Mr. Chairman, Mr. Ranking Member, and members of the committee:

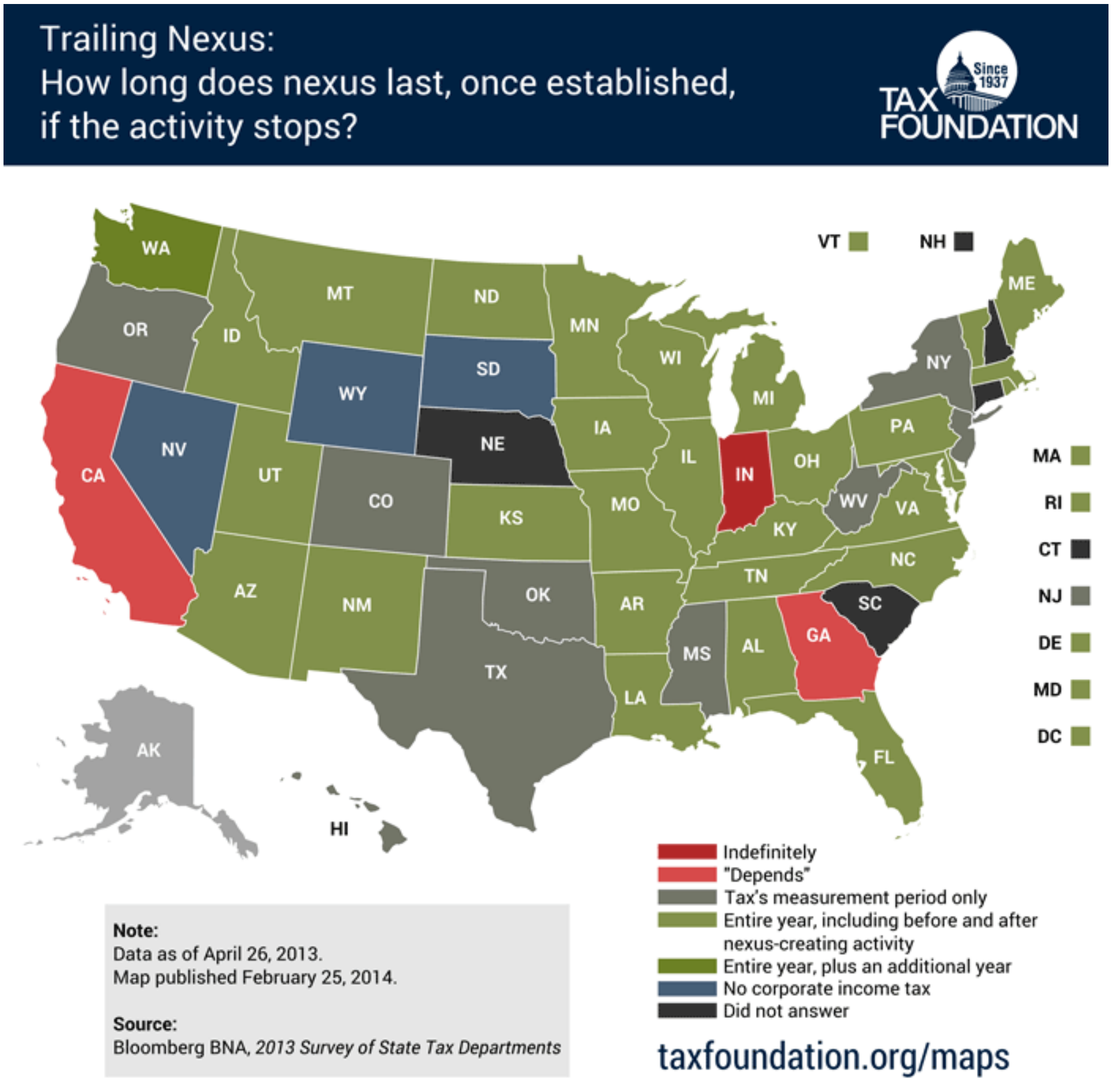
Thank you for the opportunity to appear before you today on the subject of the scope of state business activity taxation.

I'm one of those people who carries around the Constitution with him. And in there is your power to regulate interstate commerce. The reason it's in there is because before the Constitution, the states, left to their own devices, just about wrecked the national economy. Port states put taxes on goods going to interior states. Interior states taxed the port states. Everyone tried to exempt their own residents and put all their taxes on interstate commerce. That crisis is a big reason why they all gathered in Philadelphia and gave you the power to limit the ability of states to tax entities with no physical presence in the state.

