devices can incapacitate pilots and inflict eye injuries when viewed at closer ranges.

In fact, the National Transportation Safety Board documented two cases in which pilots sustained eye injuries and were incapacitated during critical phases of flight. In one of these cases, after a laser was pointed at the pilot's plane, he experienced a burning sensation and tearing in his eyes. A subsequent eye examination revealed multiple flash burns in the pilot's cornea.

These types of incidents happen more and more each year. There were over 2,800 reported incidents of this happening last year, more than double the number of reported incidents from the previous year. Because this is a documented and growing problem and because of the Federal interest in maintaining the safety of our airspace, this bill, unfortunately, is necessary.

I commend the gentleman from California, Representative DAN LUNGREN, for his work on this bill, and I urge my colleagues to support the legislation.

I yield back the balance of my time.

Mr. DANIEL E. LUNGREN of California. I yield myself such time as I may consume.

Mr. Speaker, this is a timely matter. There was a press report just this week that police are trying to find the person who, on Friday morning, pointed a green laser beam both at an airplane and at a news helicopter in the Phoenix area. There have been incidents all around the country. This is not just something that is peculiar to my area; it is something that is increasing in terms of severity and in the number of incidents, so we need to pass this legislation as soon as possible.

I urge my fellow Members to support this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIEL E. LUNGREN) that the House suspend the rules and pass the bill, H.R. 386, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REMOVAL CLARIFICATION ACT OF 2011

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 368) to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Removal Clarification Act of 2011''.

SEC. 2. REMOVAL OF CERTAIN LITIGATION TO FEDERAL COURTS.

(a) CLARIFICATION OF INCLUSION OF CERTAIN TYPES OF PROCEEDINGS.—Section 1442 of title 28, United States Code, is amended—

(1) in subsection (a), in the matter preceding paragraph (1)—

(A) by inserting ''that is'' after ''or criminal prosecution'';

(B) by inserting ''and that is'' after ''in a State court''; and

(C) by inserting ''or directed to'' after ''against''; and

(2) by adding at the end the following:

''(c) As used in subsection (a), the terms 'civil action' and 'criminal prosecution' include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.''.

(b) CONFORMING AMENDMENTS.—Section 1442(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''capacity for'' and inserting ''capacity, for or relating to''; and

(B) by striking ''sued''; and

(2) in each of paragraphs (3) and (4), by inserting ''or relating to'' after ''for''.

(c) APPLICATION OF TIMING REQUIREMENT.—Section 1446 of title 28, United States Code, is amended by adding at the end the following:

''(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsections (b) and (c) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.''.

(d) REVIEWABILITY ON APPEAL.—Section 1447(d) of title 28, United States Code, is amended by inserting ''1442 or'' before ''1443''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. DANIEL E. LUNGREN) and the gentleman from Georgia (Mr. JOHNSON) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous materials on H.R. 368, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DANIEL E. LUNGREN of California. I yield myself such time as I may consume.

Mr. Speaker, the Removal Clarification Act of 2011, sponsored by the gentleman from Georgia (Mr. JOHNSON), primarily amends section 1442 of title 28 of the U.S. Code. This is a statute that allows Federal officers, under limited conditions, to remove cases filed against them in State court to U.S. District Court for disposition.

The purpose of section 1442 is to deny State courts the power to hold Federal officers criminally or civilly liable for acts allegedly performed in the execution of their Federal duties. This does not mean Federal officers can break the law; rather, it just means that these cases are transferred to U.S. District Court for consideration.

Congress wrote the statute because it deems the right to remove under these conditions essential to the preeminence of the Federal Government on those matters entrusted to it under the Constitution. Federal officers or agents, even Members of Congress, should not be forced to answer in a State forum for conduct asserted in the performance of Federal duties.

The Supreme Court weighed in on this matter long ago. As the Court explained in the case of Willingham v. Morgan, the Federal Government can only act through its officers and agents, and they must act within the States. If, when acting and within the scope of their authority, those officers can be arrested and brought to trial in a State court for an alleged offense against the law of the State, yet warranted by the Federal authority they possess; and if the general government is powerless to interfere at once for their protection, the operations of the general government may at any time be arrested at the will of one of its members.

□ 1430

District courts have inconsistently interpreted the statute. Most recently, in March, 2010, the Court of Appeals for the Fifth Circuit upheld a district court ruling in Texas that the Federal removal statute does not apply to a Texas law involving pre-suit discovery.

Because 46 other States have similar laws, the House General Counsel's Office is concerned that more Federal courts will adopt this logic. The problem occurs when a plaintiff who contemplates suit against a Federal officer petitions for discovery without actually filing suit in State court. Many Federal courts now assert that this conduct only anticipates a suit; it is, therefore, not a ''cause of action'' as contemplated by the Federal removal statute.

The problem is compounded because of a separate Federal statute, section 1447 of title 28. Therein it requires U.S. district courts to remand any case back to State court if ''at any time before final judgment it appears that the district court lacks subject matter jurisdiction.''

Judicial review of remand orders under section 1447 is limited and has no application to suits involving Federal officers and section 1442. So this means remanded cases brought against Federal officers under these conditions cannot find their way back to Federal court, a result that conflicts with the

history of the Federal removal and remand statutes.

While we passed a predecessor bill last July, the other body developed minor amendments to clarify the text. These changes were vetted with House Judiciary and we endorse them. The revisions improve the bill in two ways. First, the new language stipulates that only Federal issues are removable to Federal court. And second, the text provides that a 30-day removal ''clock'' is triggered either by a request for testimony or documents, or an order enforcing such a request.

In addition, the floor version strikes section 3 of H.R. 368. This is superfluous language that references a favorable CBO score inserted in the CONGRESSIONAL RECORD last year in advance of our consideration of the predecessor bill. Section 3 isn't needed because we have an updated CBO score—also favorable—that applies to this year's bill.

