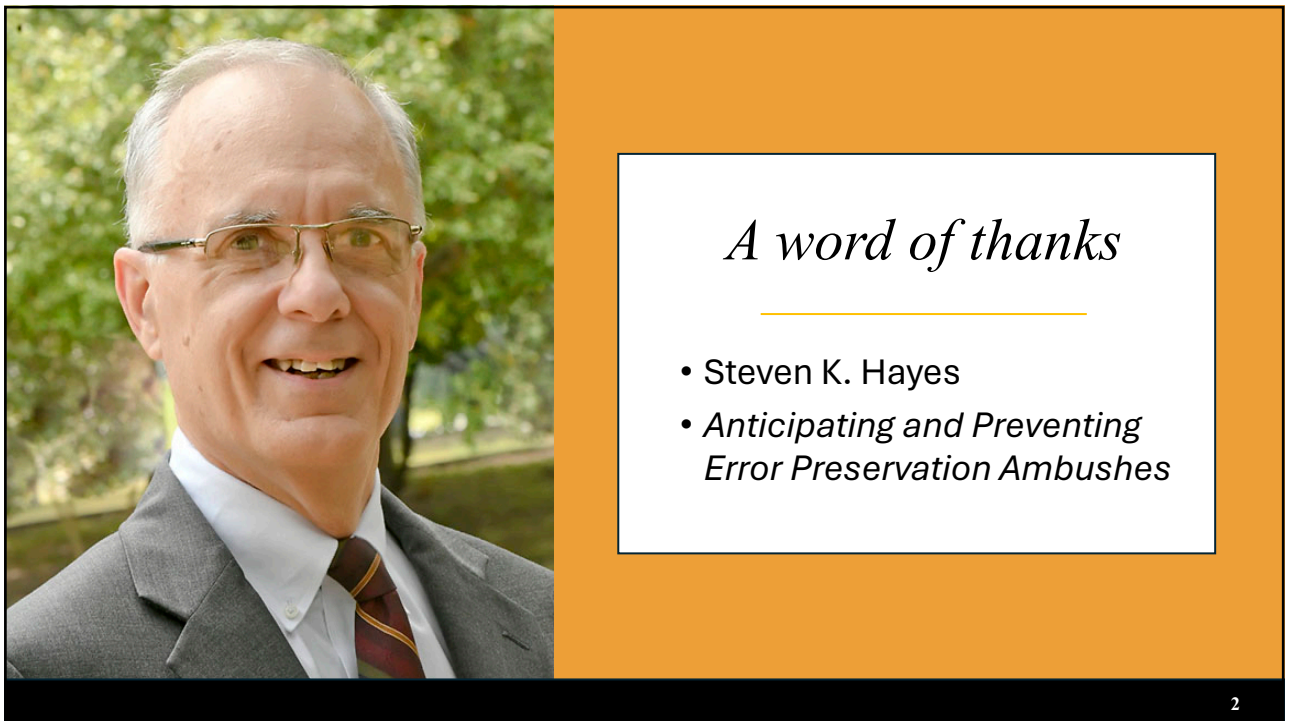




1

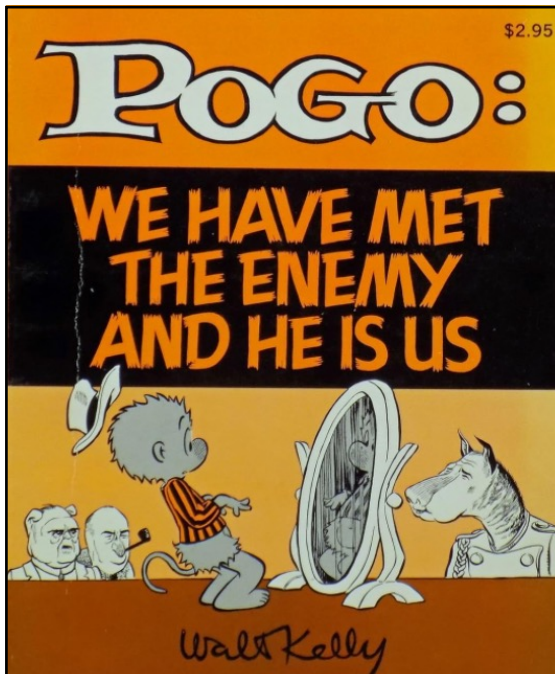


2

What is the purpose of error preservation?

3

3



Ambushes

"New" arguments

- *Government immunity*

"Other stuff"

4

4

Texas Department of Transportation v. Mark Self and Birgit Self

This last conclusion was error for two reasons. First, TxDOT's "paid service" argument was not waived and should have been considered. As subject-matter jurisdiction is never presumed and cannot be waived, see *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-44 (Tex. 1993), the issue can "be raised for the first time on appeal by the parties or by the court,' [and] a court is *obliged* to ascertain that subject matter jurisdiction exists regardless of whether

No. 22-0585, 67 Tex. Sup. Ct. J. 759

5

5

Texas Department of Transportation v. Mark Self and Birgit Self

the parties have questioned it." *Univ. of Tex. Sw. Med. Ctr. at Dallas v. Loutzenhiser*, 140 S.W.3d 351, 358-59 (Tex. 2004) (citations omitted). Thus, an appellate court's review of a plea to the jurisdiction is not limited to the grounds set forth in the governmental unit's plea in the trial court. *Dallas Metrocare Servs. v. Juarez*, 420 S.W.3d 39, 41 (Tex. 2013) ("[A]n appellate court must consider all of a defendant's immunity arguments, whether the governmental entity raised other jurisdictional arguments in the trial court or none at all."); see also *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95-96 (Tex. 2012).

No. 22-0585, 67 Tex. Sup. Ct. J. 759

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Preservation of Error Update

Also available as part of the eCourse

[2024 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the 34th Annual Conference on State and Federal Appeals session "Preservation of Error Update"