



## Legislation Text

---

**File #:** Res 0586-2023, **Version:** \*

---

Res. No. 586

Resolution calling upon the State Legislature to pass, and the Governor to sign, S.5150, to allow de facto parents to apply to the Supreme Court for a writ of habeas corpus.

By Council Members Menin, Hudson and Riley

Whereas, Over the past fifty years, the traditional composition of the family has been transformed; and

Whereas, In 1960, for example, approximately 73 percent of children were living in a two parent home with parents who were in their first marriage; and

Whereas, By 2015, less than half of families in the United States represented this model; and

Whereas, It is now common for children to live with either a single parent, a blended family consisting of step-parents and siblings, or parents of the same sex; and

Whereas, These changes to the structure of the family have significant repercussions for established custody laws that often still assume outdated notions of the nuclear family arrangement; and

Whereas, This can be seen within New York state custody laws and in particular, the overturning of the precedent set in the 1991 case of *Alison D. v. Virginia M.*; and

Whereas, Since that determination, the State's family laws limited custody and visitation rights to a parent with either a biological or adoptive relationship to the child; and

Whereas, However, after the New York Court of Appeals ruling in the case of *Brooke S.B. v. Elizabeth A.C.C* in August 2016, the definition has been broadened; and

Whereas, The *Brooke S.B. v. Elizabeth A.C.C* case involved a same-sex, unmarried couple, who had been living in a de facto relationship for a number of years; and

Whereas, Although the couple were engaged, they were unable to marry at the time because same-sex marriage was not yet legal in New York state; and

Whereas, Rather than wait for marriage legalization, the couple decided to start their family and one of the women carried the child; and

Whereas, The couple then split a few years later and before same-sex marriage was legal; and

Whereas, While the non-biological parent and ex-partner continued to co-parent for at least a year, at one point, the biological mother cut off contact between the child and the ex-partner; and

Whereas, The ex-partner filed for custody and visitation rights but the Court originally ruled that the petitioner had no parental rights given the limitations set by *Alison D. v. Virginia M*; and

Whereas, On appeal, however, the Court overruled *Alison D. v. Virginia M*, arguing that when there is clear evidence that partners agree to conceive and raise a child together, the ex-partner does have rights to visitation and custody; and

Whereas, The Court further noted that “*Alison D.*’s foundational premise of heterosexual parenting and nonrecognition of same-sex couples is unsustainable, particularly in light of the enactment of same-sex marriage in New York state”; and

Whereas, While this case has helped broaden the definition of who is able to pursue visitation and custody, it still has limitations; and

Whereas, Key to the *Brooke S.B. v. Elizabeth A.C.C* ruling was the fact that both parties had consciously planned in advance to conceive and raise a child together; and

Whereas, This means that partners who enter a child’s life after their birth, may be prevented from pursuing visitation and custody if they do not formally adopt the child; and

Whereas, In many U.S. states, the parental rights of a de facto parent - a non-adoptive, non-biological adult raising the child - are protected by law; and

Whereas, While the rights and definitions across states differ, New York state is one of the few that does not recognize and protect this relationship; and

Whereas, S.5150, which was introduced in the New York State Senate by Senator Kevin Parker in February 2023, aims to rectify this gap; and

Whereas, If enacted, S.5150 would recognize a person acting as a de facto parent and grant them the ability to pursue visitation and custody; and

Whereas, Given the ongoing changes to the family unit, it is likely that children will develop deep bonds with their caregivers who are not necessarily their biological or adoptive parents; and

Whereas, It is therefore important that family and domestic law keep pace with these changes and protect these important bonds; now, therefore, be it

Resolved, That the Council of the city of New York calls upon the State Legislature to pass, and the Governor to sign, S.5150, to allow de facto parents to apply to the Supreme Court for a writ of habeas corpus.

LS #12518  
3/28/2023  
LMS