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Closing Casinos during COVID-19's First Wave: Comparing Tribal and First Nation Pandemic Responses to State and Provincial Executive Orders

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Recommended Citation

Gordon, Theodor P and Supan, Savannah (2023). Closing Casinos during COVID-19's First Wave: Comparing Tribal and First Nation Pandemic Responses to State and Provincial Executive Orders. Occasional Paper Series, Initiative for Native Nation Relations, Paper 2, Spring 2023.

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Occasional Paper Series

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Closing Casinos during COVID-19's First Wave: Comparing Tribal and First Nation Pandemic Responses to State and Provincial Executive Orders

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Preferred Citation:

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Project Summary

Our project compared Tribal and First Nation casinos' responses to the first wave of COVID-19 to their neighboring provincial and state governments. We evaluated whether Tribal and First Nation casinos closed earlier, at the same time as, or after their neighboring provincial and state governments issued orders closing bars and restaurants. We also evaluated whether Tribal and First Nation casinos reopened earlier, at the same time as, or after neighboring provincial and state governments began lifting restrictions on bars and restaurants. We found that in the United States, the median Tribal casino closure date was 1 day before the surrounding state closed bars and restaurants and the median Tribal casino reopening date was 21 days after the surrounding state allowed partial bar and restaurant reopenings. In Canada, the median First Nation casino closure date was 3 days before the surrounding province ordered business closures and the median reopening date was 27 days after the surrounding province allowed partial business reopenings.

Background

Tribal and First Nation Casinos

Tribal and First Nation governments across the United States and Canada trace their histories back to precolonial Indigenous nations, with each having its own processes of self-determination. In the intervening centuries, European powers, followed by the successor nations of the United States and Canada, pursued many different strategies of settler colonialism, from military conquest to forced assimilation. Today, because of their resistance to colonialism, 574 Tribal governments in the United States and 634 First Nation governments in Canada persist and continue to represent Indigenous communities. However, these Tribal and First Nation governments remain constrained by the policies of settler colonial policies of the U.S. and Canada.

The historic and ongoing marginalization of Tribal and First Nation governments limits their capacity to fully self-govern. Like all governments, Tribal and First Nation governments require revenue to develop and operate basic civil projects, including infrastructure (water, electricity, roads, etc.), education, and healthcare. Tribal and First Nation governments, with communities impoverished by settler colonialism, lack the tax base needed to fund basic services. Beginning in the late 1970s, gambling operations became a viable pathway for some Tribal governments in the United States to raise much needed revenue. First Nations in Canada, observing successes in the United States, also began opening casinos to raise revenue. Tribal and First Nation governments in both the United States soon faced legal challenges to their gambling operations.

In 1987, the United States Supreme Court recognized in the *Cabazon Decision* that the civil and regulatory authority of Tribal governments provides them with the capacity to legalize and regulate any activity that the surrounding state regulates. Because most states regulate some form of gambling (like lotteries), Tribal governments located within those states can develop their own gambling regulations, including the legalization and regulation of tribally operated casinos. In 1988, Congress passed the Indian Gaming Regulatory Act, which requires that before a Tribal government can operate a casino with house-banked games (like slot machines and blackjack), that government must negotiate a compact with the surrounding state government to determine casino regulations. By 2022, there were 498 Tribal casinos across 29 states in the U.S., in what is now a \$39 billion (USD) industry (NIGC 2023).

Responding to a similar case, Canada's Supreme Court went in a different direction. In 1996, the *Pamajewon Decision* asserted that First Nation sovereignty does not supersede provincial authority to regulate gambling. Unlike state governments in the United States, provincial governments can unilaterally determine what, if any, types of gambling First Nation governments can pursue. This left First Nations with three strategies for raising revenue through gambling: 1) To register as a charity and follow provincial charitable gambling laws, 2) To negotiate an agreement (similar to state compacts in the U.S.) with the province to allow the first nation to regulate gambling, or 3) To obtain a provincial gambling license and operate as a commercial casino. Across Canada, there is now a mixture of regulator frameworks, with First Nations opting for whichever strategy was the best fit for them and the surrounding province. By 2018, there were 38 casinos across 7 provinces, totaling \$750 million (CAD) in revenue (Belanger 2018).

The First Wave of the COVID-19 Pandemic

Because our study compares Tribal and First Nation to state and provincial responses to the first wave of COVID-19, it is helpful to provide a brief review of the timeline of the first months of the pandemic.

The first case of COVID-19 was reported in Wuhan, China in late December of 2019. On January 20 of 2020, the first case of COVID-19 was confirmed in the U.S., and the first confirmed case in Canada was soon after on January 25 of 2020. In early March, many federal governments began to mobilize their resources to respond to this pandemic. At this time, provincial and state governments began ordering businesses to close (Center for Disease Control 2023).

In the early stages of the pandemic, it was known that COVID-19 was highly contagious, but the medium of spread was unknown. Many public health officials hypothesized that the virus could spread through contamination of surfaces, but it was later discovered that the virus was largely airborne. It was also known that COVID-19 was very deadly, with a mortality rate that was initially estimated to be 1-2%. Facing a highly contagious disease with a high mortality rate, no available vaccine, and little known about its mechanism of spread, government officials had to make hard decisions with little information. In the first months of the pandemic, closing business was one of the few tools available to governments to promote social distancing and slow COVID-19's spread. Since then, Schnake-Mahl, et al. (2022) found that bar and restaurant closures during the first six weeks of the pandemic were effective, leading to a 55% decline in new COVID-19 cases.

