Liquor, marijuana, and guns: essential services or political tools during the Covid-19 pandemic?

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\section*{ABSTRACT}
Policy responses to the Covid-19 pandemic are important to understanding how some governments have been able to effectively combat the crises. Early efforts by many government leaders included policy actions to effectively shut-down society through stay-at-home or shelter-in-place orders. Drawing from several key decision-making theories, this article examines the process of issuing stay-at-home orders in two U.S. States, California and Colorado, with a specific focus on three vice industries: liquor, cannabis, and firearms. Since the beginning of the pandemic, the liquor, marijuana, and gun industry have experienced a dramatic increase in sales. Using policy documents, news articles, and available resources, several decision-making theories help explain the context for how essential businesses were defined in California and Colorado’s stay-at-home orders. As the evidence suggests, a combination of health, economic, and political factors influenced when and how each industry was determined as essential industries. Scientific reasoning alone was not the determining factor for if these vice industries were permitted to continue operations during a global pandemic. As the globe continues to combat Covid-19 this paper sheds some light on balancing of political and economic concerns despite the need to protect public health.

\section*{1. Introduction}
The Covid-19 pandemic has caused turmoil throughout the world as public officials struggle to respond to the crisis. As the pandemic emerged in the United States a flurry of decisions were made at all levels of government seeking to manage the crisis. One of the primary policy responses of state and local governments has been in the form of stay-at-home orders. Operating under incomplete information, limited science, politically charged environments, and conflicting guidance from national and international health officials, decision makers struggled to develop a coherent and effective strategy for a response to the pandemic.
As stay-at-home orders swept the nation in the early weeks of the pandemic, officials were faced with the task of identifying which businesses were deemed essential to remain operational for the duration of the stay-at-home order. Three specific areas received conflicting, and sometimes rapidly changing, attention: alcohol, marijuana, and firearms. One such example emerged from Denver, Colorado on March 23rd when it only took two hours for the Mayor to redefine essential businesses to include both liquor stores and marijuana dispensaries (Swanson 2020). After consulting with the City Attorney, Denver’s Mayor initially indicated that both liquor stores and recreational marijuana stores were not essential and would be closed under the local stay-at-home order. However, after an aggressive and rapid lobbying effort from the Colorado Licensed Beverage Association, the Mayor tweeted out a revision to the order later that afternoon allowing both liquor stores and recreational marijuana dispensaries to remain open as essential businesses.

Denver’s experience with the definition and subsequent redefinition of essential businesses begs the question, how are decision makers defining essential businesses during the Covid-19 pandemic? What factors are influencing the identification of essential businesses? This paper explores two states, California and Colorado, through the lens of decision making to begin to unpack how essential businesses have been defined during the Covid-19 pandemic. In addition to sharing regional similarities in population, ideology, and structure of state-local power (e.g. home rule and Dillon’s Rule states), these two states are among the eleven in the U.S. that have legalized recreational cannabis sales and use for adults. The similarities and presence of legal cannabis provides ideal case studies to study the topic of this paper.

As the world continues to grapple with this pandemic, reviewing how decision makers identify essential services/goods will be of significant importance in the months ahead. Although this article highlights two states within one country, much can be learned that is applicable to the global community. Stay at home orders are not unique to the U.S. and understanding how decision making theories are related to these important decisions provide insights for the global community. Furthermore, as the pandemic continues to flare up across the world, the lessons about decision making found in this paper will be applicable to other jurisdictions across the world. Finally, understanding the limitations and challenges to these decisions will potentially offer some clues for better decisions in the months ahead. Thus far, the evidence suggests that countries with more science based decision making have fared better in the pandemic response than those relying on political or economic calculations.

2. Covid-19 pandemic & policy responses in the United States

On the final day of 2019, the Wuhan Health Commission in China reported a cluster of pneumonia like illness- now known as Covid-19- to the World Health Organization (WHO). However, even with this early reporting and the immediate follow up by WHO, it was not until the end of January that Covid-19 was declared a public health emergency of international concern. On March 11th, Covid-19 was officially declared a pandemic (World Health Organization 2020). During the early months of the pandemic, countries across the globe began implementing a variety of policies and
restrictions on travel to try to prevent and/or slow the spread of the virus within their borders.

