

## CANDIDATE QUALIFICATION IN THE ELECTORAL ACT 2026: FROM POST-ELECTION PETITIONS TO PRE-ELECTION SCRUTINY



**This Factsheet:** Examines how the Electoral Act 2026 moves candidate qualification disputes out of post-election petitions and into the pre-election phase, and what that means for parties, candidates, courts, and the integrity of electoral outcomes.

### Introduction

The Electoral Act 2026 introduces a significant restructuring of how candidate qualification disputes are addressed in Nigeria's electoral system, different from the 2022 predecessor Act. It removes qualification as a ground for post-election petitions while retaining and reinforcing pre-election mechanisms for challenging false information in nomination documents. Taken together, these changes shift the centre of gravity of qualification disputes from election tribunals to the pre-election phase, with important implications for political parties, candidates, courts, and electoral administration.

This reform responds to recurring controversies in recent electoral cycles, particularly during the 2023 election petition litigation cycle, where disputes relating to candidate nomination and party sponsorship were often reframed as qualification issues in post-election proceedings, generating some of the most complex and conflicting judicial decisions. In doing so, however, the Act forecloses post-election consideration of qualification issues.

## Key Implications of Removing Qualification as an Election Petition Ground

Benefits	Risks
<ul style="list-style-type: none"> <li>▪ <b>Clearer litigation boundaries:</b> Reduces overlap between pre-election and post-election disputes.</li> <li>▪ <b>Earlier resolution of disputes:</b> Encourages qualification issues to be raised and determined before elections.</li> <li>▪ <b>Reduced post-election litigation:</b> Limits the volume and complexity of qualification-based election petitions.</li> <li>▪ <b>Greater certainty of outcomes:</b> Narrows the grounds for challenging election results after declaration.</li> <li>▪ <b>Reduced judicial substitution:</b> Minimises court-imposed outcomes such as replacing winners.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>No post-election route for rival candidates to challenge qualification:</b> Candidates from other parties lose a key post-election avenue to question a winner's qualification, even where serious concerns later emerge.</li> <li>▪ <b>Perceived self-protective reform by political elites:</b> Risks being seen as shielding candidates from post-election scrutiny.</li> <li>▪ <b>Lower accountability for misrepresentation:</b> Weakens deterrence where qualification issues escape early challenge.</li> <li>▪ <b>Entrenched party gatekeeping:</b> Limits external oversight, concentrating enforcement within parties.</li> <li>▪ <b>Legitimacy risks:</b> Lingering doubts about a candidate's qualification undermines public trust.</li> <li>▪ <b>Potential exposure to disruptive rerun outcomes:</b> Candidates may face nullification through re-runs triggered by intra-party disputes to which they were not party.</li> </ul>

### I. Constitutional Foundations of Candidate Qualification

Candidate qualification in Nigeria is primarily governed by the *Constitution of the Federal Republic of Nigeria 1999*, which sets eligibility standards for elective office. These include requirements relating to citizenship, age, educational qualifications, political party sponsorship, and the absence of constitutional disqualifications (e.g., bankruptcy, allegiance to another country, or certain criminal convictions).

Key constitutional provisions include:

- **Presidential Elections:** Sections 131 & 137
- **National Assembly:** Sections 65 & 66
- **Governorship Elections:** Sections 177 & 182
- **State Houses of Assembly:** Sections 106 & 107

Because these requirements originate from the Constitution, disputes concerning qualification are matters of constitutional legality, not merely internal party affairs.

**Section 285** of the Constitution provides for the determination of pre-election disputes, including nomination and primary-related matters. It also establishes election petition tribunals to determine disputes arising from the conduct and outcome of elections.

In practice, this dual framework allowed qualification-related disputes to arise in both pre- and post-election litigation. The Electoral Act 2026 seeks to draw a clearer line by confining qualification disputes to the pre-election phase.

## **2. The Dual Litigation Framework Under the Electoral Act 2022**

Before the 2026 Act, the Electoral Act 2022, allowed qualification disputes to arise in two different procedural contexts:

- **Pre-Election Litigation: Section 29(5)** allowed an aspirant who participated in a party primary to challenge false information submitted by another aspirant in nomination documents.
- **Post-Election Petitions: Section 134(1)(a)** allowed a candidate who participated in an election to file an election petition on the ground that the winner was not qualified to contest the election at the time of the election.

