Thomas Jefferson, Jefferson's Fair Copy (Before Oct. 4, 1798), *in* 30 THE PAPERS OF THOMAS JEFFERSON 543, 547 (Barbara B. Oberg ed., 2003), https://founders.archives.gov/documents/Jefferson/01-30-02-0370-0003 [https://perma.cc/HE7D-JSW4] (emphasis added).

A draft of the 1776 Virginia Constitution wrote: "The . . . *house of Representatives shall be composed of persons chosen by the people* annually on the [1'st day of October] and shall meet in General assembly on the [15'th day of November] following."[70]

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[.][71]

> 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.[72]

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."[73]

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

70. Thomas Jefferson, Third Draft by Jefferson (Before June 1776), *in* 1 THE PAPERS OF THOMAS JEFFERSON 356, 358 (Julian P. Boyd ed., 1950), https://founders.archives.gov/documents/Jefferson/01-01-02-0161-0004 [https://perma.cc/2V2M-5AEA] (alteration in original) (emphasis added).

71. 7 ANNALS OF CONG. 1206 (1851) (emphasis added).

72. 1 ANNALS OF CONG. 361 (1789) (Joseph Gales ed., 1834) (emphasis added).

73. THE DEBATES, *supra* note 37, at 359 (emphasis added).

the corpus. Although they may be used in similar contexts, their frequencies indicate what the actual preferred language or use of the phrase might have been in the Founding Era. This also 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 *citizens* but rather the word *people* was predominantly used in those contexts.

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 thirty-nine search results while *made by the citizens* occurred together seven times. The following chart summarizes all of the "items" that are in the phrase *made by the citizens*:

	Left Context: "Item" being *made by the citizens*	**Made by the Citizens**	**Right Context**
(1)	A noble stand	*was made by the citizens*	of Dublin
(2)	[T]he captures of our vessels	*was made by the citizens*	of France
(3)	[N]o small tumult	[was] *made by the citizens*	of the order of the twelve
(4)	The contracts"	were *made by the citizens*	of their own free will, and if the French government never . . .
(5)	That the [election] of [electors], for the purpose of choosing the president and vice-president of the United States	will] be *made by the citizens*	of this (late, qualified to vote for members of the houses of delegates

(6)	That . . . [election] of representatives . . . in the [Congress] of the United States	[shall be] *made by the citizens*	of this Rate qualified to vote for [members] of the house of delegates
(7)	[I]f the same declarations and assurances are made by you, which it is required		should be *made by the citizens* to be assembled at Redstone

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.[74] Thus, this government-related category constitutes approximately 28.5% 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 in eleven out of the thirty-nine search results. Notably, this represents roughly 28% 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

74. 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."

> inspire confidence, and the other that it would induce the Government to sympathize with the people.[75]

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 used are comparable.[76] Additionally, the share with which each phrase was used in a government-related context was strikingly similar, with both representing approximately 28% 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 that appeared with the phrase *made by the people* in the concordance lines would indicate that it was a more frequently used phrase and that it constituted a more all-encompassing phrase than *made by the citizens.*[77]

CONCLUSION

Our findings indicate that, ultimately, the word *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

75. 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 65, at 57 (emphasis added).

76. For example, each one included an "election" as an object that was *made by the citizens* or *people*.

77. 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).

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 that 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 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."[78]

78. U.S. CONST. pmbl.