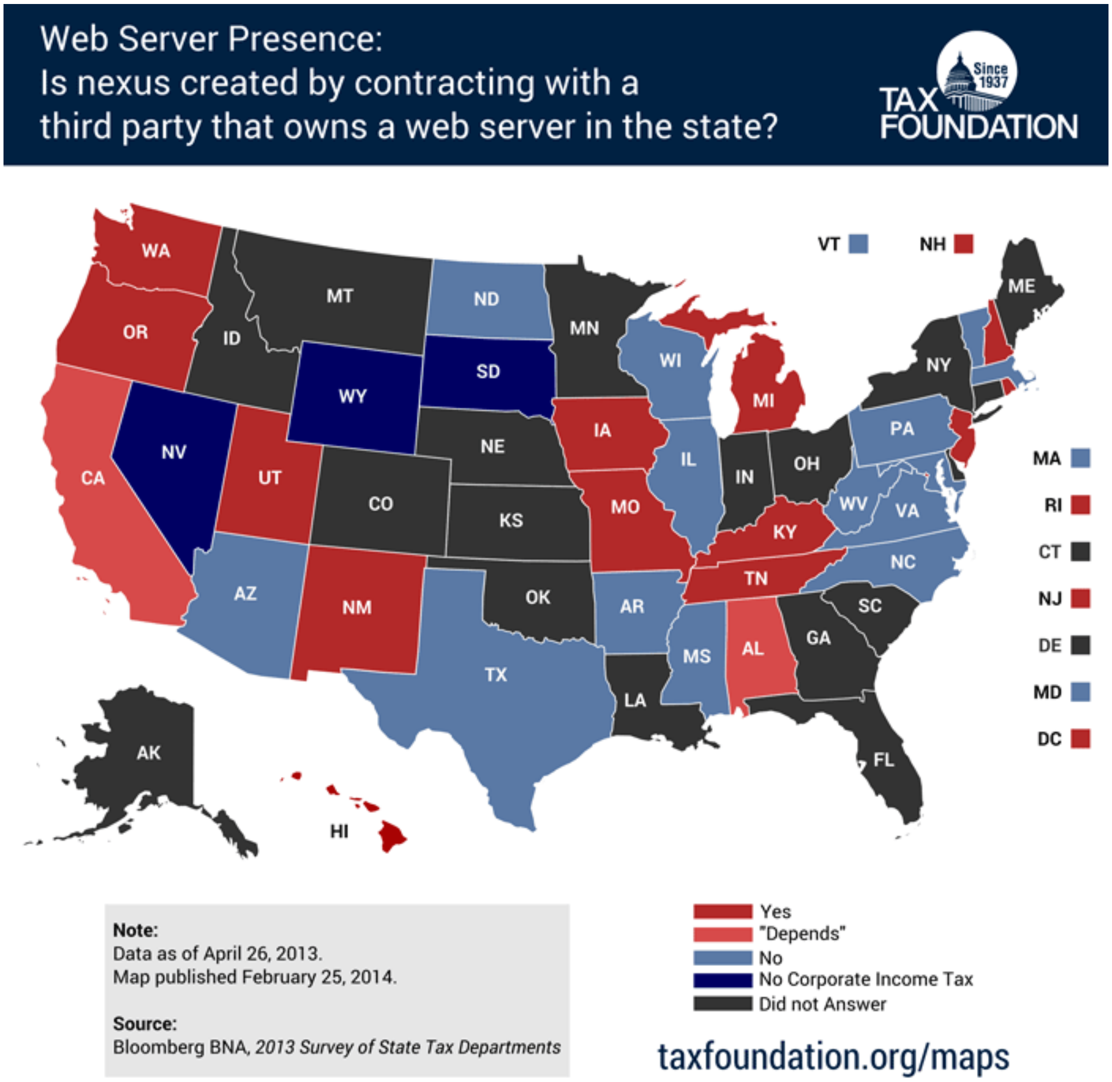
The physical presence rule for business taxation is not only good constitutional law, it's good tax policy. The economists in my office speak of the benefit principle: the idea that people and businesses should pay taxes in the places where they benefit from government services. For businesses, that's where they have property and employees. States should pay for services by taxing the residents who live and work in the state and benefit from those services.

Congress has acted on this before. In 1959, Congress enacted P.L. 86-272, and was going to do more, but the states said that if Congress would just stay out, the states would solve it and things would get better.

