April 23, 2026

The Honorable Alison Clarkson
Chair, Senate Committee on Economic Development, Housing and General Affairs
Vermont General Assembly
State Capitol Building
115 State Street
Montpelier, Vermont 05633

RE: House Bill 639 (Scheu) – Genetic Information Privacy – Enforcement

Dear Chair Clarkson -

In advance of my testimony to your committee today, I wanted to provide written comments regarding our position on the private right of action in H.639 as well as the inclusion of a potential right to cure provision. This written testimony incorporates the verbal comments delivered by myself and my colleague during the April 2 hearing and my comments that I will deliver today.

Ancestry supports the policy provisions in H.639 (Scheu) and strongly opposes the private right of action contemplated for the bill's enforcement.

Our company's mission is to help everyone discover, preserve and share their family history. We do this in two primary ways - through our best-in-class genetic testing product and our family history service which is powered by more than 65 billion historical records. These include vital records - things like birth, marriage, and death certificates, census records, military records, and archival records. Essentially, anything that we can pull in that helps our customers add texture and context to their family trees.

In Vermont, this had led to longstanding relationships with various state agencies. Through our public private partnerships, we have digitized nearly 13 million records and are working on 19 million more in partnership with the state archive. We provide this service at no cost to the state – and everyone wins. Vermont saves millions of dollars in digitization costs and we are able to provide our consumers with access to historical records from the state as soon as they are publicly available. We also provide every resident with free access to our Ancestry.com and newspapers.com collections through the state archives website. Our partnership in Vermont is among the most robust that we have with any state in the nation.

As we consider the proposed genetic information privacy act, we hope to continue productively partnering with Vermont to provide its residents value here as well in the form of the strongest protections for genetic privacy in the country. This bill is the result of work we have undertaken for the past decade - first, by convening other consumer testing companies and privacy advocates to

promulgate industry best practices in cooperation with the Future of Privacy Forum and then translating those best practices into legislative form when states moved to legislate in this area starting in 2020.

The policies in this bill reflect our practices all along - requiring separate, opt-in consent for any collection, processing, use, or sharing of genetic data and providing consumers the right to delete their genetic information and biological samples at any time. And, while we support codifying the policy provisions in this bill, the reality is that the only thing that will change for Vermont consumers if H.639 passes is that companies like Ancestry can be sued for administrative violations due to the inclusion of a private right of action.

Ancestry and our largest competitors 23andMe and MyHeritage account for more than 90% of the direct-to-consumer genetic testing market in the US. All have uniform terms of service and privacy policies that conform to the existing 15 state genetic privacy laws on the books. We are already contractually bound to do all the things in this bill for Vermont consumers and can be sued if we breach those contracts.

Some have argued that H.639's enforcement should be similar to the age-appropriate design bill that passed with a private right of action last session. We respectfully note that the bills and their enforcement needs are markedly different. In the first instance, no one gets into Ancestry's genetic database without providing a substantial saliva sample and separate, opt-in consents that detail their rights and how we may use their data. It is not an incidental collection nor is it entering into a passive agreement to our terms solely by virtue of visiting our website. Everyone knows what they are signing up for with us, must provide myriad consents in the sign-up flow, and we are bound to the agreements we make in that process.

Unlike the age-appropriate design code bill, the Vermont legislature is not changing the rules on a vast ecosystem that will need dispersed enforcement to ensure thousands of entities are complying. There are three major services in the US for genetic testing. These tests have been on the market for 18 years. There has never been a major privacy violation by any large company in the marketplace. And, this bill codifies existing practices that no one has asserted the companies have violated in nearly two decades.

We understand that there has been substantial concern regarding the industry in light of 23andMe's recent past. While it's true that they had a data breach in 2023 and were found liable under various state data breach laws for not reporting it in a timely fashion, that is a separate issue from the privacy protections contemplated in H.639.

There was also broad concern regarding privacy protections last year when the company filed for bankruptcy and the attorneys general banded together to petition the courts to ensure that the privacy promises 23andMe made survived their reorganization. But ultimately, the company's founder formed a non-profit and purchased the company out of bankruptcy. The same leadership, terms, privacy policies, user experience - everything was the same before and after the bankruptcy aside from the financial structure of the company.

There was no privacy harm in the course of that bankruptcy. And, the investigation into it provides a real-life counter to concerns that the Vermont Attorney General's office may lack investigative bandwidth. While Vermont was one of many states that petitioned the court, the investigation was co-led by California and Connecticut – states with the staff resources and internal expertise led the effort.

So, we don't believe that there is going to be a drain on resources for enforcement. None of the other fifteen states with AG enforcement have experienced that. We do know that in the one state with a broad private right of action on a genetic privacy bill, we have had to fight several frivolous claims brought against us. In our experience, private rights of action shift focus from real data privacy and security concerns to meritless litigation, which we believe undermine the privacy goals at the heart of this legislation.

Keeping enforcement in the hands of the Attorney General who has the expertise to distinguish between a technical administrative error and actual consumer harm is the most efficient path forward. Private rights of action often prioritize litigation over actual privacy protection. Ancestry has firsthand experience with this in the case of *Kingsley v. Ancestry (2020)*.

Following our acquisition by Blackstone, we faced a massive class-action lawsuit where plaintiffs alleged that a routine corporate stock purchase—a standard business transaction—constituted an "unauthorized sale" of data. Because the Illinois law contained a private right of action with hefty statutory damages of up to $15,000 per claim plus attorney's fees, the incentive was not to fix a privacy problem—because there wasn't one. The incentive was to secure a massive payout.