Methods

To understand how Tribal and First Nation responses compared to their state and provincial counterparts, we collected closure and reopening data from 498 Tribal casinos across 29 states in the U.S. and 38 First Nation casinos across 7 provinces in Canada. We collected this data from the Casino City Press's COVID-19 Gaming Property Closings and Reopenings database (2023). We compared these closure and reopening dates to the dates that governors and premiers issued orders to close bars and restaurants and to the dates that they began lifting those restrictions. Finally, we calculated the difference in days between the casino closures and the governor or premier issuing bar and restaurant closure orders, as well as the difference in days between casino reopenings and the Governor or Premier lifting these restrictions.

For each state and province, we calculated the median number of days between casino closures and state or provincial closure orders, as well as the median number of days between casino reopenings and state or provincial restrictions being lifted. We then graphed these results by country so that we were able to compare the data from state to state or from province to province. Additionally, we calculated the overall mean and median for each country in order to determine whether Tribal and First Nation responses varied greatly between the U.S. and Canada or if they were similar, despite the differences in how the industries are regulated.

Results

Figure 1 displays the median Tribal casino closure date compared to state closure orders in the U.S.

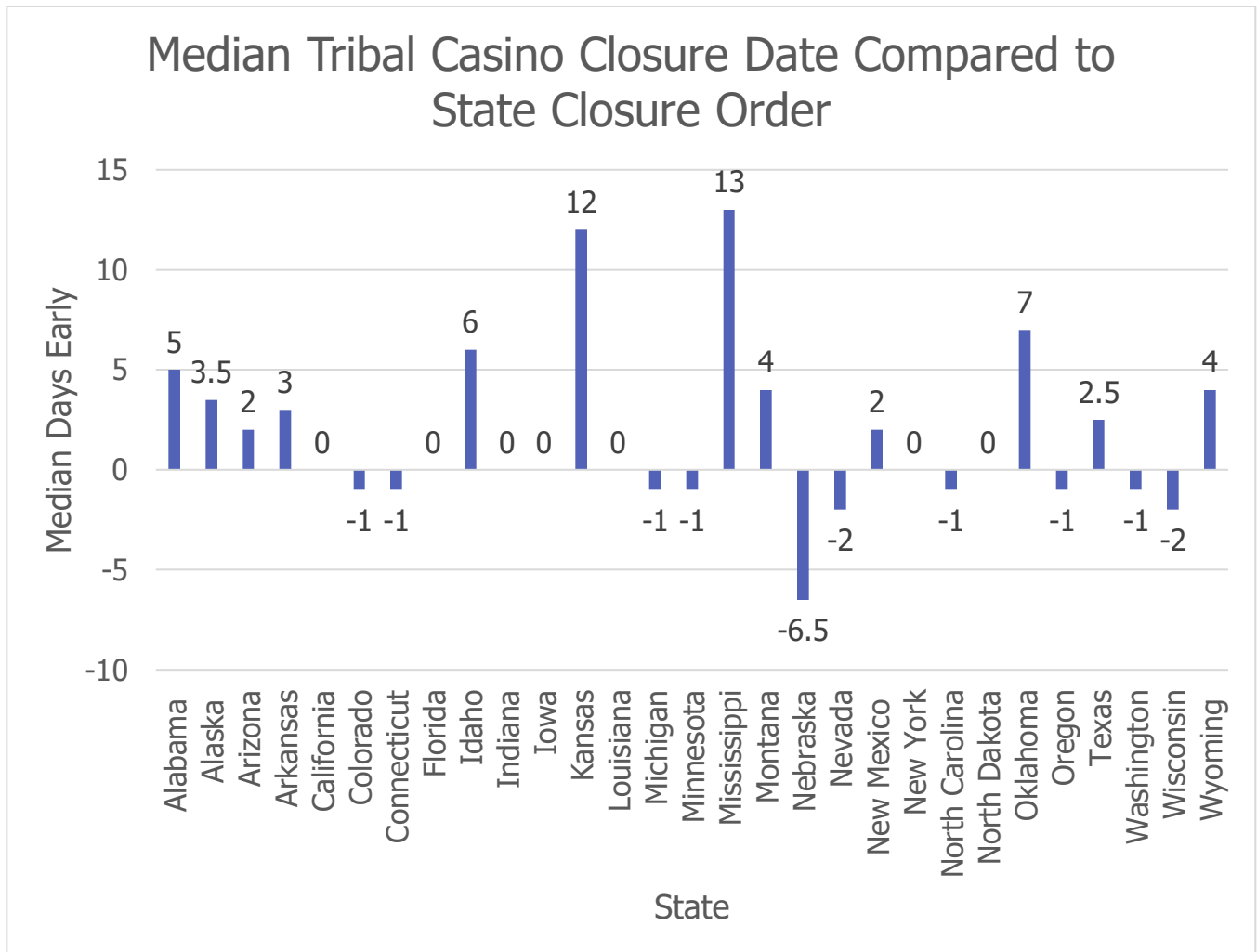


Figure 1

Casinos in 12 states closed before governors issued executive orders closing bars and restaurants. Kansas and Mississippi casinos closed the earliest, with a median of 12 and 13 days early, respectively. In seven states, the median casino closure was on the same day that governors issued executive orders. Casinos in nine states stayed open after the executive orders were issued. Most of these casinos only stayed open for one or two days after the executive orders were issued. However, casinos in Nebraska stayed open the longest, with a median of 6.5 days after executive orders were issued. Overall, this data shows that Tribal governments acted faster than state governments to close businesses.

Figure 2 displays the variation in when state Governors issued executive orders closing bars and restaurants. It also notes the party affiliation of each state Governor at that time.