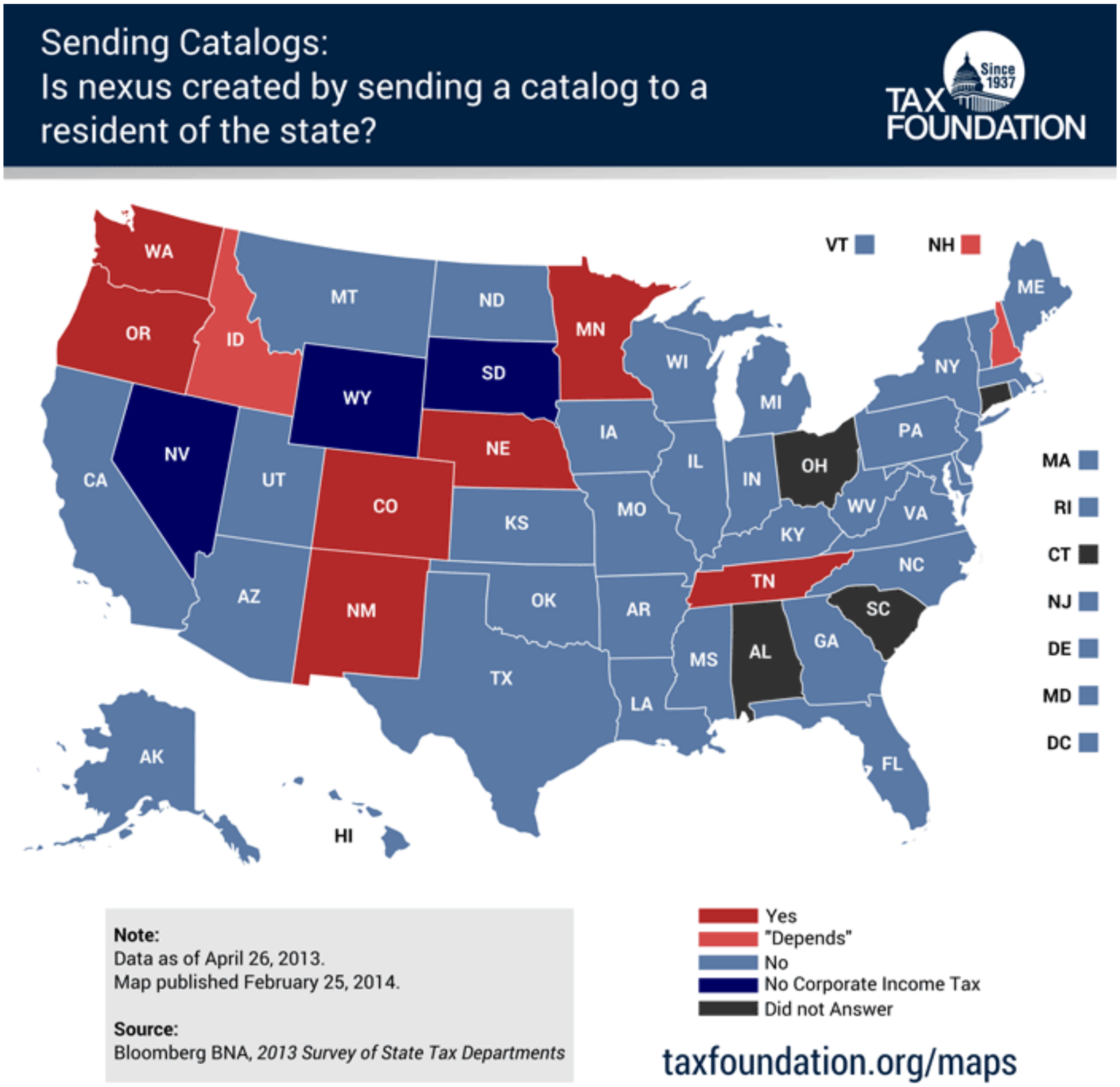
They haven't. I wish I could say that what happened to Mr. Vegas is an isolated example. In many states, it's official policy. I could review many, but in the interest of time, I brought five, pulled from the excellent annual *Survey of State Tax Departments* by Bloomberg BNA.



