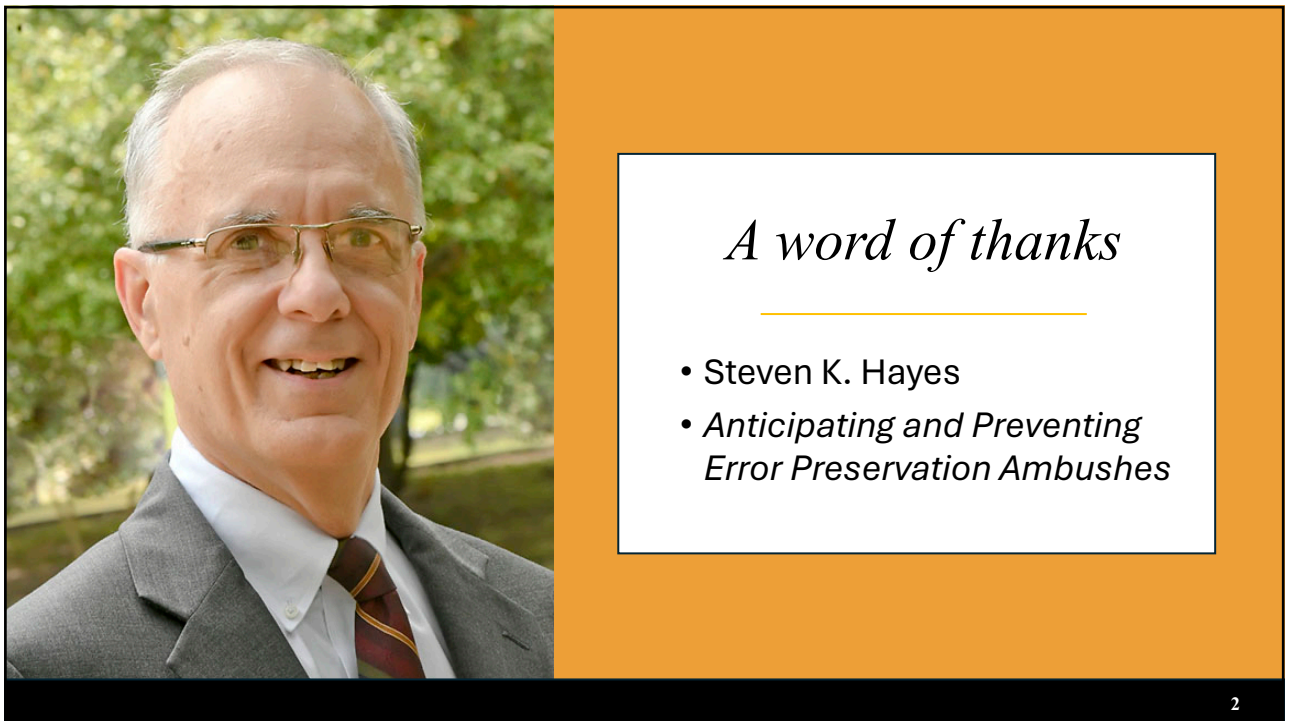




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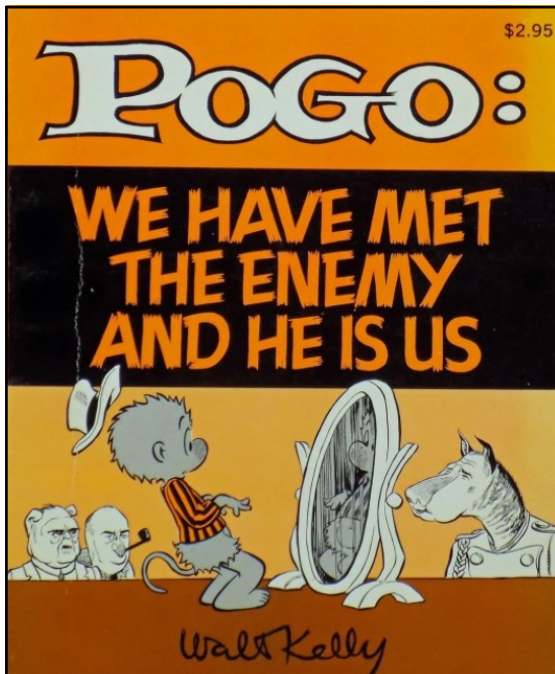


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*What is the purpose of error preservation?*

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## Ambushes

**"New" arguments**

- *Government immunity*

**"Other stuff"**

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*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

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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).

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