Mr. INHOFE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The result was announced—yeas 87, nays 13, as follows:

[Rollcall Vote No. 44 Leg.]

YEAS—87

Akaka	Enzi	Menendez
Alexander	Feinstein	Merkley
Ayotte	Franken	Mikulski
Barrasso	Gillibrand	Moran
Baucus	Graham	Murkowski
Begich	Grassley	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Portman
Blumenthal	Hoeven	Pryor
Blunt	Hutchison	Reed
Boozman	Inouye	Reid
Boxer	Isakson	Roberts
Brown (MA)	Johanns	Schumer
Brown (OH)	Johnson (SD)	Sessions
Burr	Johnson (WI)	Shaheen
Cantwell	Kerry	Shelby
Cardin	Kirk	Snowe
Carper	Klobuchar	Stabenow
Casey	Kohl	Tester
Chambliss	Kyl	Thune
Coats	Landrieu	Toomey
Coburn	Lautenberg	Udall (CO)
Cochran	Leahy	Udall (NM)
Collins	Lieberman	Vitter
Conrad	Lugar	Warner
Coons	Manchin	Webb
Corker	McCain	Whitehouse
Cornyn	McCaskill	Wicker
Durbin	McConnell	Wyden

NAYS—13

Crapo	Lee	Rockefeller
DeMint	Levin	Rubio
Ensign	Murray	Sanders
Hatch	Paul	
Inhofe	Risch	

The joint resolution (H.J. Res. 48) was passed.

The PRESIDING OFFICER. The motion to reconsider is considered made and laid upon the table.

EXECUTIVE SESSION

NOMINATION OF AMY BERMAN JACKSON TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of Amy Berman Jackson, of the District of Columbia, to be United States District Judge for the District of Columbia.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, we yield back all time on this matter.

Mr. LEAHY. Will the leader withhold?

Mr. REID. The chairman is here.

Mr. LEAHY. Madam President, I thank the majority leader for scheduling this confirmation vote today. I have been talking about this nomination since last year. Amy Jackson is one of four nominees to the vacancies that have plagued the District Court for the District of Columbia, this Nation's Capital, for some time. This is another of the nominations that could—and in my view should—have been considered and confirmed last year. Instead, it was one of two nominations to that court unnecessarily returned to the President without final Senate action, despite the nominee's qualifications and the needs of the American people to have judges available to hear cases in the Federal courts. The President has had to renominate Ms. Jackson, the Senate Judiciary Committee has had to reconsider her and now, finally, the Senate is being allowed to consider her.

I have spoken about the vacancies in the District of Columbia on numerous occasions, including during the last 2 weeks. I have noted the criticism from Chief Judge Lamberth of the U.S. District Court for the District of Columbia. Chief Judge Lamberth wrote to Senate leaders last November urging action by the Senate to fill the vacancies that exist on the District Court for the District of Columbia. We could and should have acted before adjourning last year in response to his request. All four nominations were reported unanimously by the Judiciary Committee last year. They were needlessly delayed.

When the Senate was allowed to consider and confirm Judge Boasberg on Monday, I, again, raised the question of the refusal on the other side of the aisle to proceed to consider the Jackson nomination. Ms. Jackson's nomination was reported without opposition by the Judiciary Committee last year and, again, earlier this year. Ms. Jackson is a former assistant U.S. attorney with outstanding credentials and experience who the Standing Committee on the Federal Judiciary of the American Bar Association gave its highest peer review rating of ''well qualified.'' Representative NORTON has called her one of the top practitioners in one of the District's top law firms and given her a strong endorsement. I expect this will be another of the nominations that has been needlessly delayed and then confirmed unanimously or nearly so.

In addition to the Jackson nomination, there remain 10 additional judicial nominees awaiting final Senate consideration after having been reviewed by the Judiciary Committee. Also reported from the Judiciary Committee and before the Senate are nominees to fill two judicial emergency vacancies in New York, a judicial emergency vacancy on the Second Circuit, two judicial emergency vacancies in California and vacancies on the Federal and D.C. Circuit, in Oregon, and two vacancies in Virginia.

Federal judicial vacancies around the country still number too many and they have persisted for too long. That is why Chief Justice Roberts, Attorney General Holder, White House Counsel Bob Bauer and many others—including the President of the United States—have spoken out and urged the Senate to act.

Nearly one out of every nine Federal judgeships remains vacant. This puts at serious risk the ability of all Americans to have a fair hearing in court. The real price being paid for these unnecessary delays is that the judges that remain are overburdened and the American people who depend on them are being denied hearings and justice in a timely fashion.