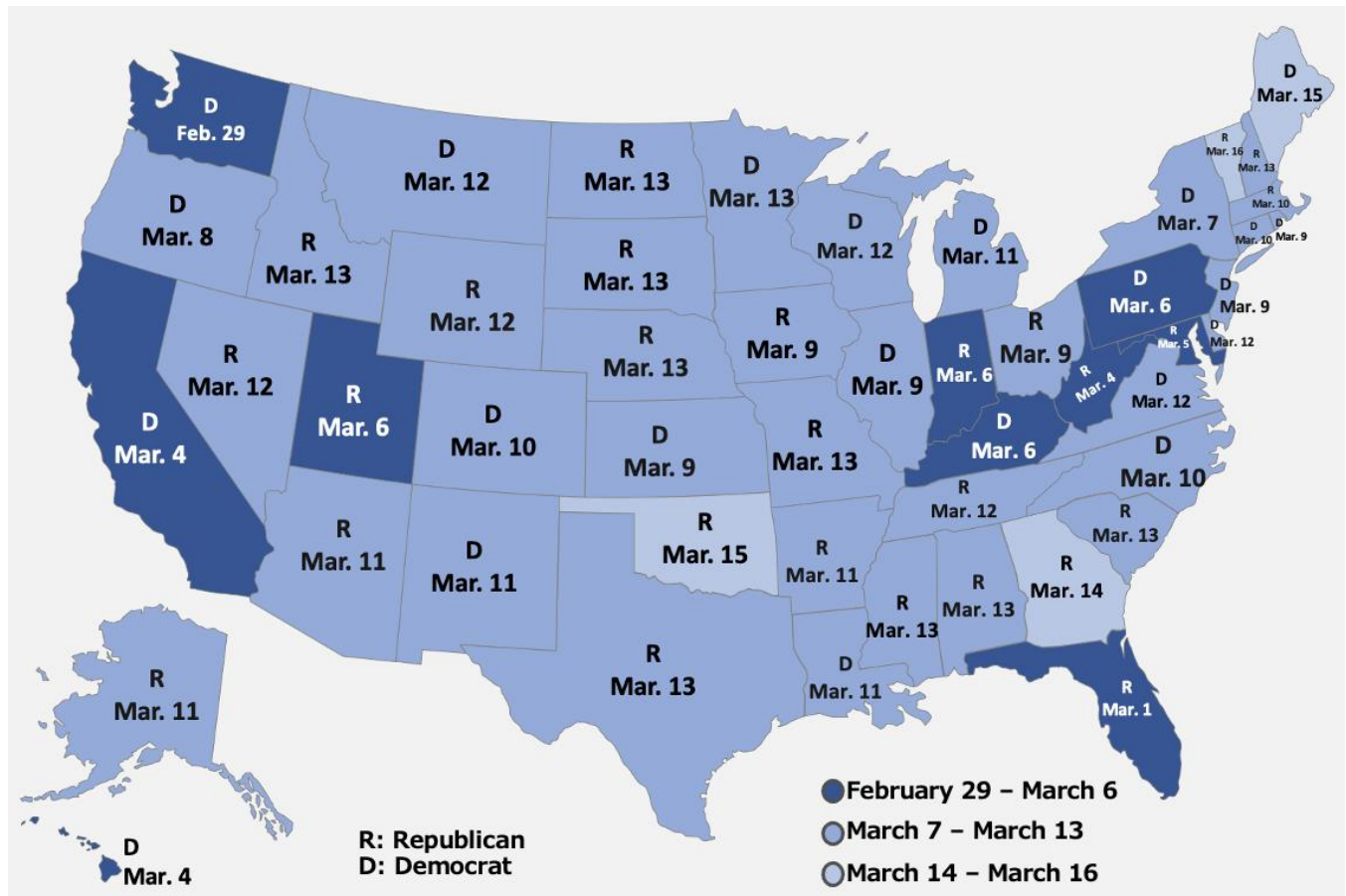


Figure 2

Coastal states tended to close quite early, which is likely because these states were the first to be hit by COVID-19. States with Democratic governors generally closed businesses earlier than states with Republican governors.

Figure 3 displays the median number of days that Tribal casinos in each state stayed closed after the Governor allowed bars and restaurants to reopen in any capacity.