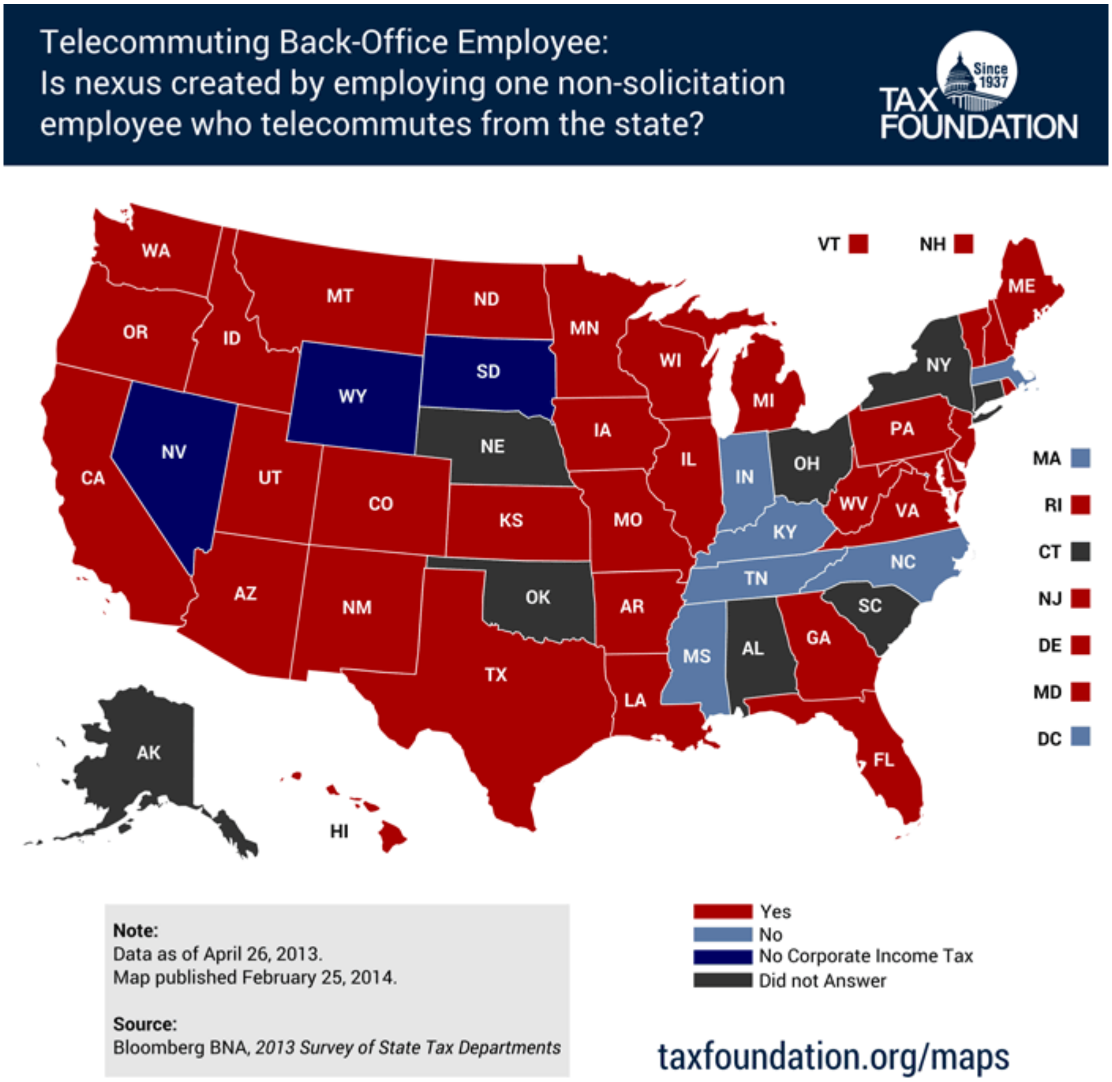
This first map shows how long nexus lasts in each state if a business stops the activity. The gray states say it lasts just for the tax's measurement period. So if the tax is paid quarterly, nexus is just for that quarter. The green states apply nexus for the full year. Washington State adds another year beyond that. A couple states, the black ones on the map, declined to answer the question, which is not helpful. California and Georgia said "it depends," and nexus apparently lasts forever in Indiana.