When Chief Judge Lamberth wrote to Senator REID and Senator MCCONNELL last November, he noted that Senate action to fill the vacancies in DC was needed so that ''the citizens of the District of Columbia and the Federal Government and other litigants'' who rely on the Court could receive ''the high quality of justice they deserve.'' The Chief Judge wrote about the ''severe impact'' these judicial vacancies were having and observed that the ''challenging caseload'' of the Court ''includes many involving national security issues, as well as other issues of national significance.'' I ask unanimous consent that a copy of the Chief Judge's letter be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. LEAHY. Regrettably, the progress we made during the first 2 years of the Bush administration has not been duplicated, and the progress we made over the 8 years from 2001 to 2009 to reduce judicial vacancies from 110 to a low of 34 was reversed. The vacancy rate we reduced from 10 percent at the end of President Clinton's term to less than four percent in 2008 has now risen back to over 10 percent. In contrast to the sharp reduction in vacancies we made during President Bush's first 2 years when the Democratically controlled Senate confirmed 100 of his judicial nominations, only 60 of President Obama's judicial nominations were allowed to be considered and confirmed during his first 2 years. We have not kept up with the rate of attrition, let alone brought the vacancies down significantly.

By now, judicial vacancies should have been cut in half, but they have not been. Unlike in the first 2 years of President Bush's first term when with a Democratic majority the Senate reduced vacancies from 110 to 60, judicial vacancies topped 90 in August 2009 and have remained above that level ever since. After tonight's confirmation, they will still number 95, putting at risk the ability of Americans to have a fair hearing in Court.

The Senate must do better. The Nation cannot afford further delays by the Senate in taking action on the nominations pending before it. Judicial vacancies on courts throughout the country hinder the Federal judiciary's ability to fulfill its constitutional role. They create a backlog of cases that prevents people from having their day in court. This is unacceptable.

We can consider and confirm this President's nominations to the Federal

bench in a timely manner. President Obama has worked with Democratic and Republican home state Senators to identify superbly qualified, consensus nominations. The nominations on the Executive Calendar should not be controversial. They all have the support of their home State Senators, Republicans and Democrats. All have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution.

During President Bush's first term, his first four tumultuous years in office, we proceeded to confirm 205 of his judicial nominations. We confirmed 100 of those during the 17 months I was chairman during President Bush's first 2 years in office and by this date in President Bush's third year had confirmed 110. So far in President Obama's third year in office, the Senate has only been allowed to consider 73 of his Federal circuit and district court nominees. We remain well short of the benchmark we set during the Bush administration. When we approach it we can reduce vacancies from the historically high levels at which they have remained throughout these first three years of the Obama administration to the historically low level we reached toward the end of the Bush administration.

I have thanked the ranking Republican on the Judiciary Committee, Senator GRASSLEY, for his cooperation this year. I was pleased to see him taking credit for what he called ''our rapid pace.'' I was encouraged by his commitment to ''continue to move consensus nominees through the confirmation process.'' My friend from Iowa is fond of pointing to the vacancies for which there are not nominees. Of course, some of that is attributable to a lack of cooperation by certain home state Senators with the White House. Nonetheless, I agree with the Senator from Iowa that we can do little about confirming nominations we do not have before us. What we can do is proceed expeditiously with the qualified nominations the President has sent to the Senate.

In that regard, I would temper my friend's extolling our achievements this year by observing that every judge confirmed so far this year could and should have been confirmed last year. Every one of them was unanimously reported last year and would have been confirmed had Republicans not objected and created a new rule of obstruction after midterm elections. We have long had the ''Thurmond rule'' to describe how Senator Thurmond shut down the confirmation process in advance of the 1980 presidential election. Last year's shutdown was something new. I cannot remember a time when so many consensus nominees were left without Senate action at the midterm point of a Presidency. That new level of obstruction has contributed to our being so far behind and judicial vacancies having been perpetuated at so high a level for too long.

I thank Chief Judge Lamberth for his efforts on behalf of his Court, on behalf of the people of the District of Columbia, and on behalf of our justice system. The American justice system is not some discretionary luxury. It serves an essential function in our democracy. I thank all the women and men who work every day in our courts to guarantee justice for the American people.

I am glad that Amy Jackson's wait is finally over and congratulate her and her family on her confirmation.

EXHIBIT 1

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,
Washington, DC, November 4, 2010.

Re Judicial Vacancies—United States District Court for the District of Columbia.

Hon. HARRY REID,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, The Capitol, Washington, DC.

DEAR SENATOR REID AND SENATOR MCCONNELL: On behalf of the judges of the United States District Court for the District of Columbia, I request that the Senate act soon to fill the vacancies that exist at our Court.

Of our 15 authorized judgeships, we currently have four vacancies. One has been vacant since January 2007. With the additional vacancy that will result from Judge Ricardo M. Urbina's assumption of senior status, effective January 31, 2011, this Court faces the prospect of having only 10 of its 15 authorized judgeships filled. The severe impact of this situation already is being felt and will only increase over time. The challenging caseload that our Court regularly handles includes many involving national security issues, as well as other issues of national significance. A large number of these complex, high-profile cases demand significant time and attention from each of our judges.

