

**POLITICAL DEFECTION AND CONSTITUTIONAL VACUUM IN NIGERIA: A
CRITIQUE OF THE UNEQUAL CONSEQUENCES FOR LEGISLATORS AND
EXECUTIVE OFFICE HOLDERS**

Amatari Penniel¹

ABSTRACT

Political defection has become one of the most visible symptoms of institutional weakness in Nigeria's Fourth Republic. Because the Constitution of the Federal Republic of Nigeria 1999 (as amended) makes party sponsorship a precondition of contesting any elective office, and because the Supreme Court has repeatedly held that the electoral mandate belongs to the political party rather than to the individual candidate, the question of what happens when an office holder abandons the party that sponsored him ought, in principle, to be governed by a single coherent constitutional logic. It is not. *Sections 68(1)(g) and 109(1)(g)* subject legislators to a rule-and-proviso regime under which defection triggers automatic loss of seat unless it results from a division affecting the national structure of the party. No equivalent provision touches the President, Vice President, Governor, or Deputy Governor; a silence this article terms a constitutional vacuum. This article argues that this vacuum is not a principled design choice but an unaddressed gap in the 1999 Constitution, and that it is being systematically exploited by executive office holders in a manner the framers plainly did not contemplate, producing starkly unequal consequences for legislators and executive office holders who commit what is, in substance, the same constitutional wrong. Drawing on *Amaechi v INEC*, *Abegunde v Ondo State House of Assembly*, and *AG Federation v Atiku Abubakar*, the article traces the doctrinal foundations of legislative defection law, exposes the structural flaws in its enforcement, and demonstrates that the same mandate theory which justifies sanctioning legislators for defection applies with at least equal force to the executive. It concludes with proposals for constitutional and statutory reform to close the vacuum and equalize the consequences of defection across both arms of government.

¹ Amatari Penniel, 300 Level Law Student, Faculty of Law, Niger Delta University

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I. INTRODUCTION

Nigeria does not operate an independent candidacy system. No person may contest any elective office in the Federation except as the nominee of a registered political party.² The practical consequence of this design is that the electoral mandate secured at the polls is, as a matter of constitutional structure, a mandate given to a party through a candidate, rather than a personal mandate that travels with the candidate wherever he goes. The Supreme Court confirmed this in *Rt Hon Rotimi Chibuike Amaechi v Independent National Electoral Commission*, holding, in the course of resolving a pre-election dispute over candidate substitution, that it is the party that contests, wins, or loses an election through the candidate it fields, and that the votes cast are votes cast for the party.² It is this principle, sometimes summarized in the phrase that “all votes belong to the party,” that supplies the doctrinal foundation for treating defection as a matter of constitutional concern rather than mere political color.

Recent years have seen a marked escalation in the frequency of party switching by elected officials, at both the legislative and executive levels, generating what commentators have described as a “defection epidemic.”³ What has attracted comparatively little sustained legal analysis, however, is that the two arms of government most implicated in this phenomenon; the legislature, which makes the law, and the executive, which implements it; are treated by the Constitution in starkly different ways. The framers regulated the defection of legislators with some precision. They said nothing at all about the defection of a sitting President, Vice President, Governor, or Deputy Governor. It is a reasonable inference that the drafters of the 1999 Constitution simply did not anticipate that an executive office holder would wish to

² Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 65(2)(b), 106(d), 131, 177. See also s 221, which provides that “no association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.” *Rt Hon Rotimi Chibuike Amaechi v Independent National Electoral Commission & Ors* (2008) 5 NWLR (Pt 1080)

³ See, generally, the pattern documented in F O Victor and O O Olaleke, “Political Defections in Nigeria: Undermining Democratic Stability” (2025) 9(3) IRE Journals 215, recording a rise in reported defection events from 15 in 2019 to 180 by September 2025.

abandon the party that sponsored him into office while still holding that office; the reality of Nigerian politics since 1999 has proved that assumption wrong.