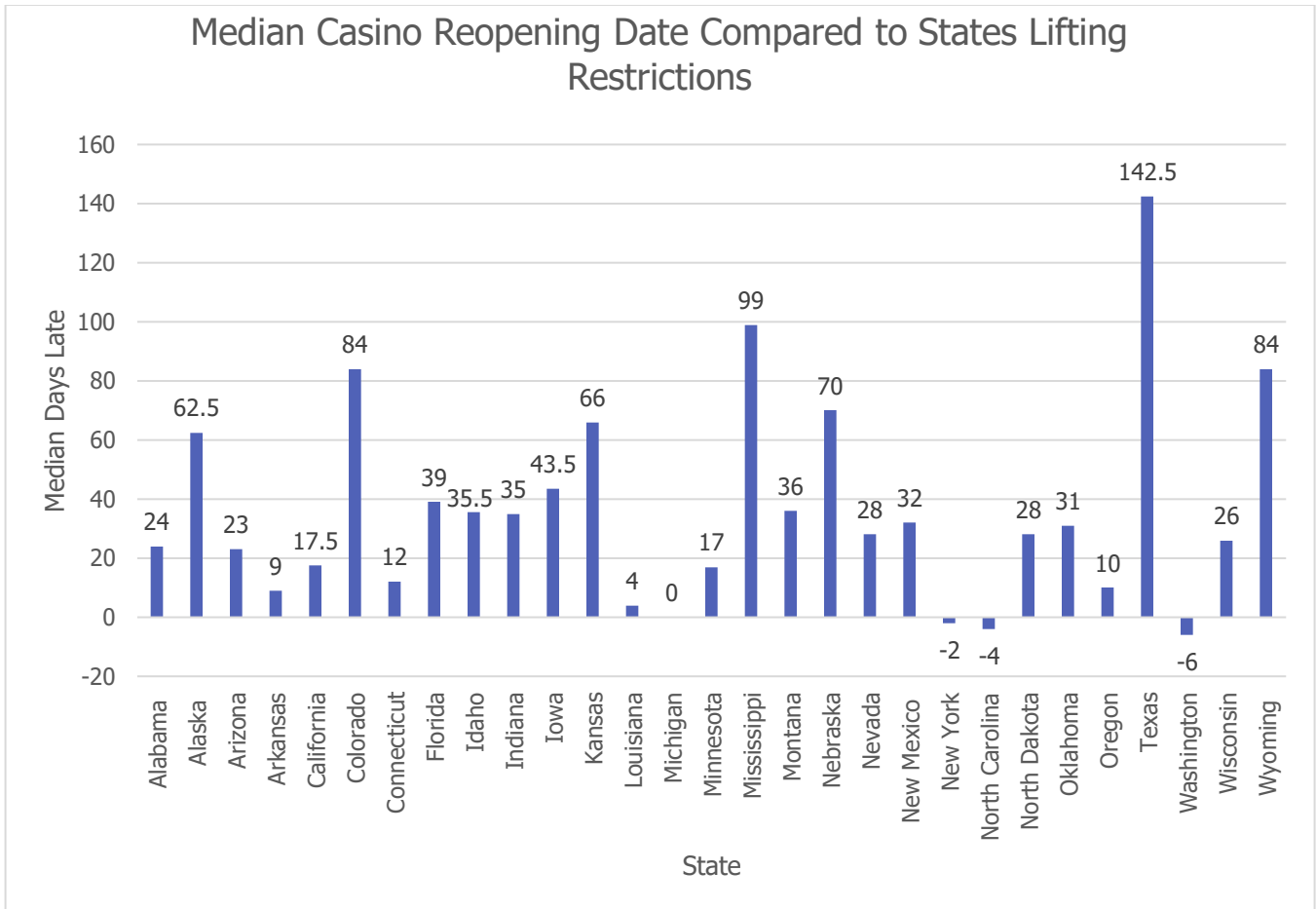


Figure 3

Tribal casinos in 25 states reopened after governors allowed bars and restaurants to reopen in any capacity. Casinos in Texas reopened the latest, with a median of 142.5 days after restrictions were lifted. Casinos in three states reopened before these restrictions were lifted. Casinos in Washington reopened the earliest, with a median of six days before restrictions were lifted. The median of casinos in Michigan reopened on the same day as the Governor lifted restrictions. Overall, Tribal casinos in most states remained closed for several weeks after Governors allowed bars and restaurants to reopen at some capacity.

Figure 4 displays the variation in when governors began lifting restrictions on bars and restaurants. It also notes the party affiliation of each state Governor at that time.

