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Fifth Circuit Affirms Shareholder Veto of Chapter 11 Petition

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“Federal law does not prevent a bona fide shareholder from exercising its right to vote against a bankruptcy petition just because it is also an unsecured creditor,” held the U.S. Court of Appeals for the Fifth Circuit in *Franchise Services of North America, Inc.* on May 22, 2018. According to the court, applicable Delaware law would not “nullify the shareholder’s right to vote against the bankruptcy petition.” Appellate courts have regularly rejected creditors’ attempts to contract away the debtor’s right to seek bankruptcy relief. But this case, on its facts, does not fall into that category. In this article, of counsel Michael Cook discusses the appellate court’s decision.

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