In closing, I would like to thank Congressman JOHNSON for his hard work on this project, and I would urge my colleagues to support H.R. 368.

Mr. Speaker, I reserve the balance of my time.

Mr. JOHNSON of Georgia. I thank the gentleman from California, and I yield myself such time as I may consume.

Mr. Speaker, H.R. 368, the Removal Clarification Act of 2011, will enable Federal officials to remove cases to Federal court in accordance with the spirit and intent of the Federal officer removal statute, 28 U.S.C. 1442(a). This is a noncontroversial, bipartisan bill. In the 111th Congress, a nearly identical version passed the House under a suspension of the rules and passed the Senate with an amendment by unanimous consent.

Under the Federal officer removal statute, a Federal officer should be able to remove a case from State court to Federal court when it involves the Federal officer's exercise of his or her official responsibilities. The purpose underlying the Federal officer removal statute is to prevent State litigants from interfering with the Federal Government's operations. There is, however, some ambiguity as to whether the Federal officer removal statute applies to State pre-suit discovery procedures. More than 40 States have such procedures, which require individuals to be deposed or respond to discovery requests even when a civil action has not yet been filed. This means that Federal officials can be forced to litigate in State court, undermining the purpose and intent of the Federal officer removal statute.

Courts are split on whether the removal statute applies to pre-suit discovery. Some courts have found that Federal officers cannot remove a proceeding to Federal court when these pre-suit discovery motions are at issue while others have found that such proceedings could be removed. This bill will clarify that Federal officers should be able to remove a proceeding to Federal court any time a legal demand is made for a Federal official's testimony or documents if the officer's exercise of his or her official responsibilities was at issue.

The legislation will also allow a Federal officer to appeal a district court's decision to remand the matter back to the State court, pursuant to 28 U.S.C. 1447. This bill will not result in the removal of the entire State case when a Federal officer is served with a discovery request when the only hook is that a Federal officer has been served with such a discovery request. Rather, the bill we consider today makes clear that ''if there is no other basis for removal, only that discovery proceeding may be removed to the district court.''

Finally, the bill makes clear that the timing requirement under 28 U.S.C. 1446 will not be changed, restating the 30-day requirement for removing the case when the judicial order is sought as well as when the judicial order is enforced.

In closing, I would like to thank Chairman SMITH and Ranking Member CONYERS for working with me on this bill, and I urge my colleagues to support this important bipartisan piece of legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, once again I would like to thank the gentleman from Georgia for bringing this bill to the committee and to the floor. I urge my colleagues to support this bill.

Ms. JACKSON LEE of Texas. Mr. Speaker, I rise today in support of the amendment to H.R. 368, ''The Removal Clarification Act of 2011.''

''The Removal Clarification Act of 2011'' clarifies when a case involving a federal official can be removed from a state court into a federal court. It states that a federal official can remove cases to federal court in accordance with the spirit and intent of the federal officer removal statute. It is also makes clear that the federal officer removal statute applies to all federal officials, including officials of the legislative and executive branch of the Federal government.

The purpose of the law is to take from state courts the indefeasible power to hold a federal officer or agent criminally or civilly liable for an act allegedly performed in the execution of their federal duties. This does not mean federal officers can break the law; it just means that these cases are transferred to U.S. district court for consideration. Federal officers or agents, including congressmen, should not be forced to answer for conduct asserted within their federal duties in a state forum that invites local interests or prejudice to color outcomes. In the absence of this constitutional protection, federal officers, including congressmen and women, would be subject to political harassment and federal operations generally would be needlessly hampered.

H.R. 368, introduced by my colleague Rep. HANK JOHNSON of Georgia, is a non-controversial, bipartisan bill that was passed by the House and passed in the Senate with an amendment at the end if the 111th Congress. Just about a month ago, we considered this bill in the House Judiciary Committee, and it received support from my colleagues on both sides of the aisle.

Currently under 28 U.S.C. 1442(a), federal officials are able to remove a case out of state court and into federal court. However under state per-suit discovery laws, federal officials may be unable to remove the case because a ''civil action'' has not yet been filed.

H.R 368 does not make any changes to the underlying removal law. It simply clarifies 28 U.S.C. 1442(a) by including any proceeding to the extent that in such a proceeding, a judicial order, including a subpoena for testimony or documents, is sought or issued.

In my home state of Texas, there was a recent high profile case, Price v. Johnson, involving a Texas state legal action taken against Rep. JOHNSON, where the removal to federal court was denied by the U.S. District Court. The Fifth Circuit illustrated the importance of better clarity needed in 28 U.S.C. 1442(a). In the 111th Congress, the Judiciary Committee's Subcommittee on Courts and Competition Policy found that case law interpreting the removal statue is not just split among the circuits, but within them as well. Therefore, H.R. 368 is a much needed measure to once and for all settle the confusion amongst rulings in the Federal District Courts.

Currently, there are 47 states that have enacted pre-civil suit discovery statues; H.R. 368 would take into account the operation of these state pre-civil suit discovery statues and provide clarification to prevent more cases like Price v. Johnson from occurring.

H.R. 368 is essential to the integrity and preeminence of the federal government within its realm of authority. This bill will also allow for appeal to the federal court if the district court remands the matter. back to the state court and that the federal defense is also still needed for removal.

I ask my colleagues to please join me in supporting H.R. 368, ''the Removal Clarification Act of 2011.''

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIEL E. LUNGREN) that the House suspend the rules and pass the bill, H.R. 368, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

FEDERAL RESTRICTED BUILDINGS AND GROUNDS IMPROVEMENT ACT OF 2011

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 347) to correct and simplify the drafting of