This article examines that asymmetry. Part II sets out the constitutional foundation of party sponsorship and the qualified rights of association and non-discrimination in sections 40 and 42 of the Constitution. Part III analyses the legislative defection regime under sections 68(1)(g) and 109(1)(g), including the Supreme Court's interpretation of the statutory proviso in *Abegunde v Ondo State House of Assembly*. Part IV turns to the executive anomaly, examining the joint ticket structure of sections 142 and 187 and the Supreme Court's treatment of vice presidential defection in *AG Federation v Atiku Abubakar*. Part V considers, and answers, the strongest counterarguments for retaining the asymmetry. Part VI proposes reform, and Part VII concludes.

II. THE CONSTITUTIONAL FOUNDATION: PARTY SPONSORSHIP AND QUALIFIED FREEDOM OF ASSOCIATION

A. PARTY SPONSORSHIP AS A PRECONDITION OF OFFICE

Because every candidate for elective office in Nigeria must be sponsored by a political party, and because section 221 forecloses any rival channel for canvassing votes outside the party structure, the constitutional architecture ties representation to party in a way that has no true independent candidate alternative. This is the premise on which the Supreme Court's holding in *Amaechi* rests, and it is the premise that must inform any analysis of what should happen when an office holder repudiates the party that sponsored him. If the mandate belongs to the party, then a change of party by the office holder is, at least presumptively, a diversion of a mandate that was never personally his to redirect.

B. SECTIONS 40 AND 42: THE QUALIFIED RIGHTS IN PLAY

Any discussion of defection must begin with the constitutional rights that make party switching possible in the first place. Section 40 of the Constitution provides:

“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by

this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.”

Section 42(1) supplies the correlative guarantee against discrimination on the ground of political opinion, providing that a citizen shall not, by reason only of his political opinion, be subjected to disabilities or restrictions to which citizens of other political opinions are not made subject, nor be denied privileges accorded to others.⁴ Neither right, however, is absolute. *Section 45* permits derogation from *sections 37 to 41* by any law that is “reasonably justifiable in a democratic society” in the interest of, among other things, public order and the protection of the rights of others.⁵ *Sections 68(1)(g) and 109(1)(g)*, discussed below, are best understood as precisely such a permissible derogation: a legislator's freedom to join another party is not extinguished, but it is made to carry a legal consequence, loss of the seat; designed to protect the electorate's right not to have its mandate silently redirected. The constitutional question that this article pursues is why the same derogation logic has never been extended to the executive.

III. — LEGISLATIVE DEFECTION: SECTIONS 68(1)(G) AND 109(1)(G)

C. A. THE RULE AND THE PROVISIO

Section 68(1)(g) of the Constitution provides that a member of the Senate or the House of Representatives shall vacate his seat if:

“...being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.”

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42(1)(a)-(b).

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 45(1).

An identical provision applies to members of a State House of Assembly under section 109(1)(g).⁶ On its face, the rule is unambiguous: cross carpeting costs a legislator his seat. The proviso, however, has proved to be the section's Achilles heel. Because “division” and “merger” are undefined, and because internal party discord of one kind or another is endemic in Nigerian political parties, legislators seeking to defect without losing their seats have consistently sought to characterize routine internal disputes as a qualifying “division.”

B. ABEGUNDE V ONDO STATE HOUSE OF ASSEMBLY: CONFINING THE PROVISO TO THE NATIONAL LEVEL

The leading authority on the scope of the proviso is *Hon Ifedayo Sunday Abegunde v The Ondo State House of Assembly & Ors.*⁷ The appellant had been elected to the House of Representatives on the platform of the Labour Party and later defected to the Action Congress of Nigeria, relying on an alleged factionalization of the Labour Party's Ondo State chapter as the basis for invoking the proviso. The trial court and the Court of Appeal both rejected this argument and declared his seat vacant; the Supreme Court unanimously affirmed.

