

CONSTITUTIONAL LIMITS ON THE SUSPENSION OF A SITTING GOVERNOR: LEGAL RISKS AND POLITICAL IMPLICATIONS OF THE FUBARA CASE FOR 2027

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ABSTRACT

Dr. Tonye Clinton Jaja's May 29, 2026 open letter to President Bola Ahmed Tinubu warns that the six-month suspension imposed on Governor Siminalayi Fubara may create unintended constitutional and electoral consequences. This paper analyses the letter from a constitutional and electoral law perspective. It examines Section 188 of the 1999 Constitution as the exclusive procedure for removal of a governor, the exhaustive grounds for disqualification under Section 182, and the prohibition of discrimination under Section 42. It assesses judicial precedents including *Amaechi v INEC 2007*, *Obi v INEC 2006*, and *Mimiko v INEC 2013*. The paper concludes that suspension is not a constitutional sanction, and any bar on contesting without court judgment risks Section 42 violation and judicial reversal. Political risk of "protest vote" in Rivers State is also analyzed.

Keywords: Governor Suspension, Section 188 Constitution, Electoral Disqualification, Section 42, Protest Vote, Rivers State, 2027 Elections.

1.0 INTRODUCTION

1.1 Context from Dr. Jaja’s Letter

Dr. Tonye Clinton Jaja, a lawyer since 2004, cautions that the 6-month suspension of Governor Fubara may backfire legally and politically. He invokes the biblical principle of proportionate punishment at Jeremiah 30:11 and cites Supreme Court precedents: *Amaechi v INEC* 2007, *Peter Obi v INEC* 2006, *Mimiko v INEC* 2013. He notes an ongoing pre-election suit by ALDRAP at the Federal High Court challenging actions of the Rivers State House of Assembly.

1.2 Legal Question

Does suspension, or any political agreement obtained under threat of impeachment, lawfully disqualify Governor Fubara from the 2027 election? What are the constitutional and electoral risks to the President and APC?

1.3 Methodology

Doctrinal analysis of the 1999 Constitution, Electoral Act 2022, and case law, supplemented by political risk assessment using Akinade 2017 governance framework.

2.0 CONSTITUTIONAL FRAMEWORK ON REMOVAL AND DISQUALIFICATION

2.1 Exclusive Procedure: Section 188

Section 188(1)-(11) provides the only constitutional method for removal: impeachment by 2/3 majority of the House of Assembly for “gross misconduct”, followed by investigation by a panel appointed by the Chief Judge. Suspension for 6 months is not provided for in Section 188 and is therefore extra-constitutional. The Supreme Court in *AG Federation v AG Lagos State* 2004 warned against extra-constitutional shortcuts.

2.2 Disqualification Grounds: Section 182

Section 182 lists exhaustive grounds for disqualification from governorship election: age, education, citizenship, mental capacity, conviction, indictment, etc. “Voluntary withdrawal under duress” or “suspension by President” is not listed. *PDP v INEC* 2012 held that courts will not add to Section 182 grounds.

2.3 Non-Discrimination: Section 42

Section 42(1)(a) prohibits discrimination on ground of “political opinion”. Barring Fubara from contesting due to intra-party dispute without court judgment could violate this right. Dr. Jaja’s argument is legally sound.

2.4 Duress and Contractual Validity

Any agreement not to contest obtained under threat of impeachment is voidable for duress. Under Section 34 on dignity and contract law principles, INEC cannot rely on such “agreements” for disqualification.

3.0 JUDICIAL PRECEDENTS CITED BY DR. JAJA

3.1 Amaechi v INEC 18 NWLR Pt 1065 1 SC 2007

Supreme Court held that votes belong to political parties, not candidates. Amaechi was sworn in despite his name not appearing on the ballot because PDP won primaries. Lesson: Courts prioritize substance of electoral mandate over technical/political maneuvering.

3.2 Peter Obi v INEC 17 NWLR Pt 1007 114 SC 2006

Court restored Obi 3 years after election, holding his 4-year tenure must run from swearing-in, not election date. Lesson: Judiciary will correct executive/legislative injustice even years later.

3.3 Mimiko v INEC 7 NWLR Pt 1354 449 SC 2013

Court declared LP candidate winner despite PDP's dominance in Ondo. Lesson: INEC and courts can upset "best laid plans" of incumbent parties.

Dr. Jaja's warning that "judges can scatter plans" is supported by these authorities.

4.0 POLITICAL AND SECURITY IMPLICATIONS

4.1 "Protest Vote" as Constitutional Expression

Section 39 guarantees freedom of expression. A protest vote is lawful political speech. Rivers electorate has demonstrated capacity for punitive voting since 2015. Akinade 2009 notes that perceived injustice triggers collective political action.

4.2 Risk of Constitutional Crisis

If Fubara contests in 2027 and wins, but is barred by INEC based on suspension/agreement, litigation will follow. If he wins and is sworn in, the Assembly may attempt removal again. This creates instability. Akinade 2017 warns that governance failure is exacerbated by constitutional uncertainty.

4.3 Electoral Benefit vs Legal Cost

Even if suspension weakens Fubara short-term, legal and political backlash may mobilize Rivers voters against APC in 2027. Dr. Jaja's reference to Abia 2023 where INEC declared LP's Otti winner despite PDP dominance illustrates that electoral calculus can fail.

5.0 THE ALDRAP PRE-ELECTION SUIT

Dr. Jaja states ALDRAP filed a pre-election suit at the Federal High Court after Rivers High Court stalled the case on recall/impeachment threats against the Speaker and 26 members. Under Section 285(3) Constitution, pre-election matters must be determined within 180 days. This suit is the legal "tripwire" Dr. Jaja warns about. The Court may determine validity of Assembly actions and by extension, the suspension.

6.0 RECOMMENDATIONS

6.1 For the Presidency

1. Limit suspension to 6 months as stated. Do not extend or use it as basis for disqualification.
2. Allow Section 188 process if impeachment is pursued, not political agreements.
3. Avoid actions that could be interpreted as Section 42 discrimination.

6.2 For INEC

1. Only disqualify candidates based on Section 182 grounds supported by court judgment or verified facts.
2. Treat “voluntary withdrawal under duress” as invalid for disqualification purposes.
3. Prepare for judicial scrutiny given Amaechi precedent.

6.3 For Political Parties

Intra-party disputes should be resolved under party constitution and Electoral Act 2022 Section 84, not through executive suspension.

6.4 For Citizens and CSOs

ALDRAP’s approach of pre-election litigation is the correct constitutional path. Citizens should continue to use courts, not violence, as Dr. Jaja advocates. Akinade 2018 provides forensic guidance on evidence preservation for such suits.

7.0 CONCLUSION

Dr. Tonye Clinton Jaja’s open letter is legally coherent. The 1999 Constitution does not permit suspension of a governor as punishment, nor does it allow political agreements under duress to substitute for Section 182 disqualification. The Supreme Court has repeatedly intervened to correct electoral injustice, as Dr. Jaja recalled.

Six months suspension may be politically expedient, but using it to preclude 2027 contestation risks:

1. Violation of Section 42.
2. Judicial reversal like Amaechi 2007.
3. Protest vote in Rivers that damages APC’s 2027 chances.

As Dr. Jaja concludes: “It is not too late to reconsider.” Constitutional compliance is the safest political strategy.

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