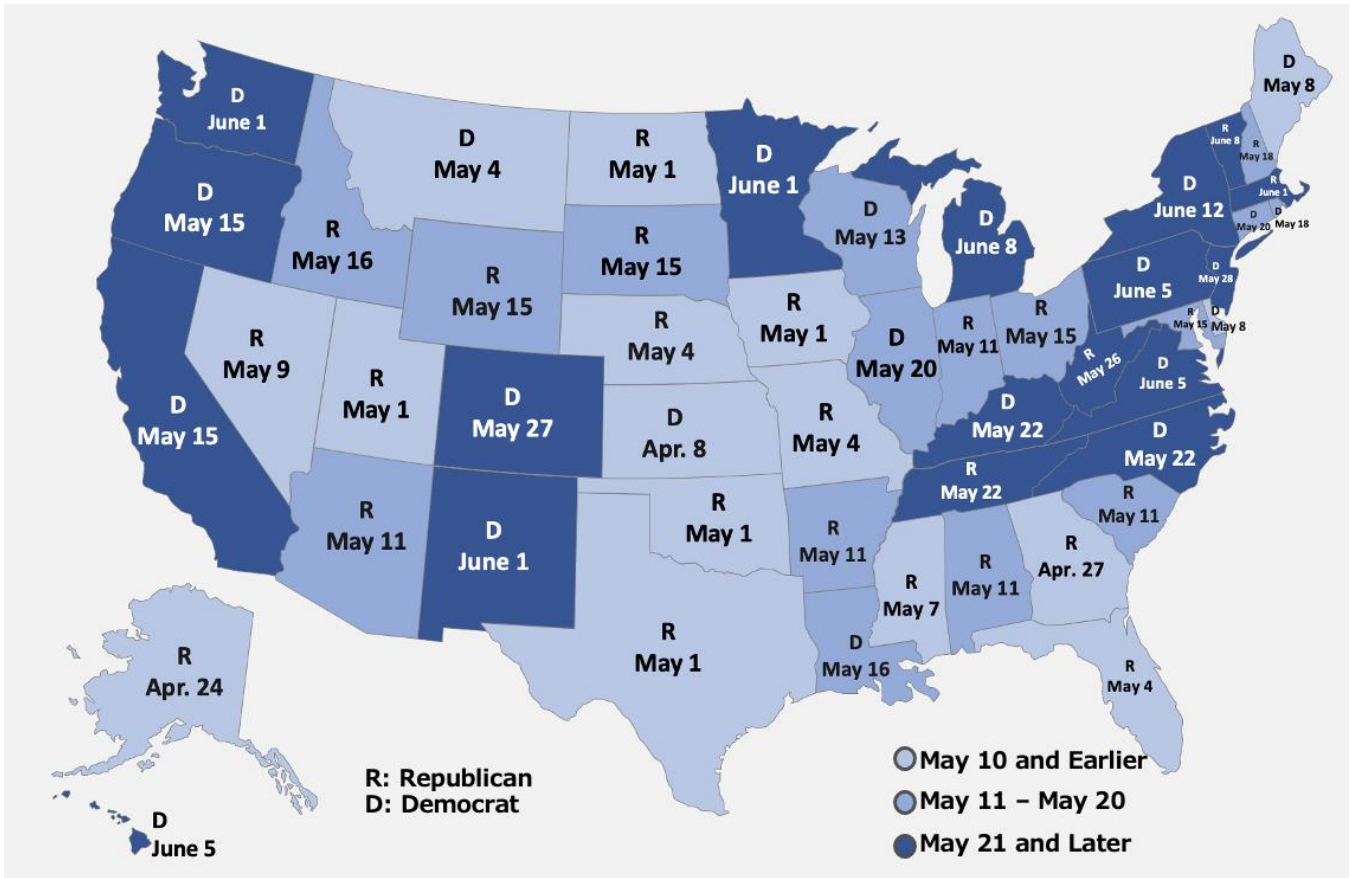


Figure 4

Coastal states tended to begin reopening bars and restaurants later. States with Democratic governors also tended to begin reopening later.

Figure 5 displays the median number of days that First Nation casinos in each province closed before Provincial nonessential businesses, including bars and restaurants.

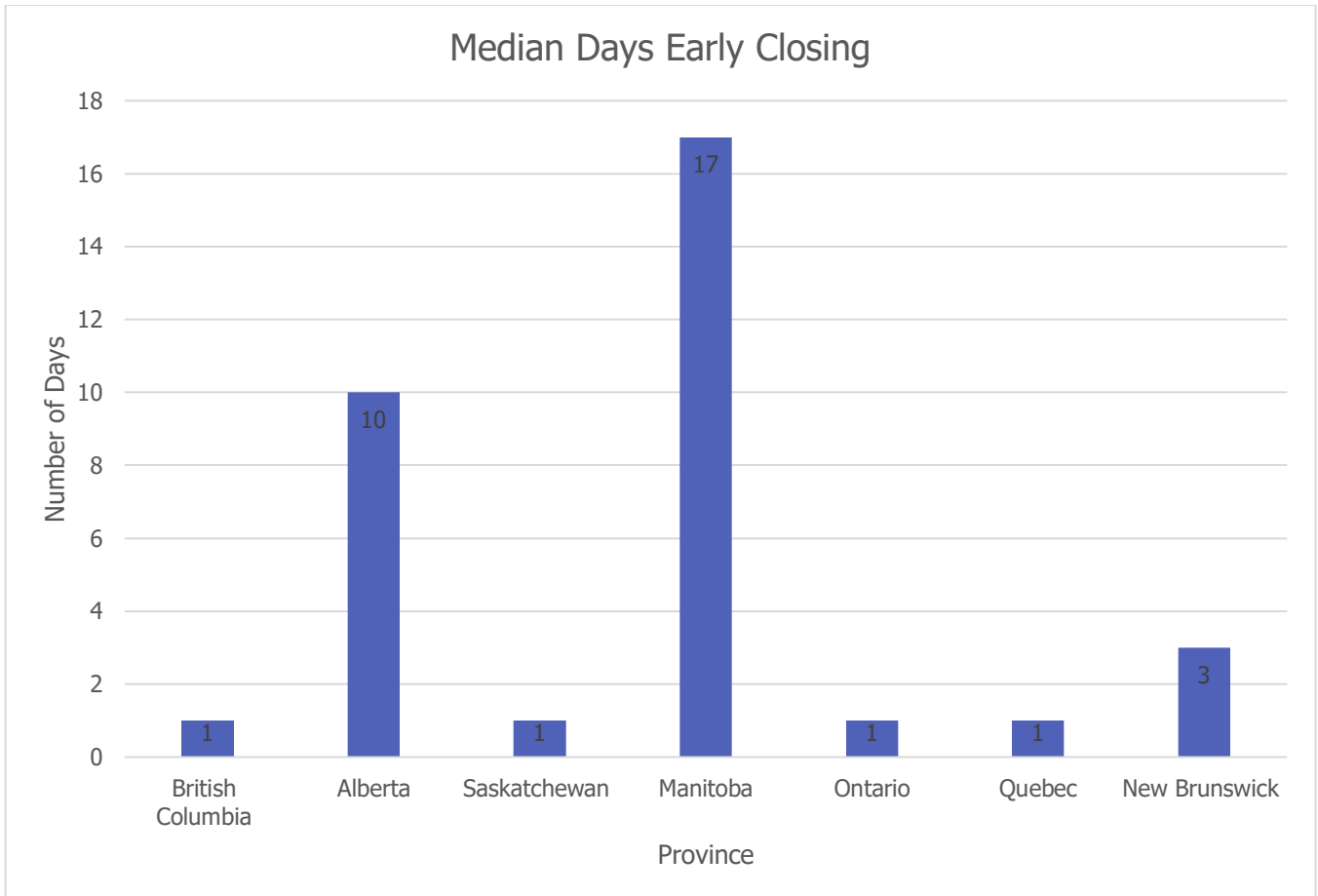


Figure 5

First Nation casinos in every province closed before the Premier issued a mandate for nonessential businesses to close. Casinos in Alberta and Manitoba closed the earliest, with a median of 10 and 17 days early, respectively.

Figure 6 displays the variation in provincial closure dates and the party affiliation of the Premier at the time.