Without a complement of new judges, it is difficult to foresee how our remaining active judges will be able to keep up with the heavy volume of cases that faces us. A 33 percent vacancy ratio is quite extraordinary.

Two nominees (Beryl Howell and Robert Wilkins) have been reported out of the Senate Judiciary Committee and await floor votes; two nominees (James Boasberg and Amy Jackson) have had their hearings and hopefully will soon be reported out of Committee.

We hope the Senate will act quickly to fill this Court's vacancies so the citizens of the District of Columbia and the Federal Government and other litigants who appear before us continue to enjoy the high quality of justice they deserve.

Sincerely,

ROYCE C. LAMBERTH,
Chief Judge.

Mr. GRASSLEY. Madam President; toady we vote on our 13th judicial nominee in just 29 legislative days. In this session of the Senate, we have confirmed more judicial nominees than in the same time period for any of the previous four Presidents.

I like to keep my colleagues up-to-date with our cooperation and progress on judicial nominees. We continue to process nominees at a fast pace in committee. We held our fourth nominations hearing yesterday and have heard from 17 judicial nominees this year. The Judiciary Committee met this morning and reported an additional district court nominee. We have now reported 23 nominees, nearly 40 percent of the 58 judicial nominations made by President Obama this year. The committee has taken some step forward on 55 percent of the judicial nominees. We have delivered on our promise to move consensus nominees.

Even with our fast pace, the current vacancy rate remains high. But with 94 vacancies in the Federal courts, the President has only put forward 44 nominees for those vacancies. That is 50 vacancies without a nominee. For seats designated judicial emergencies, 57 percent of those vacancies have no nominee.

As I have said in the past, the burden is on the President to nominate consensus individuals for current vacancies. Yet, for the second time, President Obama has sent up a nomination to a seat which is not vacant. I think we can all agree the Senate's time and resources are valuable. My priority continues to be carefully reviewing nominations for vacancies which require our immediate attention.

Today we vote on Amy Berman Jackson, nominated to be a U.S. district judge for the District of Columbia. Ms. Jackson is not the first nominee to be considered for this vacancy. Michael O'Neill, who served as chief counsel and staff director to then-Chairman Specter, was nominated by President Bush to fill this seat in June of 2008. He waited for more than 18 months for a hearing and a vote—neither of which he received. His nomination was returned to the President in January 2009. I am disappointed the Senate did not give Mr. O'Neill the courtesy Ms. Jackson is receiving today.

Ms. Jackson received her A.B., cum laude, from Harvard College and her J.D. from Harvard Law School, cum laude. Upon graduation from law school, she served as a law clerk to the Honorable Harrison L. Winter of the U.S. Court of Appeals for the Fourth Circuit.

Ms. Jackson served as an assistant U.S. attorney before moving into private practice. She has focused on white-collar crime, plaintiffs' work involving multidistrict litigation and civil matters. The ABA Standing Committee on the Federal Judiciary has unanimously rated her as ''well qualified.''

I congratulate the nominee and wish her well in her public service as a U.S. district judge.

Mr. LEAHY. I yield back any time I have remaining.

The PRESIDING OFFICER. All time is yielded back.

Mr. MCCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Amy Berman Jackson, of the District

of Columbia, to be U.S. District Judge for the District of Columbia?

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. UDALL) is necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. UDALL) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Nevada (Mr. ENSIGN).

The PRESIDING OFFICER (Mr. BENNET). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 45 Ex.]

YEAS—97

Akaka	Franken	Moran
Alexander	Gillibrand	Murkowski
Ayotte	Graham	Murray
Barrasso	Grassley	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Paul
Bennet	Hatch	Portman
Bingaman	Hoeven	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inouye	Reid
Boozman	Isakson	Risch
Boxer	Johanns	Roberts
Brown (MA)	Johnson (SD)	Rockefeller
Brown (OH)	Johnson (WI)	Rubio
Burr	Kerry	Sanders
Cantwell	Kirk	Schumer
Cardin	Klobuchar	Sessions
Carper	Kohl	Shaheen
Casey	Kyl	Shelby
Chambliss	Landrieu	Snowe
Coats	Lautenberg	Stabenow
Coburn	Leahy	Tester
Cochran	Lee	Thune
Collins	Levin	Toomey
Conrad	Lieberman	Udall (CO)
Coons	Lugar	Vitter
Corker	Manchin	Warner
Cornyn	McCain	Webb
Crapo	McCaskill	Whitehouse
DeMint	McConnell	Wicker
Durbin	Menendez	Wyden
Enzi	Merkley	
Feinstein	Mikulski	

NOT VOTING—3

Ensign	Inhofe	Udall (NM)

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The Senator from Massachusetts.

