

# **EXHIBIT A**

**Declaration of Harold Watson Gowdy, III (Trey)**

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2 1. I am a former colleague of Congressman Jeffrey Fortenberry having served with  
3 him in the United States House of Representatives from January of 2011 until January of  
4 2019.

5 2. I have been an attorney since 1989. Upon graduating from law school, I served as a  
6 judicial law clerk on the South Carolina Court of Appeals and then the United States  
7 District Court for the District of South Carolina. Thereafter, I entered private practice at  
8 Nelson, Mullins, Riley & Scarborough (“Nelson Mullins”) in Greenville, South Carolina.

9 3. In 1994, I became an Assistant United States Attorney in the District of South  
10 Carolina. From 1994-early 2000, I prosecuted a wide variety of federal criminal cases and  
11 received official commendations, including the Postal Inspector’s Award and the highest  
12 performance rating a federal prosecutor can receive. In February of 2000, I left the United  
13 States Attorney's Office to run for Circuit Solicitor in South Carolina. A Circuit Solicitor  
14 is tantamount to a District Attorney in other jurisdictions. During the pendency of that  
15 campaign and shortly thereafter, from February 2000 to December of 2000, I worked for  
16 the South Carolina law firm of Leatherwood, Walker, Todd and Mann.

17 4. In November of 2000, I was elected Seventh Circuit Solicitor in South Carolina and  
18 took office in January of 2001. I was subsequently re-elected Circuit Solicitor in 2004  
19 and 2008. In this capacity, I prosecuted and oversaw prosecutions of the full array of  
20 crimes under South Carolina state law. I also administered diversion programs, including  
21 Pre-Trial Intervention, Juvenile Arbitration, and Drug Court. I was the Chairman of the  
22 South Carolina Commission on Prosecution Coordination.

23 5. In November 2010, I was elected United States Representative for South Carolina’s  
24 Fourth Congressional District. During my time in Congress, my committee assignments  
25 included the House Judiciary Committee and its Subcommittee on Constitution and Civil  
26 Justice and the Subcommittee on Crime, Terrorism and Homeland Security. I participated  
27 in numerous congressional investigations, interviewed witnesses, deposed witnesses,  
28 sponsored bills, which were ultimately signed into law, and formed relationships with

1 colleagues on both sides of the aisle, including Congressman Jeff Fortenberry, who has  
2 represented Nebraska's first district in the House since 2005. I also served on the House  
3 Committee on Ethics, the House Committee on Education and the Workforce, the  
4 Permanent Select Committee on Intelligence, the Select Committee on the Events in  
5 Libya in 2012, and the House Committee on Oversight and Government Reform, where I  
6 served as Chairman.

7 6. I did not offer for re-election in 2018, and returned to South Carolina to practice  
8 law, write books, and teach. I teach a class on the criminal justice system at a local liberal  
9 arts college and a class at the University of South Carolina School of Law. I am also an  
10 author and host of a Sunday night television show and two podcasts.

11 7. In the late spring of 2019, Congressman Fortenberry contacted me after FBI agents  
12 appeared at his home one evening in Nebraska.

13 8. Congressman Fortenberry knew I was a former federal prosecutor and asked me to  
14 assist him. I called one of the FBI agents whose name and number Congressman  
15 Fortenberry provided and this agent immediately referred me to the Assistant United  
16 States Attorney handling the case. The agent would not discuss the matter with me nor  
17 answer any questions about the interview instead directing me to the prosecutor handling  
18 the case who was Assistant United States Attorney Mack Jenkins.

19 9. I called AUSA Jenkins and asked him to tell me what he could about the matter  
20 and that the Congressman would like to be helpful. AUSA Jenkins and I discussed the  
21 general nature of the inquiry.

22 10. I specifically asked Mr. Jenkins whether Mr. Fortenberry was considered a subject,  
23 target, or witness in his investigation. The term "target" is a universally understood and  
24 consequential term among federal criminal practitioners. The Justice Manual, which sets  
25 the policy for federal prosecutors, defines a "target" as "a person as to whom the  
26 prosecutor or the grand jury has substantial evidence linking him or her to the commission  
27 of a crime and who, in the judgment of the prosecutor, is a putative defendant."<sup>1</sup> By  
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<sup>1</sup> See Justice Manual Section 9-11.151 – Advice of "Rights" of Grand Jury Witnesses

1 contrast, a "subject" of an investigation is a person “whose conduct is within the scope of  
2 the grand jury's investigation” but who is not a target.<sup>2</sup> It was and is my understanding  
3 that a “witness” is a person who, at the time, is not suspected of a crime and therefore is  
4 unlikely to be charged.

5 11. It was imperative for me to know whether Mr. Fortenberry was a target, subject, or  
6 witness in this investigation, so I could advise Mr. Fortenberry about the risks and  
7 benefits of cooperating further with the investigation. The answer to the question of  
8 whether a client is a target, subject, or witness often dictates what level of engagement a  
9 client will subsequently have with federal agents or prosecutors. While Congressman  
10 Fortenberry was keenly interested in sharing information with federal authorities, it was  
11 also critical for me to know how those authorities viewed him, so I could best advise him.

12 12. Mr. Jenkins stated Mr. Fortenberry was a subject trending toward a witness in the  
13 investigation. My recollection of this phrase is clear because I had never heard it phrased  
14 that way before or since. Had Mr. Jenkins told me Congressman Fortenberry was a target  
15 or had Mr. Jenkins told me the agents suspected Mr. Fortenberry had previously made a  
16 false statement to the FBI there would not have been a subsequent interview.