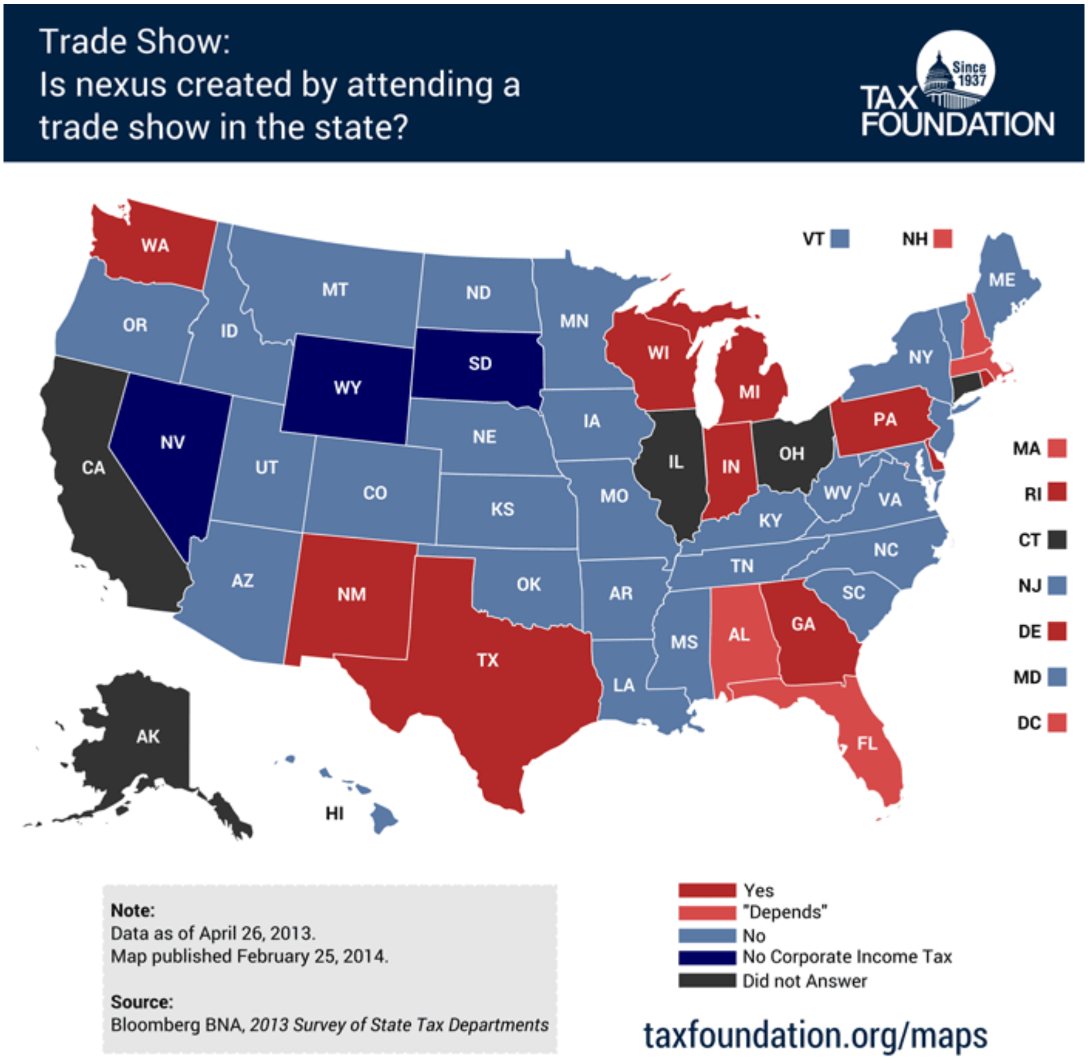
This next map is if you have nexus because you have a website that you pay a third party to host, and that third party has a server in the state. You all have websites, do you know where it is hosted? If you were a company, 14 states say you would have nexus. 18 states declined to answer.



This map is if a state will find nexus if you send a catalog into the state. No people or sales, just sending in a catalog. This is open-and-shut in the caselaw, and most states are good, but 7 states say that's nexus, and 2 more say "it depends."



This map involves having a non-solicitation employee in the state. Under the physical presence rule, and under BATSA, there should be a finding of nexus in this case. I'm not too worried about the yes states here, or the no states: just because a state can tax something doesn't mean they have to. What worries me is the 8 states that declined to answer this basic question. That's 8 states where taxpayers cannot get answers from their officials to rely on for business activity.



This map shows the states that find nexus if you attend a trade show. Note, this is *attend* a trade show, not exhibit or sell stuff. Every state will find nexus if you sell stuff at a trade show. But merely attending a trade show means nexus in 10 states, with 5 more saying "it depends," and 5 more declining to answer.

This is basic stuff. The last time we had this hearing, the states talked about how physical presence would harm their revenue, even though these taxes are a tiny portion of their budgets, and the states are cutting them anyways for in-state companies through single-sales factor apportionment and tax incentive deals. They talked about how it would encourage tax evasion even though it doesn't change one thing about the ability of states to go after tax evaders. They talked about state sovereignty even though stuff like this is precisely why Congress has the power to regulate state taxation of interstate commerce.

I hope today we get answers. If states are handling this and Congress doesn't need to get involved, why is basic guidance about nexus all a mess? The truth is that states don't want to fix this problem. Like before the Constitution, they are happy to substitute their parochial interests for the national economic interest. They are doing harm. It's time – beyond time – for there to a modest national framework answering this key question: how far does state tax authority over interstate business extend? If Congress doesn't answer that question, no one will.

Thank you.