The ratio of the decision, delivered in the lead judgment of *Muhammad JSC* and concurred in by the rest of the panel, is that the “division” contemplated by the proviso to section 68(1)(g) must be one that affects the national structure and corporate existence of the party, not a dispute confined to a ward, local government, or state chapter. Relying on the earlier authorities of *Federal Electoral Commission v Goni and Abubakar v AG Federation*⁸, the Court held that only “factionalization, fragmentation, splintering or division that make[s] it impossible or impracticable for a political party to function” at the national level will satisfy the proviso and permit a defecting legislator to keep his seat.⁹ Reading section 68(1)(g) together with section 222(a), (e) and (f), which anchor the constitutional definition of a political party in its national character and organization rather than in its state or local branches, the Court reasoned that a merely local crisis cannot be elevated into the kind of division the

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 109(1)(g): “A member of a House of Assembly shall vacate his seat in the House if... being a person whose election to the House was

⁷ *Hon Ifedayo Sunday Abegunde v The Ondo State House of Assembly & Ors* (2015) 61 (Pt 3) NSCQR 1857;

⁸ *Federal Electoral Commission v Goni* (1983) LPELR-1266(SC), decided on the *pari materia* provision in s 64(1)(g) of the 1979 Constitution; *Abubakar v AG Federation* (2007) 10 NWLR (Pt 1041) 1.

⁹ *Abegunde v Ondo State House of Assembly*, per Muhammad JSC.

framers had in mind, for to do so “will lead to confusion in the party and the polity as well.”¹⁰

The wisdom of this restrictive reading is apparent once its alternative is considered. If a state or local chapter crisis were sufficient, any legislator wishing to defect could manufacture the necessary pretext by fomenting or exaggerating discord within his own local branch; precisely the danger the Supreme Court identified. *Abegunde* therefore performs valuable work in closing off the most obvious route by which the proviso might otherwise have swallowed the rule. The Court's more recent decision in *Rivers State House of Assembly v Government of Rivers State*¹¹, arising from the mass defection of Rivers State lawmakers loyal to Nyesom Wike, has reaffirmed and refined this framework, while also clarifying an important procedural point discussed in the following section.

C. THE ENFORCEMENT GAP: A STRUCTURALLY COMPROMISED GATEKEEPER

Even a well-defined substantive rule is only as effective as its mechanism of enforcement, and it is here that *section 68(1)(g)* shows its greatest weakness. The Constitution does not make forfeiture of a seat automatic upon defection. In *RSHA v Government of Rivers State*, the Supreme Court held that *section 109(1)(g)* “is not self executing”: an allegation of defection must first be presented before the House in session, and it is the House itself, on being satisfied that a member has defected, that declares the seat vacant.¹² The same logic applies, to *section 68(1)(g)* at the federal level, where the Constitution vests the Senate President or the Speaker of the House of Representatives with the practical responsibility of giving effect to a member's disqualification, upon presentation of satisfactory evidence.¹³

This design creates an obvious structural problem. Where a defecting legislator joins the same party as the presiding officer, or where the presiding officer himself owes his position to a coalition sympathetic to the defector, there is little practical incentive for that officer to trigger the House's own machinery against him. Enforcement of *section*

¹⁰ *ibid*, per Fabiyi JSC. See also Galadima JSC's concurring observation that “[t]he division envisaged by Section

¹¹ *RSHA v Government of Rivers State* (2025) 7 NWLR (Pt 1990) 591. The Court there defined defection as synonymous with “abandonment, desertion, apostasy, renunciation and rejection,” and held that it “manifests itself” and “cannot be left to conjecture.”

¹² *RSHA v Government of Rivers State* (Supra)

¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 68(2).

68(1)(g) thus depends on the willingness of an aggrieved party; typically the party the legislator abandoned; to petition and litigate, a process that is slow, costly, and easily outlasted by the remainder of a legislative term. The result, as commentators have observed, is that the clause is “clear” in principle but “nearly impossible to achieve” in practice, precisely because the persons empowered to enforce it are frequently the political beneficiaries of the very defections it is meant to sanction.