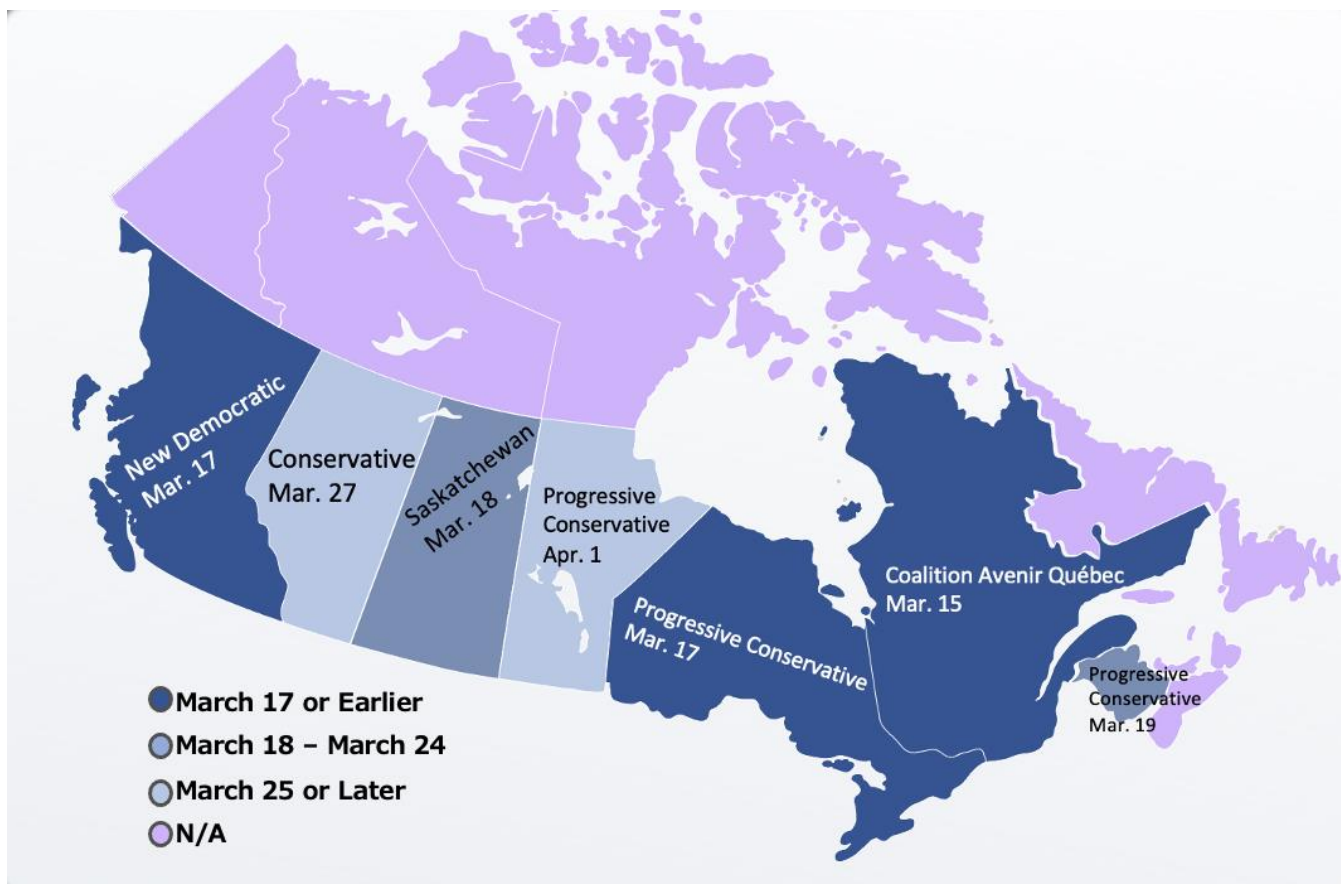


Figure 6

Coastal provinces closed earlier than prairie provinces.

Figure 7 displays the median number of days that First Nation casinos in each waited to reopen after Premiers lifted or loosened bar and restaurant restrictions.

