

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

ENGROSSED

LLS NO. R12-0939.01 Julie Pelegrin x2700

HJR12-1023

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**HOUSE JOINT RESOLUTION 12-1023**

101      **CONCERNING AUTHORIZING AND DIRECTING THE COMMITTEE ON**  
102           **LEGAL SERVICES TO RETAIN LEGAL COUNSEL TO REPRESENT THE**  
103           **GENERAL ASSEMBLY AS AMICUS CURIAE IN THE CASE OF**  
104           **LOBATO V. STATE OF COLORADO FOR THE PURPOSE OF**  
105           **PRESERVING AND PROTECTING THE GENERAL ASSEMBLY'S**  
106           **PLENARY POWER UNDER THE DOCTRINE OF SEPARATION OF**  
107           **POWERS.**

1           WHEREAS, In *Lobato v. State of Colorado*, Case No. 2005 CV  
2           4794, the Denver District Court entered an order on December 9, 2011,  
3           declaring that the current school finance system in Colorado is  
4           unconstitutional because it is not rationally related to the thorough and  
5           uniform system of free public schools that the General Assembly is  
6           required to establish and maintain throughout the state pursuant to section

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

HOUSE  
Final Reading  
May 7, 2012

1 2 of article IX of the state constitution; and

2 WHEREAS, The Denver District Court also concluded that the  
3 current school finance system violates section 15 of article IX of the state  
4 constitution, which guarantees school districts the control of instruction  
5 in the public schools of their districts, by failing to provide sufficient  
6 financial resources to school districts to permit them to provide the  
7 services, instructional programs, materials, and facilities that are  
8 necessary to meet statutory requirements; and

9 WHEREAS, These conclusions of the Denver District Court,  
10 which are presently being appealed to the Supreme Court of the State of  
11 Colorado, could, if upheld, adversely affect the General Assembly's  
12 plenary power under the doctrine of separation of powers; and

13 WHEREAS, One exercise of the General Assembly's plenary  
14 power that could be adversely affected is the power to appropriate, which  
15 includes, but is not limited to, establishing the level of appropriations to  
16 ensure the availability of the desired level of educational opportunities  
17 throughout the state and the appropriate minimum level of funding to  
18 ensure uniformity of the educational opportunities provided throughout  
19 the state; and balancing all the competing needs of the state in creating a  
20 balanced budget within available resources while complying with  
21 constitutional revenue restrictions; and

22 WHEREAS, The District Court opinion may also adversely affect  
23 the plenary authority of the General Assembly to enact substantive  
24 legislation concerning fiscal and policy matters, including, but not limited  
25 to, determining what constitutes a thorough and uniform system of free  
26 public education; establishing the quality of the public education system  
27 and the accountability measures to ensure the attainment of this level of  
28 quality; establishing appropriate education policies while recognizing  
29 school districts' power of local control of instruction in public schools;  
30 and determining the appropriate balance between conflicting and complex  
31 constitutional mandates concerning revenue, spending, and  
32 appropriations; and

33 WHEREAS, The interest in preserving the plenary power of the  
34 General Assembly is an interest of the General Assembly as an institution  
35 and not of the individual members thereof; and

36 WHEREAS, The Sixty-eighth General Assembly of the State of

1 Colorado believes that one of its most solemn duties is to preserve and  
2 protect the plenary power of the General Assembly under the doctrine of  
3 separation of powers; now, therefore,

4 *Be It Resolved by the House of Representatives of the Sixty-eighth*  
5 *General Assembly of the State of Colorado, the Senate concurring herein:*

6 That, although the General Assembly is not named as a defendant  
7 in *Lobato v. State of Colorado*, it is in the best interests of the General  
8 Assembly and the State of Colorado that the General Assembly seek to  
9 protect and defend its plenary power through participation in the *Lobato*  
10 case as an amicus curiae; and

11 That the Committee on Legal Services, in furtherance of its  
12 authority under section 2-3-1001, Colorado Revised Statutes, is  
13 authorized and directed to retain legal counsel to represent the General  
14 Assembly through participation in said *Lobato* case as an amicus curiae  
15 and to seek reversal of the trial court's opinion to the extent that it violates  
16 the principle of separation of powers, jeopardizes the plenary power of  
17 the General Assembly, and fails to give significant deference to the fiscal  
18 and policy determinations of the General Assembly.