

ers of two thirds of the property abutting any street.³²⁷ Or, in another case, it struck down an ordinance that permitted the establishment of philanthropic homes for the aged in residential areas, but only upon the written consent of the owners of two-thirds of the property within 400 feet of the proposed facility.³²⁸ In a decision falling chronologically between these two, however, the Court sustained an ordinance that permitted property owners to waive a municipal restriction prohibiting the construction of billboards.³²⁹

In its most recent decision, the Court upheld a city charter provision permitting a petition process by which a citywide referendum could be held on zoning changes and variances. The provision required a 55% approval vote in the referendum to sustain the commission's decision, and the Court distinguished between delegating such authority to a small group of affected landowners and the people's retention of the ultimate legislative power in themselves which for convenience they had delegated to a legislative body.³³⁰

Estates, Succession, Abandoned Property.—The Due Process Clause does not prohibit a state from varying the rights of those receiving benefits under intestate laws. Thus, the Court held that the rights of an estate were not impaired where a New York Decedent Estate Law granted a surviving spouse the right to take as in intestacy, despite the fact that the spouse had waived any right to her husband's estate before the enactment of the law. Because rights of succession to property are of statutory creation, the Court explained, New York could have conditioned any further exercise of testamentary power upon the giving of right of election to the surviving spouse regardless of any waiver, however formally executed.³³¹

Even after the creation of a testamentary trust, a state retains the power to devise new and reasonable directions to the trustee to meet new conditions arising during its administration. For instance, the Great Depression resulted in the default of numerous

³²⁷ *Eubank v. City of Richmond*, 226 U.S. 137 (1912).

³²⁸ *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928). In a later case, the Court held that the zoning power may not be delegated to a church. *Larkin v. Grendel's Den*, 459 U.S. 116 (1982) (invalidating under the Establishment Clause a state law permitting any church to block issuance of a liquor license for a facility to be operated within 500 feet of the church).

³²⁹ *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526 (1917). The Court thought the case different from *Eubank*, because in that case the ordinance established no rule but gave the force of law to the decision of a narrow segment of the community, whereas in *Cusack* the ordinance barred the erection of any billboards but permitted the prohibition to be modified by the persons most affected. *Id.* at 531.

³³⁰ *City of Eastlake v. Forest City Enterprises*, 426 U.S. 668 (1976). Such referenda do, however, raise equal protection problems. *See, e.g., Reitman v. Mulkey*, 387 U.S. 369 (1967).

³³¹ *Irving Trust Co. v. Day*, 314 U.S. 556, 564 (1942).