

of its shares. If the foreign company makes that showing, it then enjoys a presumption of immunity under the FSIA, meaning that the plaintiffs' lawsuit will be dismissed.

But before that happens, the plaintiffs have one more chance to save their case from early dismissal. This is where the "commercial activity" exception comes into play. The plaintiffs can defeat the presumption of immunity by showing that the foreign state-owned company was acting as a market participant—that is, engaging in commercial activity that takes place in or affects the United States—when it caused the harm the plaintiffs complained about.

This principle—the "commercial activity" exception—saves a case from early dismissal and gives plaintiffs a chance to move forward and try to prove their claims against a foreign, state-owned corporation behaving like a market actor.

But as it turns out, that can be a complicated showing for plaintiffs to make at such an early stage in the case. Here is why. Companies owned by foreign states are often governed through very complicated corporate structure.

Take, for example, the large Chinese insurance company backed by the Chinese state bank in its recent attempt to purchase an American hotel chain. In describing the attempted takeover, the Wall Street Journal described the Chinese company's ownership structure as "opaque."

Yet in implementing the FSIA, courts require plaintiffs to meet the commercial activity exception at every level of corporate organization or they must show that various levels of organization acted only as corporate pass-throughs and, therefore, can be ignored.

Here is why I think that may be a problem. Corporate parents can exercise an extraordinary level of control over subsidiaries without concluding that the subsidiary is a mere pass-through.

Requiring plaintiffs to show commercial activity at every level of corporate organization—at such an early stage in the lawsuit—runs the risk of ignoring high-level involvement in the conduct that allegedly hurt the plaintiffs. If plaintiffs don't satisfy this showing against a parent company at an early stage in their case, they may lose the chance to establish their claims.

Now, what this means, as a practical matter, is that this mechanism puts foreign companies that happen to be owned by sovereign states at a distinct advantage over private foreign companies. A private foreign company has no mechanism for early dismissal of a lawsuit on these grounds. A private foreign company would be required to respond to the plaintiffs' allegations, and it would have to produce evidence during the course of the lawsuit relating both to its control over other parts of the conglomerate and also to its involvement in the activities alleged.

As a result of this early dismissal mechanism, the plaintiffs' case in New Orleans could only proceed against one subsidiary, and that happens to be CNBM. The case against CNBM itself was dismissed.

Now, it may be that these plaintiffs still wouldn't have been able to establish liability on the part of CNBM in the end, but they didn't even have that opportunity.

This is something that I want to consider carefully. If a foreign, state-owned company is able to shield parts of its organization behind the FSIA to avoid having to answer a lawsuit entirely in a way that the FSIA doesn't contemplate, when a privately owned foreign company wouldn't enjoy the same luxury, then a fix may be in order.

The point of the commercial activity exception to foreign sovereign immunity is to treat foreign governments like any other market actor when they enter into commerce. Nothing about the principles of foreign sovereign immunity or the FSIA is designed to afford extra early defenses to foreign companies' commercial actions just because the companies happened to be owned by foreign states.

But, currently, foreign, state-owned companies will argue that many of their affiliates don't have to answer the claims of American companies and American consumers, even when it is clear that at some level the company engaged in market activity that may have harmed Americans. Sometimes, like in the New Orleans case, the companies are succeeding.

So I think that may be a problem. That is why I took the time to speak now on the floor of the Senate, and I intend to look at it very carefully and possibly seek legislative remedy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

GUN VIOLENCE

Ms. BALDWIN. Madam President, last week—let's start with last week—Americans woke to the news of a horrific mass murder in Orlando, FL. The gunman, a U.S. citizen inspired by terrorists, legally purchased a weapon of war and turned it upon members of the LGBT community on Latin night at a nightclub in Orlando, FL—49 dead, 53 wounded.

Senators returned from their home States last week to express thoughts and prayers and to observe moments of silence. Many of us resolved that while important, those sentiments were not enough and that we needed to follow up those thoughts, those prayers, and those moments of silence with action.