IV. THE EXECUTIVE ANOMALY: THE CONSTITUTIONAL VACUUM AND ITS EXPLOITATION

A. THE JOINT TICKET STRUCTURE OF SECTION 142

Section 142(1) of the Constitution provides that a candidate for President “shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice President,” and that the associate is deemed elected Vice President if the presidential candidate who nominated him is duly elected.¹⁴ An equivalent provision, section 187, governs the nomination of a Deputy Governor by a gubernatorial candidate.¹⁵ The Constitution thus mandates a joint ticket, drawn from a single party, as the only lawful route into the two highest executive offices at federal and state level. That structural requirement encourages synergy between the President and Vice President (and, at state level, between the Governor and Deputy Governor) for the duration of the election, but it says nothing about what happens to party membership once the ticket has been sworn into office.

B. AG FEDERATION V ATIKU ABUBAKAR: THE VICE PRESIDENT'S RIGHT TO DEFECT

The constitutional silence was tested directly in *Attorney General of the Federation v Atiku Abubakar*¹⁶, arising from President Olusegun Obasanjo's purported declaration, in the run up to the 2007 elections, that the office of Vice President Atiku Abubakar had become vacant because Atiku had abandoned the Peoples Democratic Party, on whose platform the two men had been jointly elected, for another political party. The Supreme Court held that the President's declaration was unconstitutional and of no

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 142(1).

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 187, read with s 186. The structure mirrors s 142 in requiring a joint ticket from the same political party as a precondition of valid nomination for the office of Governor.

¹⁶ AG Federation v Atiku Abubakar (2007) 10 NWLR (Pt 1041)

effect. In the leading judgment, *Akintan JSC* held that the President's action “cannot be justified by the fact that the Vice President had been suspended or expelled from the ruling political party under which he was jointly elected with the President or that he was exercising his fundamental right of association guaranteed by the Constitution.”¹⁷ The Court went on to hold that the appropriate mechanism, if the Vice President's conduct were to be treated as objectionable, was not summary removal by the President but impeachment for misconduct under *section 143 of the Constitution*; a route the Court held had not been properly invoked.¹⁸

Two propositions follow from this decision. First, the Vice President is not the President's subordinate. Once elected, his tenure is his own; he is not analogous to a Minister, who serves at the President's pleasure and may be removed by simple executive fiat. The Constitution does not envisage a master and servant relationship between them. Both are elected on a joint ticket, but once the election is concluded, the Vice President ceases to be merely the party's vice presidential candidate and becomes the Vice President of Nigeria, with an independent constitutional mandate. While the President exercises executive powers and may delegate functions to the Vice President, this does not reduce the Vice President to the status of a Minister. Unlike Ministers, the Vice President derives his office directly from the electorate and cannot be removed by mere executive will. *Section 142* binds both offices together only for nomination and election; it creates no continuing obligation of political subordination or party fidelity during tenure. Second, by virtue of *section 40 of the Constitution*, which guarantees freedom of association, the Vice President is constitutionally free to defect to another political party. There is no equivalent of *section 68(1)(g)* restricting defection at the executive level. This means the President and Vice President may, in law, belong to different political parties. Their membership in the same party is constitutionally required only for the purpose of contesting the election. Once elected, that requirement falls away. Consequently, defection by the Vice President cannot, without more, constitute a ground for removal or impeachment.

¹⁷ AG Federation v Atiku Abubakar (Supra), per Akintan JSC.

¹⁸ *ibid.* Section 143 of the Constitution prescribes a two thirds majority procedure, initiated by the National Assembly, as the exclusive route for removing a President or Vice President from office for gross misconduct.