On January 21st, the United States documented the first case of Covid-19 within the country. The initial public policy response in the United States was weak as key public officials expressed their doubts that this virus was something to be concerned about. On January 24th, Dr. Anthony Fauci, the Director of the National Institute of Allergy and Infectious Diseases, indicated, “We don’t want the American public to be worried about this because their risk is low” (Hauck et al. 2020). By January 31st, the Trump administration declared a public health emergency while remaining steadfast that the virus was a low risk to the people of the United States. However, by mid-March, the policy responses to Covid-19 in the U.S. began to expand rapidly with state and local governments leading the way and the federal government lagging in action and coordination.

Alongside declarations of emergencies, the most common policy responses from state and local governments have included stay-at-home orders, shelter-in-place policies, and safer-at-home declarations, which is similar to what is seen across the world. While these are similar policies, some important differences do exist and each represent varying levels of restriction for residents. Safer-at-home orders generally mean that the residents of a jurisdiction are asked to limit their time outside of the home but that non-essential businesses are likely to remain open. Stay-at-home orders, the subject of this article, are more aggressive than safer-at-home policies and include rules and provisions to limit activities only to those deemed essential. Finally, shelter-in-place orders are the strictest of the measures and require that people stay inside their location until further notice (National League of Cities 2020).

As states and local governments developed and implemented stay-at-home orders, it is important to understand how and why decisions were made concerning essential businesses. How is essential defined? Who makes the decision on what is essential? What information is used to identify essential activities? Decision making theories can offer some insights into these questions by unpacking the events leading up to these decisions.

3. Decision making & COVID-19

Within the context of pandemic preparedness and emergency management, several key areas have been identified for how decision-making theory can inform policy actions. Each area identifies known concerns about planning and responding to moments of crisis and are outlined in the paragraphs below.

First, policy decisions are often made with known time restraints, cognitive limitations, and are generally guided by the available capacity and resources on hand at the time of the crisis. Herbert Simon (1947, 1957) concepts of bounded rationality and satisficing outline the challenges for public officials trying to make a rational decision. Even under non-emergency conditions actors are more likely to simply make good enough decisions rather than purely rational decisions that take into consideration complete information and analysis. The stakes for good enough decision-making are elevated in times of crisis, as imperfect information and delayed action can often significantly worsen outcomes.
Pandemic response plans have been developed in the United States at the state and federal levels. A federal plan was initially developed by the U.S. Department of Health and Human Services in 2005 and was updated in 2006, 2009, and 2017 (CDC 2017). Yet despite this preparation, public officials were preparing for an influenza pandemic, were well aware of several resource gaps for an adequate response and were baselining plans on the outcomes of the 1918 Spanish flu (Kamradt-Scott 2020). When compared to influenza and ebolavirus, there is a higher degree of uncertainty surrounding the response to COVID-19, a disease that is new among humans. Nonetheless, even with the previous planning efforts, officials are operating under conditions of imperfect information as “Pandemics are unpredictable. While history offers useful benchmarks, there is no way to know the characteristics of a pandemic virus before it emerges” (Homeland Security Council 2006, 25).

Second, it is clear that responses to COVID-19 from officials have been piecemealed and are the result of multiple actors with conflicting interests. Drawing from public choice theories, decision makers can be expected to promote and to make decisions that are in their personal best interests—the so-called utility maximizing behavior—and not necessarily based on some abstract principle of public interest (see for example, Buchanan 1954; Buchanan and Tullock 1962). The premise behind this approach is in the realization that policy decisions create winners and losers whereby individuals will perceive some decisions to be more beneficial for their personal interests and therefore more advantageous to promote and select (Buchanan and Tullock 1962). Some of these competing concerns and priorities were evident from early in the pandemic. For example, economic concerns began to be expressed early in the pandemic. In late March, President Trump made a statement expressing his concerns on the impact of the stay-at-home orders on the economy, “Our country wasn’t built to be shut down. America will, again, and soon, be open for business. Very soon. A lot sooner than three or four months that somebody was suggesting. Lot sooner. We cannot let the cure be worse than the problem itself” (Tankersley et al. 2020). This statement clearly implies a cost-benefit calculation whereby economic interests may outweigh the benefit obtained from decisions meant to protect public health.