I joined with my colleagues on the floor when Senator MURPHY of Connecticut held the floor for 15 hours to draw attention to two commonsense amendments that would have limited that easy access to a weapon of war by closing a loophole that allows so many

of our firearms purchases to occur without a proper background check and to close something we are calling the terror gap, which would allow the FBI the authority to deny gun purchases to people who are on a watch list, suspected of connections with terrorism. Those measures gained a vote in the Senate last night, but both failed to advance.

I don't think we can simply say that we tried and continue to accept shootings like the one in Orlando as the new normal and then move on to other business—especially, I might add, with our procedural posture right now, as the Senate has before it at this period in time the Commerce-Justice-Science appropriations bill, a measure in which we can prioritize our response to this tragedy and the preceding tragedies through amendments perfecting the measure before us. Americans are demanding more. We can't just carry on as usual in the wake of these enormous domestic tragedies. Wisconsinites are demanding more. Just in this last week, I received heartbreaking communications from my constituents asking us to act. I will briefly share two of them.

A young mother wrote to me:

I am a young mother of two young children and every day that they go to school I say a silent prayer that they come home safely to me, that no one decides to walk into their school or onto their bus with a gun and an intent to kill.

Another young person wrote to me:

As a young LGBTQ person, I am devastated by this attack on my community. I am scared that this attack happened in what was supposed to be a safe place, a free space in a world that is often hostile for LGBTQ people. I am scared for my safety and for the safety of my community. I am also angry. I am angry that the United States is the only country where shootings like this regularly occur, and I am angry that our government is not doing enough to prevent this kind of violence.

The attack in Orlando was, as I mentioned, an act that allegedly was inspired by maybe ISIL or other terrorist groups, but it was also an act of hate, a hate crime. I have filed an amendment with my colleagues, Senator MIKULSKI of Maryland and Senator HIRONO of Hawaii, to increase funding to strengthen the prevention of hate crimes and the enforcement of our hate crimes laws and our civil rights laws. The amendment is now cosponsored by 18 other Members of the Senate.

I think it is important to understand what a hate crime is. A hate crime is an underlying criminal act—so it is not about hate thought or hate speech—wherein the victim of the crime or victims of the crime are targeted based on a particular characteristic. Sometimes we hear about hate crimes committed against the LGBT community because of their sexual orientation or gender identity, but hate crimes are often perpetrated against people on the basis of religion, race, ethnicity, or gender. Hate crimes targeted against people based on their characteristics are done

so because not only are the victims victimized, but it sends a message of terror and hate throughout a community to all people who share characteristics with the victim or who love people who share the characteristics of the victim. They are terrifying, and they deserve, as we have chosen to do in the United States, to be treated very specifically as hate crimes.

It is only recently that the United States recognized hate crimes against members of the LGBT community or against women or people with disabilities with the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.

There are too many of these hate crimes in the news these days. We are still grieving the massive numbers of dead and injured in Orlando. It was not all that long ago that Charleston had a mass murder in a church. The African-American community was targeted. In Wisconsin, in another place of worship, in a Sikh temple in Oak Creek, WI, a gunman came and targeted the congregation during Sunday worship.

In America, hate crimes overall are declining. That is good news, and that says something about what we can do together when we pass strong laws and try to prevent these crimes, educate, and enforce our laws. But I am sad to share that while overall our hate crimes are declining, those against some groups—most notably Muslims and members of the LGBT community—are on the rise. LGBT people are more likely than any other group to be targeted for hate violence, and LGBT people of color, particularly transgender women of color, are at the very greatest risk.

The amendment I have offered, along with my colleagues, Senators MIKULSKI and HIRONO, would provide, in the Commerce-Justice-Science appropriations bill, additional funding for the Civil Rights Division to focus on hate crimes prevention on the one hand but also enforcement and prosecution of those crimes when they occur. This amendment will provide important tools to the Justice Department that they need to combat discrimination and crimes of hate in communities across the country. I am pleased to have a large number of human rights organizations in this country endorse this as an important step forward.

