reasons of ease of enforcement and of assuring a common day in the community for rest and leisure.[207] Later, a state statute mandating that employers honor the Sabbath day of the employee's choice was held invalid as having the primary effect of promoting religion by weighing the employee's Sabbath choice over all other interests.[208]

Conscientious Objection.—Historically, Congress has provided for alternative service for men who had religious scruples against participating in either combat activities or in all forms of military activities; the fact that Congress chose to draw the line of exemption on the basis of religious belief confronted the Court with a difficult constitutional question, which, however, the Court chose to avoid by a somewhat disingenuous interpretation of the statute.[209] In *Gillette v. United States*,[210] a further constitutional problem arose in which the Court did squarely confront and validate the congressional choice. Congress had restricted conscientious objection status to those who objected to "war in any form" and the Court conceded that there were religious or conscientious objectors who were not opposed to all wars but only to particular wars based upon evaluation of a number of factors by which the "justness" of any particular war could be judged; "properly construed," the Court said, the statute did draw a line relieving from military service some religious objectors while not relieving others.[211] Purporting to apply the secular purpose and effect test, the Court looked almost exclusively to purpose and hardly at all to effect. Although it is not clear, the Court seemed to require that a classification must be religiously based "on its face"[212] or lack any "neutral, secular basis for the lines gov-

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[207] 366 U.S. at 449–52. Justice Frankfurter, with whom Justice Harlan concurred, arrived at the same conclusions by a route that did not require approval of Everson v. Board of Education, from which he had dissented.

[208] Estate of Thornton v. Caldor, Inc., 472 U.S. 703 (1985).

[209] In United States v. Seeger, 380 U.S. 163 (1965), a unanimous Court construed the language of the exemption limiting the status to those who by "religious training and belief" (that is, those who believed in a "Supreme Being"), to mean that a person must have some belief which occupies in his life the place or role which the traditional concept of God occupies in the orthodox believer. After the "Supreme Being" clause was deleted, a plurality in Welsh v. United States, 398 U.S. 333 (1970), construed the religion requirement as inclusive of moral, ethical, or religious grounds. Justice Harlan concurred on constitutional grounds, believing that the statute was clear that Congress had intended to restrict conscientious objection status to those persons who could demonstrate a traditional religious foundation for their beliefs and that this was impermissible under the Establishment Clause. Id. at 344. The dissent by Justices White and Stewart and Chief Justice Burger rejected both the constitutional and the statutory basis. 398 U.S. at 367.

[210] 401 U.S. 437 (1971).

[211] 401 U.S. at 449.

[212] 401 U.S. at 450.