Although **section 134(3)** of the 2022 Act sought to limit such claims – by clarifying that qualification disputes in post-election tribunals should only relate to constitutional requirements – this distinction was frequently blurred in practice. Petitioners still went ahead to frame party nomination disputes as qualification issues.

## **3. The Litigation Problem the 2026 Act Seeks to Address**

Qualification disputes were among the most contentious issues in the 2023 post-election litigation cycle and resulted in outcomes that attracted significant public criticism. Two categories of disputes dominated:

### **a. Party nomination and sponsorship disputes**

- whether a candidate was validly nominated, or
- whether a party properly sponsored the candidate.

### **b. Qualification disputes**

- educational qualification
- false affidavit declarations
- alleged constitutional disqualification (e.g. past criminal conviction, forged certificate, etc.)

**Section 134(1)(a)** of the 2022 Act – the ground relating to qualification – was frequently used to litigate issues extending beyond constitutional eligibility, including internal party processes such as the validity of congresses and primaries.

In several States such as Plateau and Imo, this led to conflicting decisions at the Tribunal and Court of Appeal levels. Some panels treated flawed primaries as undermining party sponsorship, thereby invalidating nominations and unseating declared winners. Others, however, held that such matters were internal party affairs and fell outside the jurisdiction of election tribunals.

#### 4. Judicial Clarification

In response to the conflicting decisions, the Supreme Court clarified key principles:

- Questions relating to party primaries, nomination, or sponsorship of candidates are pre-election matters and fall outside the jurisdiction of election petition tribunals.
- Once a party nominates a candidate, the constitutional requirement of sponsorship is deemed satisfied and cannot be challenged in post-election proceedings.
- However, tribunals may still entertain qualification issues grounded in constitutional requirements, such as citizenship or certificate forgery.

#### 5. The Electoral Act 2026: Removal of Qualification as a Petition Ground

To address disputes arising from the misuse of qualification in post-election litigation, **section 138** of the Electoral Act 2026 removes qualification as a ground for election petitions. Petitions are now limited to two grounds:

- corrupt practices or non-compliance with the Electoral Act, or
- failure to secure a majority of lawful votes.

##### *a. Legal consequence and emerging gap*

Election petitions must strictly fall within the grounds listed in the Electoral Act. Courts have consistently held that where a petition is based on grounds outside those provided by law, the tribunal lacks jurisdiction.

The implication is clear: Any petition raising qualification issues is likely to be struck out for lack of jurisdiction. By removing qualification entirely, the Act limits the ability of tribunals to address genuine constitutional defects that may only come to light after elections, such as issues relating to citizenship, age, or disqualification under constitutional provisions.

##### *b. Why it matters*

**Some observers have raised concerns that this approach may inadvertently shield candidates with qualification deficiencies from post-election accountability, particularly where such issues are not identified on time.**

The Supreme Court did not eliminate qualification as a valid post-election legal issue; it clarified that it had been misused and misapplied, particularly in relation to internal party disputes. The National Assembly however goes further by deleting the ground altogether in the Act.

In addition, the Act no longer provides an explicit basis to void a candidate's return on non-qualification grounds and declare another candidate winner. The earlier provision under **section 136(2)** of the 2022 Act, which enabled this outcome, has been removed in the 2026 framework.

In practical terms, political parties and aspirants must now front-load aspirant vetting and litigation as missing the pre-election window may permanently foreclose qualification challenges, even where serious constitutional issues are involved.

## 6. Retaining the Pre-Election Mechanism

While removing qualification as a post-election ground, the Act retains the pre-election challenge mechanism. **Section 29(5)** of the 2026 Act provides that an aspirant who participated in a primary may challenge false information in nomination documents at the Federal High Court (FCT or relevant jurisdiction). By virtue of **section 285 (9)** of the Constitution, such suits must be commenced within 14 days from the date of the occurrence of the event or action complained of, reinforcing the need for prompt action.