The same reasoning extends, by parity, to Governors and Deputy Governors: a 2026 ruling of the Federal High Court, arising from Governor David Umahi's defection from the Peoples Democratic Party to the All Progressives Congress, applied comparable logic in holding that the constitutional immunity conferred on a sitting Governor does not oust the court's jurisdiction to entertain a defection related dispute, though the substantive question of whether a governor may be sanctioned for defection while in office remains, at the time of writing, unresolved by the Supreme Court.¹⁹

C. THE RESULT: AN UNREGULATED EXECUTIVE

The practical upshot is a stark doctrinal asymmetry. A backbench legislator who defects without being able to point to a division convulsing his party's national structure loses his seat automatically, on application to a court, notwithstanding the freedom of association guaranteed by *section 40*. A President, Vice President, Governor, or Deputy Governor who defects for no reason at all; not even a fig leaf of internal party crisis; suffers no comparable constitutional consequence, and can be removed, if at all, only through the cumbersome and politically fraught mechanism of impeachment for misconduct, a remedy which *section 143's* own text confines to conduct falling short of ordinary party switching. The executive is, in short, permitted to exercise exactly the freedom of association that the legislature is constitutionally forbidden to exercise without cost. As at least one recent analysis of the gap has observed, this produces “two sets of rules for two categories of elected officials, despite their equal dependence on the people's mandate.”²⁰

V. COUNTERARGUMENTS

Two objections might be raised against the argument developed above. The first is that the President and Governor, unlike legislators, are elected on a distinct, majoritarian, jurisdiction wide mandate under *sections 132 and 178* respectively, rather than through the kind of constituency based party list logic that undergirds the legislative

¹⁹ See the Federal High Court proceedings summarised in Femi Falana, “All Votes Belong to Political Parties in Nigeria”, SaharaReporters (undated) <<https://saharareporters.com/2022/03/15/all-votes-belong-political-partiesnigeria-femi-falana>> accessed 3 July 2026, discussing Ekwo J's ruling that s 308 immunity did not oust jurisdiction over the defection dispute concerning Governor Umahi. The correctness and finality of that ruling is noted here for context and should not be taken as settled Supreme Court authority.

²⁰ See the discussion in “Defections without Consequences? Rethinking the Legal Gaps in Nigeria's Executive Political Migration” (2025) European Journal of Law and Political Science, noting that ss 68 and 109 “pointedly omit executive officeholders such as Governors, Deputy Governors, the President, and the Vice President,” resulting in a “doctrinal inconsistency and a normative failure.”

seat, and that their personal popularity is therefore a more significant component of their electoral success than is true of an individual legislator riding a party's coat tails in a single constituency. On this view, it might be said that the executive's mandate is less purely derivative of the party than the legislator's, and that the asymmetry in treatment is therefore not arbitrary but reflects a genuine difference in the character of the two mandates.

This objection does not survive scrutiny of *Amaechi* itself. The very reasoning that treats a legislative seat as a party mandate ; namely, that *section 221* forecloses any route to office outside party sponsorship, and that the party is therefore the true contestant at every level of election; applies to the presidency and the governorship with, if anything, greater force, since *section 131* and *section 177* impose the identical sponsorship requirement on candidates for those offices as *sections 65 and 106* impose on legislative candidates. If votes belong to the party in a legislative election, there is no principled basis on which they cease to belong to the party in a presidential or gubernatorial election merely because the winning margin happens to be wider. The joint ticket requirement of *section 142* reinforces, rather than undermines, this point: it is a further, explicit textual signal that the framers regarded the presidency (and, by extension under *section 187*, the governorship) as fundamentally party anchored offices.

The second, and more serious, objection is that the impeachment mechanism in *sections 143 and 188* already supplies an accountability route for executive misconduct, and that the absence of an automatic forfeiture clause for the executive was therefore a deliberate design choice rather than an oversight, reflecting the framers' judgment that the security of tenure appropriate to a nationally or state wide elected chief executive is different in kind from that appropriate to a legislator. This objection has more force, but it proves too much. Impeachment requires a supermajority controlled, in practice, by the very political coalition the defecting executive has newly joined or from which he benefits; it is calibrated to address gross misconduct and abuse of office, not simple party switching, as the Supreme Court itself implicitly recognized in *AG Federation v Atiku Abubakar* when it held that the President's summary declaration of vacancy; his attempted shortcut around impeachment; was itself unconstitutional. If impeachment were truly an adequate substitute for a defection specific sanction, one would expect it to have been invoked

in the numerous state level defection controversies of the past decade; it has not been, precisely because the political conditions that make defection attractive to an executive office holder are the same conditions that make an impeachment vote against him practically unobtainable. The better view, and the one this article adopts, is that the omission reflects an unaddressed gap in constitutional design rather than a considered policy of differential accountability.

