guts of their doctors and nurses. I can still see them in my mind, struggling to keep those hospitals open with the city completely underwater and a parish underwater. This is for Orleans and Jefferson. They still have not been reimbursed for the work that they did during Katrina.

For some reason, we can't get this Congress to understand the importance of what those hospitals did during this great time of need. So I wish to send this in for the RECORD.

DISASTER DECLARATION

Ms. LANDRIEU. Mr. President, finally, I wish to urge this administration to provide a 100-percent disaster declaration for at least these parishes. Our Governor has asked for 100 percent for all the parishes—and I am going to put up that chart in a minute—but the Governor believes the entire State deserves to have a 100-percent reimbursement because Gustav went through our whole State, and then Ike came up a few weeks later and flooded and did a tremendous amount of wind damage.

We are not designated as a 100-percent cost share yet, which means the Federal Government would step in and pick up 100 percent of some of these parishes that are on their last leg. They have been through four storms in the last couple years. Unfortunately, and I am not sure why, but several counties in Texas have been granted the first 0 to 14 days at 100 percent. Yet our parishes, which were hit equally as hard, have not yet received that designation.

So I am asking, on their behalf and with the full support of our Governor, our Lieutenant Governor, and others who are leading our effort in the recovery, if the administration would please consider at least giving equal treatment—100 percent, 0 to 14—for the parishes that were as hard hit as the Texas counties were in this aerial.

But do not forget, as I close, that when Hurricane Gustav was in the gulf, our Governor called for a mandatory evacuation, and 2 million people, the largest evacuation in the country's history, left their homes to move temporarily, for a couple days, and then came back. The damage was very bad. It wasn't catastrophic such as Katrina, but it was as bad as Hurricane Rita. But when they came home, the Federal Government said: Well, thank you for evacuating, but there is virtually no help for you or your counties.

It is expensive to evacuate. I know people don't understand, those who have never had to go through it, but it costs hundreds of dollars to fill your tank with gas, if you have a car; it costs hundreds of dollars to stay at a hotel, even if it is just for a day or two; it costs hundreds of dollars to drive down the road to pick up your elderly aunt or your grandmother, who lives in another parish, to get her to evacuate. I can't tell you the expense that people incur.

I don't think the Federal Government should pick up 100 percent of the expense of mandatory evacuations, but I do think, for some period in some parishes, particularly those that have been very hard hit, that the Government, the Federal Government, if they can do it for some of the counties in Texas, most certainly should consider the parishes in Louisiana. So I am going to submit that as my last plea for the RECORD.

I know it has been a long day, but I feel as if we got some things accomplished. I don't know what the schedule will be as the leaders decide on how we bring this particular Congress to a close, but I have to say the work of the recovery is still going on. It will go on for many years. My heart goes out to my neighbors from Texas who are just now discovering with awe and shock, shock and awe, what a hurricane can mean. They haven't had one in 50 years, such as the one in Galveston, and they had one last week. So I know what they are experiencing because we have been through that. I will stand ready to work with them in my committee, as chair of the Subcommittee on Disaster, when we return. Whether it is floods in the Midwest or hurricanes in the gulf, we will continue to, first, try to protect ourselves by better levees and flood control; and then have a better system of aid and help that is reliable and dependable for these people—for our people, our constituents, and our citizens in need.

PATENT REFORM

Mr. KYL. Mr. President, I rise today to comment on S. 3600, the Patent Reform Act of 2008. This bill is based on, but makes a number of changes to, S. 1145, a patent reform bill that was reported out of the Judiciary Committee in 2007 but that was never considered by the full Senate.

S. 1145 proposed several salutary and uncontroversial reforms to the patent system, but also included provisions that would rewrite the formula for awarding damages in patent cases and that would create new administrative proceedings for challenging patents. These and other provisions of that bill would have made it much more expensive to hold and defend a patent, would have extended the time for recovering damages for infringement, and would have substantially reduced the amount that the patent holder would ultimately recover for infringement. The changes proposed by S. 1145 went so far that under that bill's regime, it may have proved cheaper in many cases to infringe a patent and suffer the attenuated and reduced consequences of doing so, rather than to pay a license to the holder of the patent. Once such a line is crossed, the incentive to invest in research and development and the commercialization of new technology in this country would be greatly reduced. Such a change would do enormous harm to the U.S. economy in the medium-to-long term. Reputable economists estimate that historically, between 35 and 40 percent of U.S. productivity growth has been the result of innovation.

My bill makes substantial changes to those sections of S. 1145 that address damages, post grant review, venue and interlocutory appeals, applicant quality submissions, and inequitable conduct. This bill will not be considered in this Congress. I nevertheless thought that it would be useful to propose alternative approaches to these issues now, to allow Senators and interested parties the time to consider these alternatives as we prepare for the patent reform debate in the next Congress. I hope that my colleagues will work with me in a bipartisan and deliberative manner to construct a bill that will be considered in the next Congress. With those thoughts in mind, allow me to describe the significant changes that this bill makes to S. 1145.

I believe that S. 1145 goes too far in restricting a patent owner's right to recover reasonable royalty damages. On the other hand, I also believe that there is room for improvement in current law. Some unsound practices have crept into U.S. patent damages litigation. My staff and I spent several months at the end of last year and the beginning of this year discussing the current state of patent damages litigation with a number of seasoned practitioners and even some professional damages experts. I sought out people with deep experience in the field who had not been retained to lobby on pending legislation.

A substantial number of the experts with whom I spoke said that there is nothing wrong with current damages litigation and that Congress should not change the law. Others, however, identified a number of unsound practices that they believe have led to inflated damages awards in a significant number of cases. Different attorneys and experts repeatedly identified the same valuation methods and criteria as being unsound, subject to manipulation, and leading to damages awards that are far out of proportion to an invention's economic contribution to the infringing product. Examples of problematic methodologies that were identified to me include the so-called rule of thumb, under which an infringed patent is presumptively entitled to 40 percent or some other standard portion of all of the profits on a product, the use of the average license paid for patents in an industry as a starting point for calculating the value of a particular patent, and a formula attributed to IBM whereby every high-technology patent is entitled to 1 percent of the revenues on a product. A number of experts also criticized the use of comparables, whereby the value of a patent is calculated by reference to the license paid for a supposedly comparable patent.

The views of those experts who were critical of current damages law find