We need to take action. We need to do more to address terrorism, to address gun violence, and to address hate crimes. I urge my colleagues in the Senate to join me in calling for a vote on this amendment and supporting it when we get that opportunity.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FLAKE). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRUZ). Without objection, it is so ordered.

ZIKA VIRUS

Mrs. MURRAY. Mr. President, I am on the floor to focus on some very frightening news we got late last week about the Zika virus, news that shows just how important it is that we get emergency funding to the President's desk right away.

Last week, three babies were born in the United States with birth defects linked to Zika. Three other pregnancies didn't make it to term as a result of this virus. As a mother and grandmother, my heart goes out to these families, and as a U.S. Senator, I am extremely frustrated that 4 months since President Obama first asked for a strong emergency funding package to respond to this frightening virus, Congress still has not sent anything to the President's desk because, unfortunately, the longer we wait to act, the more those numbers are going to grow.

In fact, Tom Frieden, Director of the CDC, has said in Puerto Rico alone, hundreds of babies could be born with birth defects related to Zika. There are already nearly 2,200 reported cases of Zika in the United States and the territories, and more than 400 expecting mothers are being monitored for possible infection.

Without question, this is a public health emergency. What makes it all the more frustrating is we have an agreement that could go to the President to be signed into law right away. While it shouldn't have taken so long, Senate Republicans did finally agree to work with us on a downpayment on the President's emergency funding proposal.

The agreement we have reached would give communities more resources for vector control. It would help accelerate development of a vaccine and, critically, provide much needed preventive health care, including family planning services, such as contraception, to families who ask for it.

This package has support from both sides of the aisle. All Senate Democrats and nearly half of Senate Republicans voted for it. It has now been a full month since that agreement passed in the Senate. Unfortunately, instead of acting on it, House Republicans chose to move to conference with their own underfunded, irresponsible proposal that offers just one-third of what is needed to combat this virus and drains much needed resources from the ongoing Ebola response effort.

With the health and well-being of women and babies on the line, now is not the time for nickel-and-diming. It is not the time for debates about taking from one health care priority to support another. This is the time to act because every infection prevented is a potential tragedy prevented, and there is no good reason why we cannot get a strong emergency funding proposal to the President's desk this week.

Families are looking to Congress for action on Zika. It is well past time that we delivered, and I hope we can

get this done without any further delay.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent to speak for a few moments before the gavel comes down at 12:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

GUN VIOLENCE

Mrs. GILLIBRAND. Mr. President, I rise to speak about three amendments to this bill that I think would help keep America safe from gun violence. After so many tragedies, including the mass murder earlier this month in Orlando, this Chamber has had one opportunity after another to do something about the gun violence crisis, and last night was our most recent chance.

The American people are watching us, waiting to see what we will do, wondering if this time, after yet another mass shooting, after yet another hateful, angry person was able to have such easy access to a weapon of war to use it to quickly kill a crowd of innocent people—maybe this time the Senate would act.

But, no, this Chamber did nothing. The Senate didn't pass a single bill, not even a bill to prevent someone on the terror watch list from buying an illegal gun—not one. How many innocent people have to be killed by guns in this country before Congress is actually convinced to act?

The Senate failed the American people last night, and there is no other way to put it. We aren't listening to our constituents who are desperate for Congress to act.

This Chamber hasn't done anything to help keep the American people safe in the aftermath of so much violence. Every time a mass shooting happens somewhere in America—just like the one that occurred in Orlando—we hear the same calls for stronger, better, tougher laws. The American people overwhelmingly support them and nearly every time the gun industry and its powerful lobby do whatever they can do to block these bills to protect their own profits.

It is the same cycle over and over again. Someone with no business handling a powerful deadly weapon of war has easy access to that weapon and then uses it to kill many people—quickly. We have to make it harder for hateful, violent, radicalized people to get their hands on weapons of war. The only way to change this—the only way—is if Congress fulfills its responsibility to protect the American people