

SUBSTITUTE AMENDMENT TO THE GARRETT

AMENDMENT TO H.R. 2308

OFFERED BY Mrs. Maloney of New York

In lieu of the substitute amendment offered by Mr. Garrett, strike all after the enacting clause and insert the following:

1 SECTION 1. SENSE OF CONGRESS RELATING TO EXISTING
2 REQUIREMENTS FOR ECONOMIC ANALYSES.

3 (a) FINDINGS.—Congress finds the following:

4 (1) As with other agencies, current law requires
5 the Securities and Exchange Commission to conduct
6 economic analyses pursuant to the Paperwork Re-
7 duction Act, the Congressional Review Act, and the
8 Regulatory Flexibility Act.

9 (2) In addition to the analyses required of all
10 regulatory agencies, the Securities and Exchange
11 Commission is also required to perform additional
12 economic analyses pursuant to section 3(f) of the
13 Securities Exchange Act of 1934 (15 U.S.C. 78c(f)),
14 section 2(b) of the Securities Act of 1933 (15 U.S.C.
15 77b(b)), section 202(e) of the Investment Advisers
16 Act of 1940 (15 U.S.C.80b-2(c)), and section 2(c)
17 of the Investment Company Act of 1940 (15

1 U.S.C.80a-2(e)), which provide that, where the
2 Commission is engaged in rulemaking and is re-
3 quired to consider whether the rule is necessary or
4 appropriate in the public interest, the Commission
5 must also consider whether the rule will promote ef-
6 ficiency, competition, and capital formation.

7 (3) In the July 22, 2011 decision in *Business*
8 *Roundtable v. SEC* (647 F.3d 1144), the United
9 States Court of Appeals for the D.C. Circuit vacated
10 the Commission's recently adopted proxy access rule,
11 which would have provided a company shareholder
12 or group of shareholders meeting certain minimum
13 ownership thresholds and other requirements the
14 ability to include in the company's proxy materials
15 the shareholder(s)' nominee(s) for the company's
16 board of directors. The court found that, because
17 the Commission had not adequately addressed the
18 likely economic consequences of the rule, its adop-
19 tion of the rule was arbitrary and capricious.

20 (b) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that the Securities and Exchange Commission is re-
22 quired pursuant to law to conduct economic analyses as
23 part of its rulemakings. Further, the D.C. Circuit Court's
24 recent decision in the *Business Roundtable* case makes
25 clear that the economic analyses the Commission under-

- 1 takes in connection with its rules are subject to meaning-
- 2 ful judicial scrutiny.