While President Trump emphasized economic concerns in policy decisions on Covid-19, many non-elected federal officials cautioned against using the economy as a major factor in decision making on Covid-19. For example, Dr. Anthony Fauci argued early on that “… the economy won’t ultimately dictate when things can start to reopen and how” (Lopez 2020). Unlike political actors, Dr. Fauci’s self-interested perspective isn’t likely based on political or economic calculations— which may be intertwined in some cases— but instead is based on doing his job as a public health official as well as possible. Similar competing interests can be seen at the state level as a number of political officials expressed heightened concerns over the impacts to the economy from the stay-at-home orders. Cost and benefit calculations based on individual-level preferences and perceived personal gains have likely played a role in the various policy decisions during the pandemic response.

Third, non-decisions and poor decisions can lead to damaging and irreversible outcomes in emergency situations. Pro-active and prompt responses are stressed in emergency response and pandemic planning and preparation. If using the
Multiple-Streams Framework as guidance, there are number of plausible reasons to explain inaction or poor decision-making (Kingdon 1984). COVID-19 was a known problem by public officials in January with the Centers for Disease Control activating Emergency Operations Center on January 20th. Messages from American public health officials were different than the message set forth by President Trump, who repeatedly dismissed the severity of the problem claiming the United States has the virus under control and it would go away on its own (Bredemeier 2020).

The window of opportunity to address COVID-19 likely did not appear in the early stages of the pandemic as politics appears to have thwarted clear leadership guidance at the federal level. When combined with the lack of preparedness and the uncertainty of the disease leading to an ill-defined problem, the three-streams were not fully united until March when the disease was already ravaging New York City. Once New York became the new epicenter for COVID-19, many other state and local governments heeded the warnings for how severe the problem could be and began to order stay-at-home and safer-at-home orders. Acting earlier would have likely saved lives with one study suggesting 36,000 could have been saved if social distancing and other preventative measures were put in place just a week earlier than initially enacted (Pei, Kandula, and Shaman 2020).

4. Case analysis

4.1. California

The first known and confirmed case of Covid-19 in California occurred on January 25, 2020 in Orange County (OC Health Care Agency 2020). The following day another individual was reported as positive in Los Angeles County (County of Los Angeles Public Health 2020). By February 4th, an additional four cases were reported in the state (California Department of Public Health 2020a). While the California Department of Public Health (CDPH) activated the Medical and Health Coordination Center on January 24th, elected state officials remained publicly silent in adopting a policy response until March 4th, when Governor Gavin Newsom issued a state of emergency. Local-level officials were quicker to initially respond within the state with six counties and one city declaring local states of emergencies in February and early March before the state order was issued. Four additional counties would declare a local state of emergency in tandem with state order.

On March 16, the Cities of San Francisco and Berkeley in conjunction with six Bay Area counties (San Francisco, San Mateo, Marin, Contra Costa, and Alameda) issued shelter-at-home orders that would remain in effect until April 7 (County of San Mateo 2020; Office of the Mayor (of San Francisco) 2020). The shelter-in-place orders, which are more similar to a true stay-at-home order, directed “all residents to remain at their place of residence, except to conduct Essential Activities, Essential Businesses, and Essential Government Functions” as defined by the order (Office of the Mayor (of San Francisco) 2020). The State of California soon followed on March 19 with a stay-at-home order issued as Executive Order N-33-20 after the total number of cases reported reached just over 1,000 (California Department of Public Health 2020b). The order
went into effect immediately with no set end date and required nonessential businesses to close.

The stay-at-home order issued by the state did not specifically define a list of essential businesses. Instead, the order referred to critical infrastructure report released by the federal Cybersecurity and Infrastructure Security Agency (CISA) publicly on March 19 with the option for the State Public Health Office and Director “to designate additional sectors as critical in order to the protect the health and well-being of all Californians” (Executive Order N-33-20). When compared to existing local stay-at-home orders, the CISA Guidance on the Essential Critical Infrastructure Workforce identified many of the same industries and workers as essential including health care facilities, banks, grocery stores, schools and universities, and government operations including public safety and law enforcement. Yet, the CISA guidance also expanded the list of essential sectors to be more specific by including such sectors as agriculture, critical manufacturing, and communication and information technology.

