

THE SUPREME COURT OF WASHINGTON

BRIAN HEYWOOD, et al.,
Petitioners,
v.
STEVEN HOBBS,
Respondent.

No. 105220-1

ORDER

The 2026 Legislature passed and the Governor signed Engrossed Substitute Senate Bill 6346, Chapter 238, Laws of 2026 (ESSB 6346), establishing a new tax commonly referred to as the “millionaire’s tax.” Section 1208 of ESSB 6346 states: “The tax imposed in this act is necessary for the support of the state government and its existing public institutions.” Petitioners Brian Heywood and Let’s Go Washington filed this petition for a writ of mandamus asking the court to invalidate the legislature’s declaration in Section 1208 and direct the Secretary of State to process their proposed referendum on the new tax. Their petition concerns only whether ESSB 6346 is subject to a referendum, not the constitutionality of the tax. That issue is not before us in this case.

To decide whether a law passed by the legislature is subject to popular referendum, we look to the Washington State Constitution. When Washington became a state in 1889, our constitution set out three branches of government: legislative, executive and judicial. Article II, section 1 initially vested all legislative power in the elected legislature, consisting of the senate and house of

representatives. In 1912, the people ratified Amendment 7 to the constitution. That Amendment provides a “fourth element [to the three branches of government], the people, reserving the right to assert its will over the legislative department of the government” through the powers of initiative and referendum. *Wash. State Farm Bureau Fed’n v. Reed*, 154 Wn.2d 668, 676, 115 P.3d 301 (2005) (quoting *State ex rel. Brislawn v. Meath*, 84 Wash. 302, 318, 147 P. 11 (1915)) (alteration in original). “However, this constitutional grant of power to the people is not without limitations.” *Id.* Relevant to the referendum power, article II, section 1(b) carves out two separate and distinct exceptions. First, it exempts from referendum laws that are “necessary for the immediate preservation of the public peace, health, or safety,” and second, it exempts laws that are “necessary for the . . . support of the state government and its existing public institutions.”

While the term “emergency clause” has long been used “as a shorthand reference” to both exceptions, *Eyman v. Hobbs*, 5 Wn.3d 653, 655 n.1, 579 P.3d 27 (2025) (Stephens, C.J., plurality), we have consistently recognized that they operate independently. *Farm Bureau*, 154 Wn.2d at 673-74 (“Both provisions are generally referred to as the ‘emergency clause’; however, the second exception does not require either immediacy or an emergency.”). Perhaps a more accurate label for the second exception is the “support of state government” exception, while the first exception is better described as the “police power exception.” Jeffrey Even, *Direct Democracy in Washington*, 32 GONZ. L. REV. 247, 282-88 (1996/97) (using these descriptions because “the phrase [emergency clause] obscures important distinctions between types of legislation that are not subject to referendum”).

A legislative declaration that a bill is subject to one of these two exceptions carries great weight. Such a declaration is subject to judicial invalidation only if “on its face, [it] is obviously

false and a palpable attempt at dissimulation.”” *In re Recall of Steve Hobbs*, No. 104322-8, at 4 (quoting *State ex rel. Hamilton v. Martin*, 173 Wash. 249, 257, 23 P.2d 1 (1933)). Judicial review is appropriately restrained because it would be a “usurpation on the part of any court” to subject to referendum legislation that was validly enacted by the people’s duly elected representatives to address “maintenance of the existing activities of the state.” *State ex rel. Blakeslee v. Clausen*, 85 Wash. 260, 270-71, 148 P. 28 (1915); *see also Recall of Steve Hobbs* at 4-5 (recognizing that our substantial deference to legislative declarations “aims to avoid separation of powers concerns”).

The parties agree that this case involves only the “support of state government” exception to the referendum, which does not require a showing of immediacy or an emergency to be valid. For over 100 years, the court has recognized that article II, section I “use[s] the word ‘support’ in its fullest sense,” encompassing revenue-generating measures and appropriation measures for the support of existing institutions of state government. *Blakeslee*, 85 Wash. 260 at 270 (“necessary” for “support” includes but is not limited to current expenses and also includes “maintenance, upkeep, continuation of existing functions, as well as appropriations for such new buildings and conveniences as may be necessary to meet the needs and requirements of the state in relation to its existing institutions”). We have long held that such laws are not subject to popular referendum. *See, e.g., State ex rel. Reiter v. Hinkle*, 161 Wash. 652, 657-58, 297 P. 1071 (1931) (“Statutes levying taxes are laws for the ‘support of the state government and its existing public institutions’ to the same or even a greater extent than are appropriation bills. Tax laws provide the funds from which the moneys appropriated are drawn.”); *State ex rel. Pennock v. Coe*, 42 Wn.2d 569, 585, 257 P.2d 190 (1953) (bill designed to reduce the cost of administering public assistance was part of a legislative plan to create “savings [which] are necessary for the support of government and its