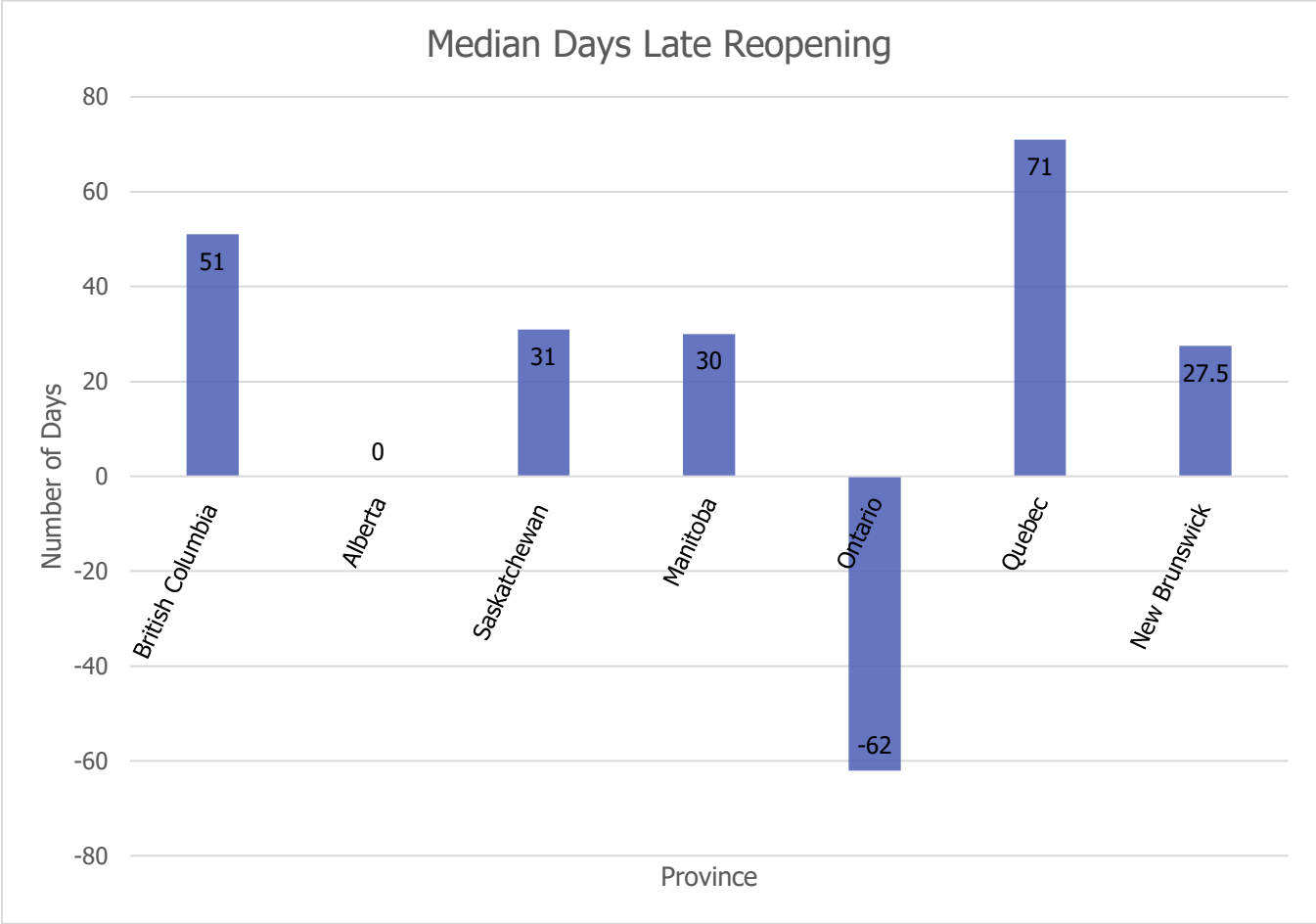


Figure 7

In five provinces, First Nation casinos reopened after the Premier allowed nonessential businesses, such as bars and restaurants, to reopen at some capacity. The median of casinos in Alberta reopened on the same day as the Premier lifted restrictions. First nation casinos in Ontario reopened a median of 62 days before the Premier allowed nonessential businesses to reopen. This outlier can be attributed to the fact that Ontario was experiencing new waves of COVID-19 as the Premier was attempting to implement a business reopening plan. Of course, this delayed the official reopening of nonessential businesses in Ontario considerably.

Figure 8 displays the variation in provincial reopening dates and the party affiliation of the Premier at the time.



Figure 8

Restrictions were lifted much later in Ontario than in other provinces.

Figure 9 displays the nationwide U.S. closure and reopening data in terms of average and median.

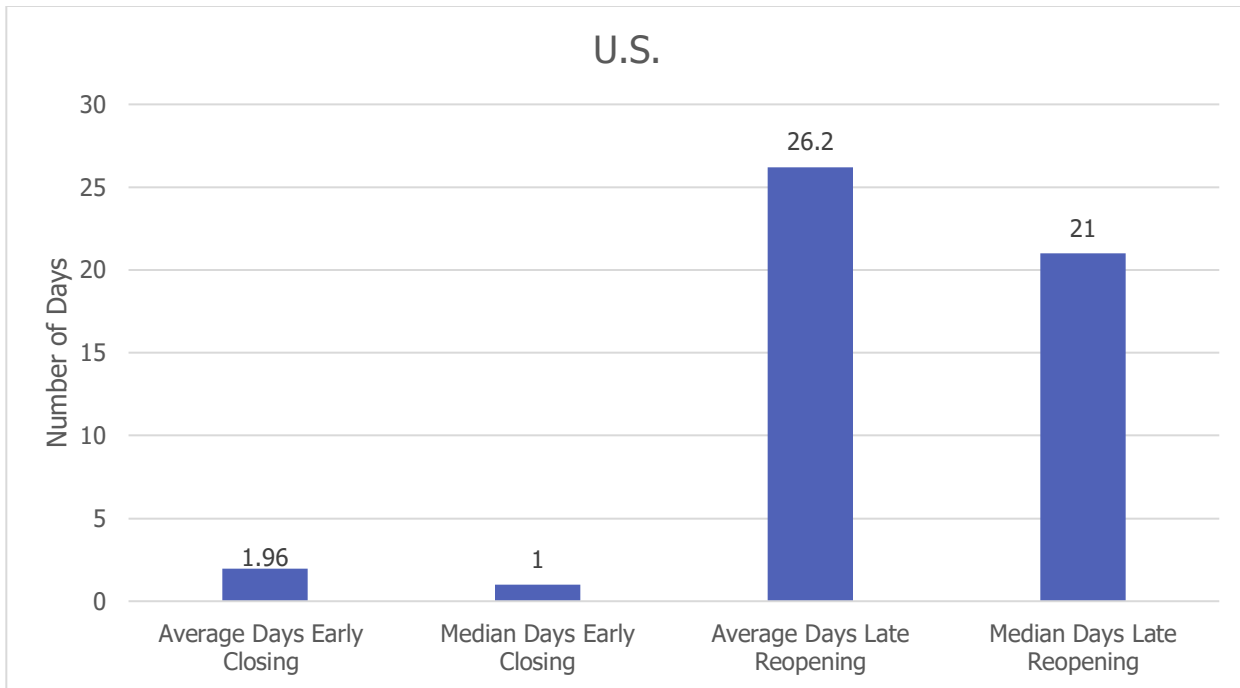


Figure 9

The nationwide average and median of Tribal casinos closed before Governors issued executive orders closing bars and restaurants. Additionally, the nationwide average and median Tribal casinos reopened several weeks after state bar and restaurant restrictions were lifted.