The initial state stay-at-home order left many unanswered questions surrounding what businesses and services were deemed essential and how much leeway local governments had for enforcing their own orders. For example, California is not a liquor control state, but many wineries, breweries, and other manufacturers were left wondering if they would be able to continue direct sales and operations since tasting rooms were ordered closed. The California Department of Alcoholic Beverage Control had already loosened restrictions on to-go orders and delivery of alcoholic beverages on March 19 but did not clarify if certain operations would be considered essential and permitted to continue direct sales (California Department of Alcoholic Beverage Control 2020). Similarly, cannabis is a unique industry and federal and state guidance remained absent. Similar to what occurred for some wineries and breweries, a number of cities forced cannabis retailers to close while the state permitted flexibility via waivers that would permit to-go, curbside, and delivery sale options (Bureau of Cannabis Control 2020).

Further clarification on essential services and industries was provided on March 21st by the California State Public Health Officer to “help state, local, tribal and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety as well as economic and national security” (State Public Health Officer 2020). The clarification deemed the cannabis industry as essential under the food and agriculture sector and health and public health sector. No further guidance was provided on direct sales by wineries, breweries, and other producers, but many continued with direct sales assuming essential status via food and beverage retail designation.

One industry that was not given the green light to continue operations were firearm stores. Indeed, the initial set of state and local stay-at-home orders did not specifically designate or exclude firearm retailers as essential businesses. This left many firearm stores operating under uncertainty until a local ordinance clarified their operating status. Some local governments opted to designate gun stores as non-essential citing general safety concerns amidst panic buying, which led to a firestorm of criticism and critique (Peele 2020).
The saga of Los Angeles received the most national coverage. On March 23rd the Los Angeles County Sheriff ordered the closure of all gun stores deeming them non-essential businesses, which follows similar policy action by the City of Los Angeles, but the county suspended enforcement the following day. The County Sheriff Office stated the suspension of enforcement “decision was made after the county counsel’s office declared gun stores essential businesses under Gov. Gavin Newsom’s statewide order” (City News Service 2020a). The suspension would be short-lived, and the county would enforce closure of gun stores on March 26th following an announcement by Governor Newsom that county sheriff offices would decide if gun stores were essential or not. The county-level closure would remain in effect until March 29th. A change in enforcement once again was based on new information. CISA released revised Essential Critical Infrastructure Workforce guidelines on March 28th that defined firearm and ammunition producers and retailers as essential businesses. Despite the changes at the county level, the City of Los Angeles decided to maintain gun stores as non-essential. Two lawsuits were filed against the city petitioning that the stay-at-home order violated the recommendations provided by CISA and went against their Second Amendment rights (Adam Brandy, et al. v. Alex Villaneuva, et al.; City News Service 2020b). Both a United States District Court and a Los Angeles Superior Court ruled in favor of the city’s order in April.

4.2. Colorado

The first cases of Covid-19 in Colorado were announced on March 5th by Governor Jared Polis and on March 10th a state of emergency was declared (Denton and Fries 2020). Policy actions in Colorado related to Covid-19 have come from both elected actors through executive orders as well as from non-elected public officials through administrative orders. In some cases, such as the city of Denver, policy actions have been aggressive and ongoing. However, not all local governments have engaged in policy development for Covid-19 and have instead relied on state or county guidance. To date, a great deal of conflict exists in Colorado between some local governments and the state government with respect to whether certain state-level policy decisions- particularly related to a requirement to wear facemasks- will be enforced at the local level.

On March 14th, Governor Polis announced the first statewide shutdown of a private industry requiring that all downhill skiing be suspended (Denton and Fries 2020). Two days later, the Colorado Department of Public Health and Environment (CDPHE) issued public health order 20–22 mandating all bars, restaurants, theaters, gyms, and casinos be closed for at least the next 30 days. Within this order the executive director of the agency, a political appointee with a public health background, outlined several key public health concerns related to Covid-19 as a justification for this policy action. “CDPHE is tasked with protecting the health and welfare of the citizens of Colorado by investigating and controlling the causes of epidemic and communicable disease. This Order is necessary to control any potential transmission of disease to others” (Public Health Order 20–22 2020). Alongside the stay-at-home orders, Governor Polis issued Executive Order D2020-011 on March 20th that impacted the scope of future orders with respect to marijuana and alcohol. This related executive order temporarily
suspended certain statewide restrictions on these industries by allowing both marijuana and alcohol stores to conduct online sales and have curbside pickup options.