existing public institutions”); *State ex rel. Hoppe v. Meyers*, 58 Wn.2d 320, 327, 363 P.2d 121 (1961) (“[S]tatutes levying taxes are laws for the support of the state government and its existing institutions[.]”); *Farris v. Munro*, 99 Wn.2d 326, 337, 662 P.2d 821 (1983) (emergency clause valid because underlying bill was “designed to produce revenue for the state general fund which in turn supports all of the existing state institutions”); *Andrews v. Munro*, 102 Wn.2d 761, 765-66, 689 P.2d 399 (1984) (bill that simultaneously raised revenue and cut taxes was “necessary” for the support of state government); *Farm Bureau*, 154 Wn.2d at 674 (“The word ‘support’ is not limited to appropriation measures but encompasses anything that generates revenue for the state.”).¹

ESSB 6346 undisputedly generates revenue for the state’s existing institutions and hence is similarly subject to the “support of state government” exception to the referendum power in article II, section 1. The petitioners’ argument that the legislation is not necessary to support state government overlooks the similarities between this bill and the revenue generating measures we have consistently held are exempt from referendum. In reaching this determination, we examine the act as a whole and consider only “what appears upon the face of the act, aided by [our] judicial knowledge.” *State ex rel. Hamilton v. Martin*, 173 Wash. 249, 257, 23 P.2d 1 (1933); *Andrews*, 102 Wn.2d at 765 (“[T]o determine whether an act of the Legislature is subject to referendum we must consider the act as a whole, not piecemeal.”). ESSB 6346 provides for the elimination and phasing out of some current taxes as well as the creation and implementation of a new tax, with the revenues

¹ In one case, *State ex rel. Burt v. Hutchinson*, 173 Wash. 72, 21 P.2d 514 (1933), we determined that the Horse Racing Act was not exempt from referendum despite a provision that generated revenue for an old age pension fund. We concluded that “the creation of a fund for old age pensions is a mere incident to the Horse Racing Act” and that old age pensions were not “an ‘existing institution’ of the state at the time the emergency clause was written into the Horse Racing Act.” *Burt*, 173 Wash. at 75-76 (“This is neither a police measure, nor an appropriation act, nor an act in support of an existing state institution.”).

to be deposited “in the state general fund” to fund the bill’s tax relief provisions and to “to make public investments in K-12 education, health care, human services, and higher education.” ESSB 6346 § 202.² Much like the legislation that we found necessary to support existing institutions of state government in *Andrews*, the 93 sections of ESSB 6346 “comprise a comprehensive system of taxation . . . with the clear purpose of raising revenue.” 102 Wn.2d at 765. Our inquiry into whether the measure is subject to referendum under article II, section 1 is limited, and as noted, it does not concern the policy merits of ESSB 6346 or whether it is subject to constitutional challenge.

Consistent with the words of the constitution and our unbroken line of precedent, we hold that ESSB 6346 falls within the exception for laws that are “necessary for the . . . support of the state government” and not subject to referendum under article II, section 1. Accordingly, a writ of mandamus may not issue because the Secretary of State has no mandatory, nondiscretionary duty to process the petitioners’ proposed referendum. *Colvin v. Inslee*, 195 Wn.2d 879, 894, 467 P.3d 953 (2020) (no writ of mandamus may issue absent proof that “a government official has a clear duty to act”).

Now, therefore, it is hereby

ORDERED:

The petitioners’ request for a writ of mandamus is denied.³

² Our precedent rejects the petitioners’ argument that ESSB 6346 must operate within the 90-day window provided in article II, section 1(c) to meet the “support” exception. *See Farm Bureau*, 154 Wn.2d at 673-74 (“‘support’ exception does not require either immediacy or an emergency”); *State ex rel. Helm v. Kramer*, 82 Wn.2d 307, 313, 510 P.2d 1110 (1973) (“‘immediate’ does not qualify the words ‘support of the state government and its existing institutions’ but only qualifies the words ‘preservation of the public peace, health and safety’”).

³ The parties filed motions to submit supplemental briefs addressing an email from Solicitor General Noah Purcell to Senator Jamie Pedersen. We deny these motions, limiting our review to

DATED at Olympia, Washington this 4th day of May, 2026.


CHIEF JUSTICE

On Behalf of the Court Per Curiam