Figure 10 displays the nationwide Canadian closure and reopening data in terms of average and median.

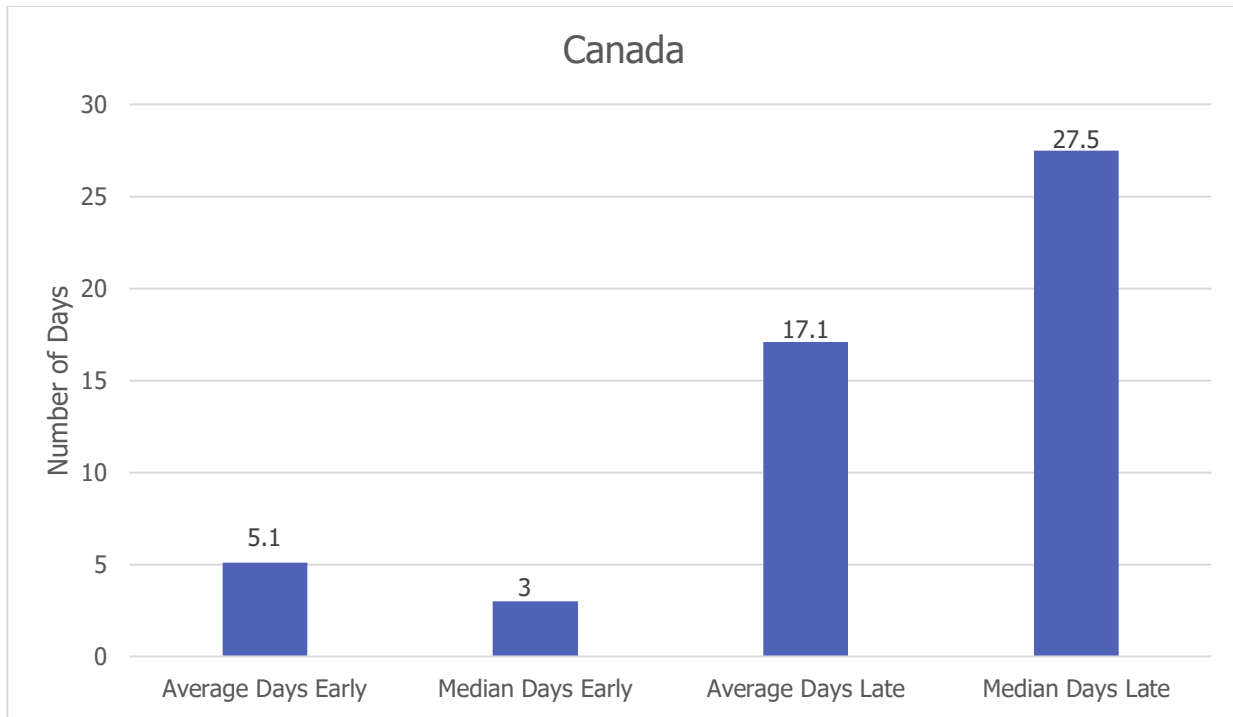


Figure 10

The nationwide average and median of First Nation casinos closed before Premiers issued orders closing bars and restaurants. Additionally, the nationwide average and median First Nation casinos reopened several weeks after provincial bar and restaurant restrictions were lifted.

Conclusions

Our results show that across the United States and Canada, Tribal and First Nation governments acted faster than their state and provincial counterparts during the first wave of COVID-19. They also kept their casinos closed for weeks after state and provincial governments allowed reopenings. These closures came at a significant cost to Tribal and First Nation governments, whose casinos frequently are a key source of government revenue. In the U.S, gross Tribal gaming revenue shrank from \$34.6 billion in 2019 to \$27.8 billion (USD) in 2020 (NIGC 2021). Canada, unlike the U.S., does not track nationwide First Nation casino revenue, but the overall impact of COVID-19 closures on casinos across Canada was significant. Stevens (2020) found that the total Canadian casino revenue earned \$6.9 billion (CAD) in 2020, compared to \$13.6 billion in 2019 (CAD). Because First Nation casinos closed for at least as long, and often longer than their commercial counterparts, they likely experienced an even greater rate of revenue loss.

Casino closures had a significant impact on Tribal and First Nation economies. However, the humanitarian cost of staying open would have been even greater. Because of a range of health disparities caused by the ongoing impacts of settler colonialism, COVID-19 posed a much greater risk to Indigenous communities than to the general public. In the United States, COVID-19 mortality for Indigenous Americans was 2.8 times as high as the mortality for white Americans (Williams, R. 2021). In Canada, First Nations community members were 3 times more likely to be hospitalized with COVID-19 and 6.5 times more likely to be admitted to the ICU (Power, et. al. 2020).

Our results show that Tribal and First Nation governments across North America were more willing to make significant economic sacrifices for the sake of public health than state and provincial governments. They consistently closed casinos earlier and reopened later than state and provincial business closures. States and provinces had much greater variability in the timing of closure and reopening, with the political affiliation of their governor or premier often influencing their responses. With Tribal and First Nation leadership positions typically operating outside of partisan party politics, the consistency of their closure and reopening times may also reflect their ability to respond to the immediate public health needs of their communities, free from the ways COVID-19 closures became politicized by the predominant political parties.

In conclusion, Tribal and First Nation governments' faster and more consistent closure dates and longer closure times, in combination with Schnake-Mahl, et al. (2022)'s research on the positive impacts of restaurant and bar closures during the pandemic's first wave, demonstrate that in the first months of the COVID-19 pandemic Indigenous leaders across North American acted more decisively to implement effective public health measures than their state and provincial counterparts. In future public health emergencies, policy makers should look to Indigenous leaders, who during the worst public health emergency in over a century, took bold action to protect their communities.

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