The broader statewide stay-at-home order was initially made by executive order, D2020-017, on March 25th. This executive order noted that, “The actions we have undertaken to date are not yet doing enough to reduce the spread of the virus, and we must take additional action to minimize the duration of this epidemic and of the disruption to our daily lives” (Executive Order D2020-017). Of importance, this executive order defers to a public health order issued three days earlier by the CDPHE on what is considered a critical business. It also referred to EO D2020-011 in allowing curbside pickup and online sales of marijuana and liquor. Governor Polis further ordered that the Executive Director of CDPHE issue a public health order that would identify several key critical industries and employees in the broader public safety, government, health care, and supply chain operations. As of the writing of this article, the CDPHE has updated the stay at home requirements order four times with the most recent update issued on April 9th. In order to understand the evolution of the stay at home requirements in Colorado a brief overview of each order will be provided below.

1. Public Health Order 20–24, March 22nd: This public health order was referenced in the Governor’s executive order mandating a stay-at-home requirement, however, it was not intended to be a full listing of essential businesses but was instead created to enable the implementation of a previous Executive Order (D2020-013) mandating a reduction in in-person workforce. In this order, 12 business areas were included with specific listings of what types of establishments are considered critical and essential. Many of the businesses listed are non-controversial such as health care facilities and law enforcement operations. Of specific relevance to this paper is the decision to include medical marijuana and beverage stores in this order. Bars and marijuana dispensaries are allowed to operate through curbside, take-out or delivery. No mention is made of firearm sales in this initial public health order. It is also unclear whether the item listed as “Grocery stores including all food and beverage stores” includes liquor stores.

2. Public Health Order 20–24, March 27th: This second updated public health order is the first one to be issued in response to the Executive Order mandating a statewide stay-at-home order. This order adds guidance on what activities are considered necessary and therefore acceptable for state residents to travel to engage in. In this updated order, several additions were made to the definition of essential services/businesses including the addition of blood banks, liquor stores, firearms stores, and a number of educational related services. No explanation is given within this order for how specific businesses were determined to be essential other than a statement that affirms the order is necessary to protect the health and safety of Coloradans.

3. Public Health Order 20–24, April 1st: The third update to the public health order makes just a few minor changes and extends the duration of the order through April 11th. Moving services were added as an essential business/service in this updated order.
4. Public Health Order 20–24, April 9th: The fourth and final update to the public health order added very few items and extended the duration of the requirements. The only business added to the list of essential businesses/services in this update was pest control. A few other minor changes were made to add language concerning activities occurring due to domestic violence concerns.

4.3. California and Colorado-Lessons

Both cases highlight the difficulties in identifying and clearly defining essential businesses in the early stages of the pandemic response. It is evident that key decision makers were faced with time constraints and were generally underprepared to respond to the pandemic. Moreover, the lack of clear guidance and action at the federal level likely enhanced the level of uncertainty many state and local leaders were operating with. For example, the federal CISA Essential Critical Infrastructure Workforce guidelines were released at the same time many states were just initiating or considering stay-at-home orders. The delay in defining essential services led to good enough decisions that perhaps hindered the ability to effectively respond to the problem in a uniform manner. The cases of California and Colorado highlight the process of identifying and agreeing upon essential services in a time of uncertainty. Both cases demonstrate some of the broader concerns and considerations among state and local leaders in permitting essential businesses to continue operating.

For the liquor and cannabis industries, Colorado was more forthcoming with clearly defining these stores as essential than was California. Based on the statewide administrative orders in Colorado liquor stores were explicitly added to the list of essential businesses in the March 27th order, but marijuana dispensaries and bars were de facto included through an earlier executive order issued by the Governor allowing for delivery and/or curbside pickup. In California, both licensed alcohol establishments and marijuana dispensaries faced uncertainty about their status in the initial designation of essential businesses. Local governments had mixed responses regarding the status of each facility in the absence of state guidance. However, even when the state provided further clarity and flexibility in sale delivery method, only marijuana dispensaries were deemed essential. Licensed liquor and alcohol establishments were left to define themselves as retail establishments providing food and beverages.