We spent three years in federal court defending a transparent business transition that resulted in zero data being breached, zero data being misused, and zero harm to our customers. While the Seventh Circuit eventually vindicated us, ruling that a corporate acquisition is *not* a 'compulsory disclosure,' it took three years of judicial resources to reach that common-sense conclusion. This case is proof that when you include a private right of action, you aren't empowering consumers; you are empowering class-action attorneys to target companies over technicalities and business structures that have nothing to do with actual privacy. Without a private right of action, a claim like this could have been resolved efficiently through an Attorney General review in weeks, rather than years of costly litigation.

When companies face aggressive litigation risks for minor technical ambiguities, we are forced to manage that risk by limiting or even disabling features in those specific states. This doesn't create better privacy; it just creates a second-tier digital experience for residents. If a private right of action remains in this bill, we may be forced to geofence certain features in Vermont simply to mitigate exposure to meritless claims.

<u>To be specific, this could mean:</u>

- **Disabling automated DNA match notifications.** For example, even though we require our users to specifically opt-in to these, a private right of action allows a plaintiff's attorney to argue that every single notification sent is a separate "unauthorized disclosure." Under the framework of

this bill, those 'per violation' damages could reach hundreds of millions of dollars over a feature our customers actually asked for.

- **Restricting integrations.** Our users often ask to link their data with third-party genealogy tools to build their trees. But with a private right of action, that third party integration becomes too legally risky for us to maintain.
- **Delaying AI-driven insights.** Even a slight ambiguity in how a new AI feature is described in a consent flow could trigger a massive class-action suit.

We are not speaking in hypotheticals here. We have already seen this happen in Illinois. Because of similar biometric and genetic privacy laws with private rights of action, major companies like Ring, Google and Meta have had to limit or completely shut off features for Illinois residents that the rest of the country gets to enjoy. We don't want Vermont to become a 'digital island' where residents lose out on innovation because of the threat of predatory litigation.

The most high-profile settlement agreements under Illinois GIPA ended up being against companies with a large presence in that state – Ford, United Airlines, Union Pacific, and even the gas company – all for technical violations the legislature likely did not have in mind when they drafted the statute.

When large penalties are at play – such as the statutory penalties in Illinois or damages for actual injury in the bill before us that can include emotional distress and other non-economic damages – there is a strong incentive for professional litigants to pursue any case, whether an actual privacy harm has occurred or not.

This introduces a lot of uncertainty and unknowns for companies operating in the state. First, actual damages can include non-economic harms such as emotional damages. It's difficult to know how a judge or jury would value the potential anguish of genetic exposure. There is also a provision for treble damages under the consumer protection act, which could ostensibly lead to damages in Vermont far outpacing other states with similar genetic privacy statutes. And, without a meaningful right-to-cure, companies like ours could be stuck in discovery for years like we were in Illinois with no off-ramp.

We believe Attorney General enforcement is a far better vehicle for real privacy protection. Attorneys General have the expertise to see the forest through the trees. They can distinguish between a minor administrative misstep and a material privacy violation. Their offices focus on high-impact threats, like the intentional sale of data or security failures, rather than generating statutory damages where no injury exists. Attorney General enforcement is also faster. If a real issue arises, we can work directly with the state to remediate it and provide relief to consumers, rather than waiting years for a court's decision.

In the last hearing, we were asked about a potential right-to-cure provision. While we strongly prefer that the bill not contain a PRA at all, other states have successfully modeled how right-to-cure provisions can lead to remediation before the courts are involved. Early on, Virginia provided a 30-day right-to-cure on their privacy bill. Since then, the standard has expanded to 60-days with states like Kentucky, Connecticut, and Maryland incorporating right-to-cures into their statutes in the last couple of years.

The states with 60-day timeframes justify the longer period because technical remediation for more complex forms of data require full engineering sprints that simply cannot be completed in a few weeks. The Connecticut AG's own report on their right-to-cure shows that the 60-day window allows for the successful resolution of most violations before they hit the courts. And, aside from Illinois, Wyoming is the only state that allows a PRA on an expansive genetic privacy statute like the one before you and that state allows for a 60 day right-to-cure. We have not experienced the same legal mischief in Wyoming as a result.

There are countless technical violations that are easily curable under a genetic privacy statute. If an individual's data is inadvertently included in a research dataset, it can be pulled back or the consumer can choose to provide the appropriate consent. Data can be pulled back from third-party vendors if a consumer disputes that they meet the service provider definition. These are just two of many examples.

We provided the House committee with a potential right-to-cure provision and have shared that today in our written comments as well. If the committee decides to move the bill with a private right of action, we hope you will seriously consider incorporating meaningful cure language. We propose the following:

No consumer may initiate a civil action unless they provide the company with 60 days' written notice. If, within that 60-day period, the company cures the noticed violation and provides the consumer a written statement that the violation has been cured and that no further violations shall occur, no action for individual or class-wide statutory damages may proceed.

We take the privacy promises we make to our customers seriously. It's why we were at the table before any legislative body asked us to promulgate the Best Practices that this bill is based upon. We are concerned that punitive enforcements like the one in H.639 will provide a strong disincentive for companies to self-regulate in the future.

We implore the committee to consider the most effective way to provide protections for Vermonters that does not bring unnecessary costs to companies that have partnered well with the state for years.

Sincerely,

Ritchie Engelhardt
Head of Government Affairs, Ancestry

cc: Members, Senate Committee on Economic Development, Housing and General Affairs