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IN THE HONORABLE SENATE OF THE STATE OF ILLINOIS
FOR THE NINETY-SIXTH GENERAL ASSEMBLY
SITTING AS AN IMPEACHMENT TRIBUNAL

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SECRETARY
OF THE
SENATE

In re)
Impeachment of)
Governor ROD R. BLAGOJEVICH)

**HOUSE PROSECUTOR'S
PROVISIONAL MOTION FOR SUBPOENA OF WITNESS TESTIMONY**

House Prosecutor David W. Ellis, pursuant to Senate Impeachment Rule 15(a), moves for the issuance of a subpoena for witness testimony and, in support thereof, states as follows:

1. The House Prosecutor provisionally seeks to subpoena the live testimony of Special Agent Daniel Cain of the Federal Bureau of Investigation at the Impeachment Trial. The House Prosecutor has requested the testimony of Special Agent Cain from the office of the United States Attorney for the Northern District of Illinois, in accordance with Senate Impeachment Rule 15(f). At the time of this writing, the United States Attorney has not responded to this request.

2. Should the United States Attorney refuse the request, the House Prosecutor will withdraw this Motion for Subpoena.

3. Should the United States Attorney grant the request but subject to limitations, in accordance with federal regulations governing the testimony of federal law enforcement officials in a state proceeding and in accordance with Senate Impeachment Rule 15(f), then the House Prosecutor either would modify this Motion for Subpoena in accordance with those limitations or withdraw the Motion.

4. Special Agent Cain's address and phone number are withheld because Mr. Cain is a current federal law enforcement officer, but his contact information will be provided to the Senate should this Motion be granted.

5. Subject to any limitation from the United States Attorney's office, in accordance with federal regulations governing the testimony of federal law enforcement officials in a state proceeding and in accordance with Senate Impeachment Rule 15(f), the House Prosecutor anticipates, at this time, that the Subpoena would seek Mr. Cain's testimony limited to the following: (i) that, before he signed his Affidavit (Exhibit 3), Mr. Cain or a fellow agent working with him listened to every intercepted oral or wire communication described in that Affidavit; (ii) that, before he signed his Affidavit, Mr. Cain or a fellow agent working with him positively identified the Governor's voice on each communication that describes the Governor as a participant, and the manner in which they did so; and (iii) that the information contained in his Affidavit was true and accurate, to the best of his knowledge and belief, at the time he signed the Affidavit.

6. This testimony is relevant and material because paragraphs 1 through 5 of the Article of Impeachment are based, in whole or in part, on Mr. Cain's Affidavit.

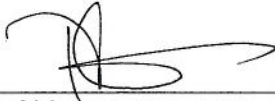
7. This testimony is not redundant because Mr. Cain is the only person who will testify on these subjects.

8. Moreover, although some evidence related to this issue is contained in the House impeachment record, under Senate Impeachment Rule 15(g), the evidence is not deemed redundant simply because it relates to material already in the record.

WHEREFORE, the House Prosecutor provisionally moves for the issuance of a subpoena for the live testimony of Special Agent Daniel Cain of the Federal Bureau of Investigation.

Respectfully submitted,

**DAVID W. ELLIS,
HOUSE PROSECUTOR**



One of his attorneys

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