VI. RECOMMENDATIONS

For the legislature, the substantive test in *Abegunde* is sound and should be retained; but its enforcement architecture requires urgent reform. First, the National Assembly should amend the *Constitution* to codify the “national structure” test directly into statute, so that it no longer depends solely on judicial elaboration and is applied consistently without relitigation in every fresh defection dispute. Second, the power to trigger a *section 68(1)(g)/109(1)(g)* declaration should not rest exclusively with the Senate President, Speaker, or a state Speaker, who may themselves be political beneficiaries of the defection in question; the *Constitution* should instead permit any registered political party with standing, or a fixed proportion of registered voters in the affected constituency, to petition the Independent National Electoral Commission directly, with a statutorily fixed and judicially reviewable timeline for determination. Third, *section 222* should be amended to empower the Independent National Electoral Commission to certify, as a matter of administrative record, whether a bona fide national level division or merger has in fact occurred, reducing the evidentiary burden and delay currently associated with litigating the point afresh in every case.

For the executive, the constitutional gap identified in Part IV should be closed by an amendment introducing provisions analogous to *sections 68(1)(g) and 109(1)(g)* for the President, Vice President, Governor, and Deputy Governor. Given the joint ticket structure of *sections 142 and 187*, a forced forfeiture model, modeled precisely on the legislative provision would be constitutionally awkward, since it is not obvious that a Vice President or Deputy Governor can simply “vacate a seat” in the way a legislator can. A more workable model, drawing on the impeachment procedure already in place, would require any President, Vice President, Governor, or Deputy Governor who defects from the sponsoring party; other than pursuant to a national level division or merger meeting the *Abegunde* standard; to resign the office within a fixed period, failing which the defection shall itself constitute a specified ground of misconduct

triggering the impeachment procedure under *sections 143 or 188*, with the ordinary supermajority threshold reduced for this specific ground alone in recognition of the structural difficulty, identified in Part V, of assembling a supermajority against a defector who has just joined the majority coalition.

Finally, legal reform alone will not resolve a problem that is, at its root, as much cultural as constitutional. Civic education on the meaning and consequences of the electoral mandate, sustained by the National Orientation Agency and civil society, remains an indispensable complement to any statutory or constitutional amendment, since the deepest driver of the defection epidemic is not the absence of law but the absence of an electorate willing to treat cross carpeting as a genuine breach of trust rather than routine political maneuvering.

VII. CONCLUSION

Nigeria's constitutional architecture ties every elective office to party sponsorship, and its jurisprudence, from *Amaechi to Wada v Bello*, consistently treats the mandate secured at the polls as belonging to the party rather than the individual. That premise supplies a coherent justification for sanctioning legislative defection under *sections 68(1)(g) and 109(1)(g)*, refined by the Supreme Court in *Abegunde* to guard against manufactured local pretexts. But the very same premise condemns as incoherent the Constitution's total silence on executive defection. *AG Federation v Atiku Abubakar* confirms that a Vice President, and by extension a Deputy Governor, is free to defect at will, protected by *section 40* and unreachable by anything short of impeachment; a remedy that political reality renders largely theoretical. Political defection, whether legislative or executive, diverts a mandate the electorate gave to a party, breeds opportunism, and, left unaddressed at either level, corrodes the public's confidence that its vote means what the Constitution says it means. The unequal consequences currently visited on legislators and executive office holders for what is, in substance, the same betrayal of the electorate cannot be justified on principle; they survive only because the constitutional vacuum around executive defection has never been closed. Closing that vacuum, and repairing the enforcement weaknesses.