MORNING BUSINESS

Mr. BROWN of Massachusetts. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak up to 10 minutes each.

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

SBIR/STTR

Mr. BROWN of Massachusetts. Mr. President, I rise in support, strong support of the SBIR bill. As many of you know, the SBIR bill and the STTR Programs provide vital resources to small businesses, not only in Massachusetts but throughout the country. This reauthorization is incredibly important to not only businesses in my State but businesses in everybody's State.

This compromise bill has been under development and negotiation long before I got here. I applaud Senators LANDRIEU and SNOWE, our chair and ranking member on the Small Business Committee, for their persistence in pushing this bill through. As a matter of fact, I have two amendments that are in the bill that is before us now. I will be offering, not today but in the near future, an amendment which I am about to talk about.

As a small business owner myself for many years, and a longstanding member of many Chambers of Commerce, I believe the Massachusetts small businesses and businesses throughout this country are the economic engine that will help get us out of this economic slowdown we are in. They have the potential to grow, to expand and hire, unlike many businesses throughout the country. Massachusetts is widely regarded as the center for innovation in biotechnology. We are a small State but we have received the most SBIR awards, only after California. That goes to show how important our State is when it comes to creating small businesses. The success of the SBIR Program serves as a reminder that government can play a role in the business community. But it also needs to know when to step out of the way and allow businesses to grow and actually create jobs.

I want to speak about an amendment I filed, amendment No. 212. It is based on S. 164, the Withholding Tax Relief Act of 2011, which enjoys bipartisan support and is critically needed now. The ranking member of the Small Business Committee, Senator SNOWE, is a cosponsor. I am looking forward to getting many other cosponsors and working very closely with the chair on this timely piece of legislation.

We need once and for all to repeal an onerous and costly unfunded mandate that directly affects businesses, not only in my State but throughout the country. This is a jobs amendment, plain and simple. It would repeal part of our Tax Code that absolutely promises to kill jobs, jobs that these young people up here could someday have. If we do not act soon, section 3042(t) would require, beginning January 12, Federal, State, and local governments to withhold 3 percent of nearly all contract payments made to private companies as well as Medicare payments, farm payments, and certain grants. It is an arbitrary tax and it is nearly impossible to actually implement it. It is one of the things we have done that makes absolutely no sense. It has been delayed many times.

The Government Withholding Relief Coalition, a coalition of more than 100 members encompassing a cross section of America, has estimated the combined total 5-year cost to the State and Federal Government of implementing this legislation could be as high as $75 billion.

That makes a lot of sense? That $75 billion is coming out of those coffers at a time we can least afford it, and it is estimated only to bring in about $7 billion over that same time period. It makes absolutely no sense. It is absurd. Any tax that costs more to implement than it actually brings in makes no sense at all. I hope with your leadership and many other Senators' leadership on this issue we can attack these bad laws that are about to click in. It should be repealed immediately. As a matter of fact, last week I received a letter from Massachusetts State Secretary of Finance Jay Gonzalez, warning Congress of the inevitable threat to small businesses' ability to survive in this tough economic climate if we allow the continuation of what I consider a stealth tax. We cannot discuss the health of small businesses on the floor without acknowledging that these very same small businesses we aim to help with the SBIR Program, the bill before us now, will be suffocated by this 3-percent withholding tax. For some businesses it may be the entire net profit of what they make per year.

I ask unanimous consent to have the letter from Secretary Gonzales printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE,

Boston, MA, March 11, 2011.

Hon. MAX BAUCUS,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

HON. ORRIN G. HATCH,
Ranking Member, Committee on Finance, U.S. Senate, Washington, DC.

Hon. DAVE CAMP,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

Hon. SANDER LEVIN,
Ranking Member, Committee on Ways and Means, House of Representatives, Washington, DC.

CHAIRMAN BAUCUS, RANKING MEMBER HATCH, CHAIRMAN CAMP, AND RANKING MEMBER LEVIN: As Secretary for the Executive Office of Administration and Finance for the Commonwealth of Massachusetts, I am writing to express my strong support for legislation to repeal Section 511 of the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2006. Section 511 amends the Internal Revenue Code by adding a provision mandating that government entities with greater than $100 million in annual spending withhold three percent on payments made for most goods and services, including Medicare payments and certain grants. That three percent is allocated toward the vendor's tax liability. S. 89 and S. 164, currently pending in the Senate, and H.R. 674, currently pending in the House, would eliminate Section 511.

As a state finance official, I strongly support enhanced transparency and tax compliance; however, I am very concerned about the impact of Section 511 on the Commonwealth of Massachusetts' accounting and