What factors might explain the decision to include marijuana dispensaries and liquor stores as an essential service in these two states? Three key explanations emerge: health concerns, political considerations, and economic realities. One of the primary underlying stated goals for defining essential businesses during this pandemic is to ensure human health can be protected. While liquor and marijuana stores may not always be as obviously related to public health as traditional health industries, they do have an important linkage through the concerns of withdrawal by those addicted to alcohol and those relying on marijuana for medical purposes. As a Denver Health Addiction Specialist confirmed, “…the abrupt closure of all liquor stores could have overwhelmed hospitals” (Smith 2020). Data on alcohol abuse seems to support a significant number of people with drinking problems in Colorado with an average of 46 people per day admitted into one Denver detox unit just last year (Osborne 2019).
A similar rationale was used by advocates concerned about the health consequences associated with the inability to access marijuana. In both California and Colorado, it was argued that many residents allowed their medical marijuana cards or recommendations to expire after statewide approval of adult recreational use in both states, leaving many one-time medical users dependent on the recreational dispensaries to satisfy their medical needs (California NORML 2020; Ricciardi 2020). This health-based argument is used to support the listing of both medical and recreational dispensaries as essential businesses.

The initial oversight of these two types of businesses and industries was likely the result of the need to rapidly respond to unfolding conditions in both states. The first attempts to define essential businesses were made before federal guidance was issued and before input from a variety of stakeholders was able to be collected that could speak the public health value of certain industries. Once additional information became available, lawmakers adjusted existing rules to accommodate changing conditions and information.

From a political standpoint, liquor stores and marijuana dispensaries both had the power of lobbyists and professional organizations to back their claims of being essential. For example, the City of Denver reversed the decision to exclude liquor and recreational marijuana stores as an essential business in the matter of a few hours. As highlighted earlier in this article, a rapid lobbying effort ensued that likely influenced Denver’s change in policy on liquor stores (Swanson 2020). The immediate aftermath of Denver’s declaration that these stores were not essential included a massive lobbying effort. “… phones started ringing and a large lobbying effort mobilized…. ‘We have a lobbyist, we have people on the ground, and we were able to text (Mayor Hancock’s) chief of staff’, said Jeanne McEvoy, president and CEO of the Colorado Licensed Beverage Association” (Crowe 2020). A similar story unfolded in California with industry associations calling for the governor to officially declare “the whole cannabis supply chain” as essential after the March 19th stay-at-home order (The Editorial Board 2020). A great deal of literature exists that outlines the influence interest groups have on policymaking (see for example, Dür and De Bièvre 2007) and these lobbying efforts likely contributed to the recognition of these industries as essential businesses in both states and permitted the issue to remain high on the agenda. Moreover, in the case of California, Governor Newsom had vested political interests in ensuring that the industry was supported, given his support for Prop 64\(^2\) in 2016 (Christopher 2020).

A final likely contributor to the decision to list these establishments as essential is related to economics. By most estimates, alcohol and marijuana is big business with a lot of tax revenue benefits for states and local governments. In 2019, the state of Colorado collected more than $302 million in marijuana tax, license, and fees and more than $1 billion in excise taxes- the highest number on record (Colorado Department of Revenue 2020). Furthermore, early estimates indicate that weekly sales of marijuana was up by double digits as compared to the year before in the aftermath of the stay-at-home orders (Holland 2020). Customers lined up at both liquor stores and dispensaries in the initial aftermath of Denver’s order with the news quoting a resident as saying, “The panic you know? Just trying to stock up” (Todd 2020). Panic buying also occurred in California before clarification occurred, and it was clear in
California that permitting alcohol sales to continue was essential to ensuring these businesses weather the financial fallout from Covid-19 stay-at-home orders (Christopher 2020). This remained partially true for cannabis operations, but it was clear that booming sales in both industries would help the businesses’ economic survival and provide much needed tax revenue for the local and state governments. From a multiple-streams approach, the combination of political and economic concerns that emerged increased the odds for a window of opportunity to form for this issue to reach high agenda status. The solution to the problem was already developed but needed modified. Long-lines and panic buying provided a visible image of rising consumer concern thus shifting some public perceptions on the issue. When coupled with lobbying efforts to express concerns from producers and a vested interest from key political leaders, the issue quickly rose as a significant concern among policy-makers.

