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## North Dakota Tightens Law on Bank Data and Privacy

By ADAM CLYMER

North Dakotans voted overwhelmingly on Tuesday to require banks and credit unions to get customers' permission before selling data on them, and privacy advocates say the vote will send a message across the country.

The result of the statewide referendum, in which 72 percent of those casting ballots favored a tightening of privacy law, "shows that when given a chance, the voters of a conservative Plains state will vote to protect their privacy," said Barry Steinhardt, director of the American Civil Liberties Union's technology and liberty program.

"It gives the lie," Mr. Steinhardt said, "to the idea that privacy is either a liberal idea or out of the mainstream."

Robert Ellis Smith, editor of Privacy Journal, published in Providence, R.I., said the vote would encourage other groups working on privacy issues, and added, "It might deter some legislators from going with corporate interests."

But the banking industry, which had argued along with Gov. John Hoeven that the proposal would discourage businesses from settling in North Dakota, expressed frustration.

Todd Steinwand, a Wells Fargo executive in Mandan, outside Bismarck, said, "As an industry we're disappointed, because it's going to discourage future economic development."

At issue was a 2001 state law that let financial institutions share or sell customer information unless customers told them not to, a system known as "opt out." On Tuesday, voters repealed that law, 88,218 to 33,196, according to final unofficial totals released in Bismarck. The repeal reinstated previous state law barring such sharing unless customers gave permission first, a system known as "opt in."

The referendum was the first in which voters anywhere in the nation had a chance to take a stand on a 1999 federal banking law that adopted a national "opt out" standard but permitted states to impose more stringent privacy protections.

Edmund Mierzwinski, consumer program director at the U.S. Public Interest Research Group, said he believed that the North Dakota vote would lead to greater privacy efforts in many states, especially California, where the Legislature is considering a measure to do just what North Dakota voters did: impose tighter privacy rules than federal banking law requires.

California's governor, Gray Davis, declined to comment on the North Dakota vote. But his deputy press secretary, Hilary McLean, said the governor was in favor of financial privacy and was hoping to get legislation passed that would protect it.

In campaigning to keep North Dakota's 2001 law, banks and credit unions had argued that they did not sell or share customer data and so there was no real issue involving privacy. Jim Schlosser, executive director of the North Dakota Bankers Association, said last week: "Our bankers do not sell information. It would be stupid of them to do that," because customers would leave them.

But opponents of the 2001 law reminded voters that in 1999, U.S. Bank, a Minnesota company that does much business in North Dakota, paid several million dollars to settle lawsuits charging that it had sold data to telemarketers.

The main argument from supporters of the less restrictive law was that repeal would make it harder to attract businesses, especially financial businesses, to the state. Governor Hoeven, a first-term Republican who is himself a former banker, said that if the state's laws differed from those of nearby states, it would have trouble drawing "firms that do business nationally and internationally." That concern translated into a widely shown television commercial for the anti-repeal side that showed walls suddenly cutting off the state's borders.

The only major amount of money spent by advocates of repeal was \$25,000 from the A.C.L.U., and their side was outspent at least 6 to 1. Charlene Nelson, who headed the pro-repeal group Protect Our Privacy, said, "We were outnumbered, outgunned, outspent, but the people of North Dakota saw through it all, saw how important privacy was, and voted accordingly."

The vote may have greater implications for North Dakota. State Representative Jim Kasper, a Republican from Fargo who led opposition to the 2001 bill in the legislature, said, "This is just the beginning of what we're going to do."

Mr. Kasper said he planned to push legislation next year that would apply an "opt in" rule to insurance and securities firms as well.

Not that he intends to stop there. "We don't know what the State of North Dakota is doing with citizens' information," he added, "but we're going to find out and take action."