17 Congressman Fortenberry wanted to assist in the investigation. This could have been  
18 accomplished with a letter or other written proffer to the federal government. I relied on  
19 AUSA Jenkins' representations to me and Congressman Fortenberry relied on my  
20 representations of that conversation with AUSA Jenkins to him. I specifically told  
21 Congressman Fortenberry the government viewed him as a subject trending toward a  
22 witness and not a target. Based on the representations of AUSA Jenkins and Mr.  
23 Fortenberry’s desire to help in the government’s investigation, I arranged for a second  
24 meeting to be held in my office in Washington, D.C. in July 2019, so Mr. Fortenberry  
25 could answer any additional questions the prosecutors or agents may have.

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<sup>2</sup> *Id.*

1 13. It was not until June 1, 2021 that I learned the FBI had secretly recorded the phone  
2 call placed from the informant to Mr. Fortenberry in 2018. Mr. Jenkins did not tell me the  
3 call was monitored, secretly recorded or that a transcript of the call existed prior to me  
4 arranging that second meeting with Mr. Fortenberry. In fact, the federal government did  
5 not tell me the 2018 phone conversation they were questioning Congressman Fortenberry  
6 about was on tape until June 1, 2021 - two years after my initial contact with them and  
7 after it was represented to me that Congressman Fortenberry was a subject trending  
8 toward a witness and not a target. If I had known that a recording of the call existed, I  
9 would not have agreed to have Mr. Fortenberry participate in an interview without first  
10 receiving a copy of the tape and transcript.

11 14. If I had known AUSA Jenkins thought Mr. Fortenberry made a false statement to  
12 an FBI agent during the initial field interview in Nebraska, there would not have been a  
13 second interview. If AUSA Jenkins believed Congressman Fortenberry lied during the  
14 initial field interview in Nebraska in the spring of 2019, then it was factually and legally  
15 inaccurate to represent Congressman Fortenberry's status as that of a subject trending  
16 toward a witness.

17 15. On July 17, 2019, I met with Congressman Fortenberry, Assistant United States  
18 Attorneys Mack Jenkins and Aron Ketchel, and FBI Special Agents Todd Carter and  
19 Edward Cho in my law office in Washington, D.C.

20 16. AUSA Jenkins led the questioning initially. Although the interview was cordial at  
21 first, the questions began to take a more accusatory tone and there were pointed questions  
22 on the details of the 2018 call. The government still, at that time, had not disclosed the  
23 2018 telephone call was on tape and that they knew exactly who said what to whom.

24 17. During a break from the interview, Congressman Fortenberry retired to the lobby  
25 area to return work related calls but I visited with him because he was confused at the  
26 accusatory tone of the questioning. I then returned to the interview room and asked  
27 AUSA Jenkins pointedly whether "this was some bullshit 1001 case." AUSA Jenkins  
28 assured me it was not.

1 18. I used the term "bullshit 1001 case" because I believed AUSA Jenkins when he told  
2 me the Congressman was a subject trending toward a witness during our initial call. If he  
3 somehow viewed his status differently I wanted to know that immediately. I would not  
4 have advised Congressman Fortenberry to return to the interview room had the  
5 government not answered in the negative when I asked if this was a "bullshit 1001 case."

6 19. AUSA Jenkins did not seem confused by my question. He did not ask me what I  
7 meant. He responded no, that's not what this is.

8 20. I was satisfied by AUSA Jenkins's reassurances, so the interview resumed.

9 Thereafter the prosecutors asked whether Congressman Fortenberry would waive the  
10 attorney-client privilege so the government could interview his FEC attorney.

11 Congressman Fortenberry, upon my recommendation and counsel, agreed. Had I known  
12 the government believed Congressman Fortenberry lied during either interview, I would  
13 never have advised the waiver of this privilege.

14 21. At several points after the July 17, 2019, interview, I followed up with AUSA  
15 Jenkins to inquire about the status of the investigation. In particular Congressman  
16 Fortenberry wanted to know what else he could do to assist the government. He viewed  
17 himself as a witness, one likely to be used in the prosecution of those who violated federal  
18 campaign law, and wanted to continue to be helpful. In addition, Congressman  
19 Fortenberry wanted to return the campaign contributions immediately upon hearing from  
20 AUSA Jenkins that the monies may have all come from a foreign source. The prosecutors  
21 requested Congressman Fortenberry not return the money to the donors. Congressman  
22 Fortenberry followed the prosecutors' instructions and subsequently donated the money to  
23 charity.

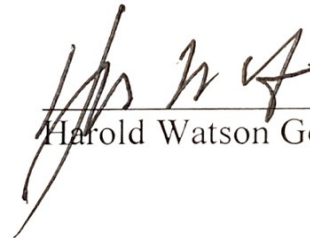
24 22. In January of 2020, I emailed AUSA Jenkins inquiring about next steps. About a  
25 week later, AUSA Jenkins replied and while offering a caveat of no promises on the  
26 timing, wrote that he hoped to let me know something by mid-February of 2020.

1 23. Nearly sixteen (16) months later, on or about June 1, 2021, Mr. Jenkins informed  
2 me that he was likely to indict Congressman Fortenberry based on both the initial  
3 Nebraska interview and the subsequent Washington, D.C., interview.

4 24. At that point, I realized I was likely a fact witness in this case and could no longer  
5 represent Congressman Fortenberry. I contacted Congressman Fortenberry to inform him  
6 and recommend John Littrell, an attorney who specializes in federal criminal defense.

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8 Under penalty of perjury, I declare these facts to be true to the best of my knowledge and  
9 recollection. I would testify to them under oath.

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11 Date: November 26, 2021

  
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Harold Watson Gowdy, III "Trey" Gowdy