

that the House suspend the rules and pass the bill, H.R. 394, as amended.

The question was taken.

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

Mr. SMITH of Texas. 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.

#### SECURING AIRCRAFT COCKPITS AGAINST LASERS ACT OF 2011

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 386) to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 386

*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 "Securing Aircraft Cockpits Against Lasers Act of 2011".

#### SEC. 2. PROHIBITION AGAINST AIMING A LASER POINTER AT AN AIRCRAFT.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by inserting after section 39 the following:

##### "§ 39A. Aiming a laser pointer at an aircraft

"(a) Whoever knowingly aims the beam of a laser pointer at an aircraft in the special aircraft jurisdiction of the United States, or at the flight path of such an aircraft, shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) As used in this section, the term 'laser pointer' means any device designed or used to amplify electromagnetic radiation by stimulated emission that emits a beam designed to be used by the operator as a pointer or highlighter to indicate, mark, or identify a specific position, place, item, or object.

"(c) This section does not prohibit aiming a beam of a laser pointer at an aircraft, or the flight path of such an aircraft, by—

"(1) an authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct such research and development or flight test operations;

"(2) members or elements of the Department of Defense or Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing or training; or

"(3) by an individual using a laser emergency signaling device to send an emergency distress signal.

"(d) The Attorney General, in consultation with the Secretary of Transportation, may provide by regulation, after public notice and comment, such additional exceptions to this section, as may be necessary and appropriate. The Attorney General shall provide written notification of any proposed regulations under this section to the Committees on the Judiciary of the House and Senate,

the Committee on Transportation and Infrastructure in the House, and the Committee on Commerce, Science and Transportation in the Senate not less than 90 days before such regulations become final."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 2 of title 18, United States Code, is amended by inserting after the item relating to section 39 the following new item:

"39A. Aiming a laser pointer at an aircraft."

#### SEC. 3. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

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 in which to revise and extend their remarks and to include extraneous material on H.R. 386, the bill currently under consideration.

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

There was no objection.

□ 1420

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

Mr. Speaker, the danger of shining a laser beam into someone's eyes is not news. What is news is the ever-increasing number of incidents of laser pointers being directed at the pilots of commercial and law enforcement aircraft.

In 2005, when a similar measure was passed by this body, this emerging threat was estimated at 400 reported incidents over the previous 15 years. By contrast, in 2009, there were almost 1,600 episodes reported. In 2010, there were over 2,800 incidents reported.

As the Airline Pilots Association has stated in its letter of support for this legislation, "The inappropriate use of widely available laser pointers against airborne flight crews represents a genuine and growing safety and security concern. At a minimum, the laser illumination of a cockpit creates a flight crew distraction, and in more serious cases, can result in eye damage and temporary incapacitation."

Mr. Speaker, the danger from shining a laser into the cockpit of any aircraft is truly a tragedy waiting to happen. The ominous prospect of a catastrophe is particularly high during the takeoff and landing stages. Emergency maneuvers to prevent the misperception of midair collisions have also occurred. In one instance, the pilot thought he was

about to strike the warning light on a tower. In another case, the laser beam was thought to be the lights of an approaching aircraft.

Law enforcement pilots, unfortunately, are frequently targeted and have to consider the possibility that they are being illuminated by a laser scope attached to a rifle. Law enforcement pilots have, on occasion, been required to discontinue a response to a crime in progress due to being hit by a laser.

At the same time, it is an unfortunate fact that some Federal prosecutors have declined to pursue cases, believing that the current Destruction of Aircraft statute does not fit the facts of their particular laser cases. Some States have statutes that have been successfully used to address this problem, but many more do not. H.R. 386 specifically addresses shining a laser pointer into an aircraft cockpit and will make aircraft travel safer for pilots and the public.

It is not only the number of laser pointers being aimed at aircraft cockpits that has dramatically increased during the past several years. The power of the current generation of laser-pointer devices has also significantly increased. Their cost, on the other hand, has gone down, making them much more widely available.

The problem of lasers being shown into cockpits is so prevalent that in my area, the Sacramento area, the FBI, the FAA, and the Federal Air Marshal Service have joined with State and local law enforcement in establishing a Laser Strike Working Group. These working groups have also expanded into other areas of the country.

H.R. 386 provides an important tool in our efforts to enhance the safety of air travel. This body passed identical language by a voice vote at the close of the 111th Congress. It is my hope that all Members will join me in supporting this important legislation.

I reserve the balance of my time.

Mr. JOHNSON of Georgia. I yield myself such time as I may consume.

Mr. Speaker, I am pleased to support H.R. 386.

This bill establishes criminal penalties for knowingly aiming a laser pointer at an aircraft or in its flight path. Incidents involving lasers aimed at aircraft have raised concerns over the potential threat to aviation safety and national security.

Some are concerned that terrorists might use high-powered lasers to, among other things, incapacitate pilots. There is also concern that laser devices can distract or temporarily incapacitate pilots during critical phases of flight.

Lasers pose a safety hazard to flight operations. Even a brief exposure to a relatively low-powered laser beam can cause discomfort and temporary visual impairment. The visual distractions of a laser can cause a pilot to become disoriented or to lose situational awareness while flying. Higher powered laser

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 lim-

ited 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