AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 4790

OFFERED BY M.

Insert after section 1 the following:

SEC. 2. SENSE OF CONGRESS THAT COMPANIES THAT IN-
CORPORATE DIVERSITY, EQUITY, AND INCLU-
SION PERFORM BETTER.

(a) FINDINGS.—Congress finds the following:

(1) The impact of diversity, equity, and inclus-
ion ("DEI") practices on organizational perform-
ance has consistently been illustrated across empir-
ical research studies.

(2) Across a range of studies, research shows
that diverse boards lead to improved financial re-
results, indeed companies with the highest percentages
of women board directors outperformed those with
the least by 53 percent when it comes to return on
equity.

(3) Despite the clear profit motive for compa-

dies to prioritize DEI, according to a recent analysis
of the boards of the 3,000 largest publicly traded
companies—
(A) just 12.5 percent of board directors come from underrepresented ethnic and racial groups, despite making up 40 percent of the U.S. population; and

(B) African Americans make up just 4%, and African American women only 1.5%, of the individual board directors included in the review.

(4) The companies that fail to prioritize DEI are not only putting themselves and shareholders at a financial disadvantage, they are also putting themselves at significant reputational, and in some cases, litigation risk.

(5) A September 2020 Business Reporter article noted that, “boards with only a token attempt at diversity and inclusion, who practice ‘one and done’, are unlikely to convince stakeholders that they are really making an effort. They may well damage the company’s reputation, especially in the eyes of investors looking for exemplary corporate governance practice”.

(6) A failure to have a meaningful DEI policy in place could also make it harder for companies to hire and retain the best talent.
(7) In February 2021, a major newspaper reported that many younger job seekers — those born in the Millennial and Gen Z generations — see DEI as a workplace requirement and may choose not to work for companies that lack workforce diversity or that are not making commitments to address the issue of systemic racism.

(8) A 2020 DEI workplace survey noted that job seekers and employees from historically underrepresented groups — about 4 in 5 Black, Hispanic, and LGBTQ respondents — reported that “a diverse workforce is an important factor when evaluating companies and job offers”.

(9) According to McKinsey, both women and men are happier and plan to stay at their company for longer when they believe their company is “highly committed to gender diversity”.

(10) Given the risk of future talent gaps, business risk professionals have advised that diversity for investors is no longer simply just “nice to have”, but a “must have” to manage the risks associated with their forecasted talent gap.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—
1 (1) the principles of diversity, equity, and inclusion have a real and material impact on a business' overall performance and financial outlook; and
2 (2) going forward, Congress shall make a good faith effort to legislate in a way that ensures American companies incorporate DEI fundamentals into their business strategy.