Unjust N.Y. law tears apart parent, child

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This week, a mother went before the Court of Appeals, New York's high court, to ask for a right that most of us take for granted every day -- the right to spend time with her child.

No parent should have to do this. But in New York, many parents do, because of a 1991 case called Alison D. vs. Virginia M.

Alison was a committed and loving parent. After separating from her partner, Alison simply asked for the right to see her son, whom she had raised with that partner since birth. But, while her son called her "Mommy," the court called Alison a "legal stranger" to him.

Why? Because she lacked the biological or adoptive ties the law required for her to legally be called a parent and have visitation rights.

New York's court can't make up for lost time for Alison, her son or the many parents and children who have been separated by the state's unjust visitation law. But the court can make sure no more time is wasted, when it decides Debra H. vs. Janice R. The court will consider a story strikingly similar to Alison's.

This time, New York must bring its law into line with the trend recognized by scholars and other states alike: that parents like Alison, who function as parents, must be legally recognized as parents. When a couple separates, those "functional parents" must be granted the right, like any other parent, to seek visitation or custody of their children.

The American Academy of Pediatrics and American Psychoanalytic Association have confirmed the harms caused to children when courts separate them from their "functional parents" -- who plan for the child with the biological parent, are there at birth, and provide all the love and care
that any parent provides. Recent work from the National Research Council and Institute of Medicine documents some of these harms, including increased aggressive behavior, poor academic performance and trouble forming healthy relationships.

In an effort to protect children against such unnecessary harm and promote fairness toward all families, courts nationwide have rejected the rigid definition of parenthood embraced by the Court of Appeals. In fact, states from Massachusetts to Montana have taken action and recognized that parents like Alison are just that: parents, who need and deserve the legal protections the law gives any other parent.

New York cannot let another day go by for parents and children who have been torn apart by the state's unjust law. We all know how quickly children grow up. Let's hope the judges on the state's high court know it too.

Suzanne Goldberg is professor Columbia Law School. Harriet Antczak and Mark Musico are students in the school's Sexuality & Gender Law Clinic, which filed an amicus brief in Alison D. vs. Virginia M. on behalf of 45 family law scholars from every law school in New York.