in objecting to land use regulations.[744] The remedy question arises because there are two possible constitutional objections to be made to regulations that go "too far" in reducing the value of property or which do not substantially advance a legitimate governmental interest. The regulation may be invalidated as a denial of due process, or may be deemed a taking requiring compensation, at least for the period in which the regulation was in effect. The Court finally resolved the issue in *First English Evangelical Lutheran Church v. County of Los Angeles*, holding that when land use regulation is held to be a taking, compensation is due for the period of implementation prior to the holding.[745] The Court recognized that, even though government may elect in such circumstances to discontinue regulation and thereby avoid compensation for a permanent property deprivation, "no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective."[746] Outside the land-use context, however, the Court has now recognized a limited number of situations where invalidation, rather than compensation, remains the appropriate takings remedy.[747]

The process of describing general criteria to guide resolution of regulatory taking claims, begun in *Penn Central*, has reduced to some extent the ad hoc character of takings law. It is nonetheless true that not all cases fit neatly into the categories delimited to date, and that still other cases that might be so categorized are explained in different terms by the Court. The overriding objective, the Court frequently reminds us, is to vitalize the Takings Clause's protection against government "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne

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[744] *See, e.g.*, Agins v. City of Tiburon, 447 U.S. 255 (1980) (issue not reached because property owners challenging development density restrictions had not submitted a development plan); Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264, 293–97 (1981), and Hodel v. Indiana, 452 U.S. 314, 333–36 (1981) (rejecting facial taking challenges to federal strip mining law).

[745] 482 U.S. 304 (1987). The decision was 6–3, Chief Justice Rehnquist's opinion of the Court being joined by Justices Brennan, White, Marshall, Powell, and Scalia, and Justice Stevens' dissent being joined in part by Justices Blackmun and O'Connor. The position the Court adopted had been advocated by Justice Brennan in a dissenting opinion in San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621, 636 (1981) (dissenting from Court's holding that state court decision was not "final judgment" under 28 U.S.C. § 1257).

[746] 482 U.S. at 321.

[747] Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) (statute imposing generalized monetary liability); Babbitt v. Youpee, 519 U.S. 234 (1997) (amended statutory requirement that small fractional interests in allotted Indian lands escheat to tribe, rather than pass on to heirs); Hodel v. Irving, 481 U.S. 704 (1987) (pre-amendment version of escheat statute).