## 7. Standing to Challenge Qualification

Another notable feature of **section 29(5)** is that it limits the right to challenge qualification to aspirants who participated in the party primary. This restriction, retained from the 2022 Act, significantly narrows the pool of potential challengers.

While this approach aligns with the constitutional definition of pre-election matters under **section 285(14)**, it raises questions about whether broader public-interest enforcement of constitutional eligibility standards is adequately accommodated. Some observers argue that, because elections concern public office, opposing parties – and even citizens – should be able to challenge candidates who submit false credentials, particularly as post-election avenues for such challenges have now been removed. Others caution that expanding standing in this way could lead to a proliferation of cases and overburden the courts.

## 8. Legal Consequences of False Qualification Information

**Section 29(6)** of the 2026 Act provides that where the false information provided relates to constitutional eligibility:

- The candidate shall be disqualified; and
- The sponsoring political party shall also be disqualified.

In this respect, the 2026 Act retains an incentive misalignment from the 2022 framework, as aspirants may be discouraged from pursuing claims that could ultimately undermine their own party's electoral prospects.

However, unlike the 2022 Act, courts can no longer declare the runner-up as winner. The repealed law had a “**second highest votes**” rule i.e., where a candidate was disqualified after the election for false qualification information, courts could:

- disqualify the candidate and the sponsoring party, and
- declare the candidate with the second highest number of valid votes as the winner, provided that candidate satisfied constitutional eligibility requirements.

This mechanism which avoided the need for fresh elections, has now been removed.

## 9. The Introduction of a Rerun Election Mechanism

**Section 29(7)** further provides that where a finding of disqualification is made after the election has been conducted, the court shall direct the electoral commission to conduct a rerun election excluding the disqualified candidate and party. This sets aside the earlier election and requires a fresh contest among the remaining candidates. In effect, a dispute originating in the pre-election phase may ultimately result in the nullification of a concluded election.

*A pre-election wrong with a post-election remedy*

**Section 29(7)** introduces a tension within the framework. It treats qualification as a pre-election issue, yet attaches a post-election remedy **where disputes persist beyond election day**. This creates a structural mismatch between the nature of the dispute and the scope of the remedy.

Key Implications

- **System-wide consequences from intra-party disputes:** A protracted dispute between aspirants within a single party may invalidate an entire election, affecting candidates, voters, and the electoral process.
- **High administrative and political costs:** Rerun elections, especially for major offices, would impose significant logistical and financial burdens.
- **Judicial caution in enforcement:** Courts may be more reluctant to disqualify candidates where doing so would unsettle a concluded election and trigger a rerun, particularly if the case persists until election day.
- **Practical incentives concerns:** Aspirants may be discouraged from pursuing or sustaining claims that could disqualify their own party and lead to a rerun election with no direct benefit to them.

Ultimately, the structure of **section 29(7)** underscores the importance of early resolution of pre-election disputes.

**Note:** *The provision does not expressly limit rerun elections to situations where the disqualified candidate is the returned winner or where the disqualification materially affects the outcome. As framed, the trigger is simply that disqualification is determined after the election, leaving the scope of application broad and likely to be defined through judicial interpretation.*

## 10. Conclusion

The Electoral Act 2026 represents a significant shift in the treatment of qualification disputes in Nigerian electoral law. By removing qualification as a ground for election petitions and retaining the pre-election challenge mechanism under section 29 as the sole pathway, the Act effectively collapses what was previously a dual-track system into a single framework.

Under the 2022 regime, qualification disputes could arise both before and after elections, with courts in some cases empowered to declare the candidate with the second highest number of valid votes as the winner. The 2026 Act removes this outcome, limiting the consequences to disqualification and, where the matter persists beyond election day, a rerun election.

In doing so, the reform appears to pursue three objectives: to ensure that qualification issues are raised early, resolved before elections, and to reduce post-election outcomes in which courts effectively determine winners rather than voters.

However, the shift also introduces important risks. Where qualification issues are not identified or resolved within the pre-election window, they may no longer be effectively remedied after the election. In addition, the introduction of a rerun mechanism raises questions about proportionality and the alignment between the nature of the dispute and the consequence imposed.



## About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making process.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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