Similar to liquor stores and cannabis, decisions on firearms changed over time in these two states. Classifying gun stores in California was a far more contentious issue that liquor or cannabis. Gun sales reached record highs in California in March with a total of 164,000 background checks performed (Iaquinta 2020). Little explanation was provided as to why the governor granted authority to local governments to make their own essential status determinations. Of those local jurisdictions deeming gun-stores non-essential, the primary reason cited for their decision was public safety concerns ranging from inexperienced owners, increased suicide risks, and an increased probability of violence. Comparatively, Colorado experienced more than doubled the usual amount of background checks in the early weeks of the stay-at-home orders (Bradbury 2020). The second updated public health order in Colorado issued on March 27th included firearms stores in the list of critical retail stores to remain open during the stay-at-home order. Unlike state decisions on marijuana and alcohol, firearms received comparatively little attention in Colorado and definitely far less than it did in California. Several interest groups and some retail establishments were vocal about the topic of firearms being listed as essential usually advocating based on constitutional or personal protection arguments (Brode 2020). Very little information is available explaining Colorado’s decision on firearms being listed as essential. However, several key explanations can be assumed from the information available from both cases.

The federal government declared firearm stores essential one day after Colorado officially listed it in their public health order. Prior to this federal declaration, major lobbying groups- such as the National Rifle Association- had been very vocal in their demands that firearm stores be considered essential. In fact, a number of lawsuits had already been filed in places like Denver, New Jersey, and California challenging state or local stay-at-home decisions on firearms (Mena 2020). Complex considerations of federal versus state powers, constitutional considerations, and political calculations are clearly present in the decisions being made on firearms. The second amendment has a lengthy history of robust debate and advocacy and it seems that even during a global pandemic, this topic remains hotly debated with gun rights advocates willing to challenge any measure that limits access to firearms.

Alongside these complex political, legal, and constitutional concerns, some have argued that firearm stores should be classified as essential under a health consideration. Specifically, some argue that access to firearms will provide people with safety during
these unprecedented times and should therefore be categorized in the same way as law enforcement and 911 operations are (Tatham 2020). These arguments have been criticized by some leading gun safety organizations that argue panic buying doesn’t contribute to increased safety and can actually lead to more gun violence (Giffords Law Center 2020). Nonetheless, policy decisions on this topic have remained fragmented and driven by legal and/or federalism concerns. Of the three types of businesses examined in this article, firearm stores are the most clearly impacted by constitutional and political considerations with very limited evidence of a science based approach to decision making.

4. Conclusions and policy suggestions

The Covid-19 pandemic dramatically impacted the functioning of society across the world. The federalist structure of the United States offers many benefits to policymakers to be able to respond to varying citizen demands and needs. However, in a time of crisis where a virus does not stop at a state’s borders, disjointed and fragmented decisions can be especially problematic. Public policy has a lengthy body of theory on decision making and much can be learned about the policy responses to Covid-19 by considering these theories. As discussed in this paper, these theories can provide important insights into why certain decisions were made.

By outlining the progression of these stay-at-home orders, it is possible to see evidence of several key decision making theories. For example, the good enough decision making theories clearly support the ever-changing decisions being made early in this pandemic. Limited information, short time to respond, and lack of consistent objective criteria are certainly easy to see in California and Colorado. Furthermore, public choice theories that argue that decisions will be made from a self-interested and rational perspective whereby a decision maker emphasizes decisions that will provide them with the most benefit can be found in the objections to stay-at-home orders. From the beginning of this crisis, many decision makers emphasized non-health considerations by focusing on economic concerns. It is widely noted that President Trump’s perceived successes on the economy are his best chance at reelection- and any decisions that can negatively impact the economy would likely not be in his best interest. Finally, Kingdon’s multiple streams model is useful for understanding how and why policy decisions were made and changed along the way.

As the world continues to grapple with this pandemic it will be essential to develop some key consistent decision making criteria to aid in making rational and ultimately successful decisions. To date, many experts argue that stay-at-home orders were lifted too soon and/or were not strong enough to prevent the spread of the virus. To be sure, many states- including the two examined here- are currently suffering from dramatic increases in cases of Covid-19. Future research, needs to focus on how to facilitate an effective decision to manage a crisis like Covid-19. How can science based decisions be emphasized even when political or economic concerns begin to rise in visibility? How can these political and economic concerns be better balanced with the very real need to protect public health? It is clear from these two cases that these particular policy
responses have not had the public health outcomes they were hoping for as the confirmed cases of Covid-19 continue to rise.

Notes

1. For example, see FEMA’s IS-241.B Decision Making and Problem Solving Student Manual (February 2014)
2. Proposition 64 was the voter initiative to legalize cannabis.

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