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## Electoral Litigation under the Electoral Act 2026: Jurisdictional Reconfiguration, Electoral Finality and Judicial Control in Nigeria

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### Abstract

Electoral litigation occupies a central position in Nigeria's constitutional democracy because the credibility of elections depends not only on the conduct of the electoral process but also on the availability of effective legal mechanisms for challenging unlawful electoral conduct. The Electoral Act 2026 repealed and replaced the Electoral Act 2022 and introduced significant changes affecting candidate nomination, political party regulation, electronic transmission of results, judicial review and election petitions. This article examines the implications of these changes for electoral adjudication in Nigeria. It focuses on five questions: the new jurisdictional architecture under the 2026 Act; pre-election litigation, candidate qualification and locus standi; the narrowing of post-election petition grounds under section 138; INEC's regulatory powers and the judicial review of its decisions and guidelines; and the relationship between electoral finality, remedies and access to justice. The article adopts a doctrinal methodology based on the Constitution of the Federal Republic of Nigeria 1999, as amended, the Electoral Act 2022, the Electoral Act 2026, relevant electoral regulations and independently verified judicial decisions. Particular attention is given to the movement of provisions between the two statutes and to the constitutional supremacy principle under section 1 of the Constitution. The article argues that the 2026 Act does not merely reorganize electoral procedure. It materially redistributes the points at which electoral grievances may be judicially presented. Most significantly, qualification has been removed as an express ground of an election petition under section 138, while section 29 preserves a pre-election mechanism concerning false information in nomination documents. The article concludes that the new framework may improve electoral finality but creates significant questions concerning constitutional consistency, access to remedies, party autonomy and the appropriate limits of legislative and administrative control over political parties.

**Keywords:** Electoral Litigation, Electoral Act 2026, Jurisdiction, Election Petitions, Political Parties, INEC, Electoral Finality, Judicial Review, Nigeria.

### 1. Introduction

Electoral disputes have become an enduring feature of Nigeria's constitutional democracy since the restoration of civilian government in 1999. The intensity of electoral competition, the centrality of political parties to access to elective office and the enormous consequences associated with electoral victory have made litigation an important component of the electoral process. Nigerian courts have consequently developed an extensive jurisprudence concerning candidate nomination, party primaries,

electoral administration, election petitions, proof of electoral irregularities and the limits of judicial intervention.

The legal framework within which these disputes are determined has, however, undergone repeated statutory transformation. The Electoral Act 2022 represented a substantial reform of the previous electoral regime, particularly in relation to party primaries, electoral technology and election administration. The Electoral Act 2026 now repeals and replaces the 2022 Act and introduces a further reconfiguration of several aspects of electoral dispute



resolution. The National Assembly describes the 2026 legislation as regulating federal, state and Federal Capital Territory Area Council elections.

The significance of the 2026 Act for electoral litigation lies not simply in the provisions expressly contained in Part VIII on election petitions. Its implications must be understood by reading the Act together with the Constitution and the provisions governing political parties, nomination, withdrawal and substitution of candidates, electronic transmission of results and INEC's regulatory authority. Sections 29, 31, 33, 60, 76, 84, 85, 86, 87, 88, 134, 137, 138, 139, 140, 141 and 151 are particularly important in this regard.

The most consequential development concerns the relationship between pre election and post election litigation. Under section 134 of the Electoral Act 2022, qualification constituted one of the express grounds upon which an election could be questioned. The 2026 Act adopts a materially different formulation. Section 138 now permits an election to be questioned only on the ground that the election was invalid by reason of corrupt practices or non compliance with the Act, or that the respondent was not duly elected by a majority of lawful votes cast.

This change raises a fundamental constitutional and jurisprudential question. If qualification is no longer expressly available as a post election ground, where and when should disputes concerning constitutional qualification be litigated? The answer appears to lie substantially in the pre election provisions, especially section 29 and the constitutional provisions governing candidate qualification. Yet the exclusion of qualification from section 138 also raises questions about situations in which a disqualifying fact becomes known only after the election.

The 2026 Act also changes the statutory treatment of political party nomination. Section 84(2) provides for direct primaries or consensus, thereby removing indirect primaries from the statutory formulation found in section 84(2) of the 2022 Act. Section 86 provides that direct primaries shall be conducted in accordance with the guidelines of the relevant political party. Section 87 regulates consensus candidature and requires written consent from all cleared aspirants.

These provisions have already generated constitutional litigation. In July 2026, the Court of Appeal declared sections 77(5), 77(6), 77(7) and 84(2) unconstitutional in *Zenith Party v. INEC*, Appeal No. CA/ABJ/CV/750/2026, holding that the impugned provisions were inconsistent with constitutional protections concerning political parties. The decision demonstrates that the meaning of the 2026 Act cannot be analysed solely from the text of the statute without considering constitutional supremacy under section 1 of the Constitution.

The central argument of this article is that the Electoral Act 2026 represents a shift from a litigation framework principally concerned with resolving disputes after elections towards a framework that places greater emphasis on resolving certain disputes before the electoral event. This shift potentially

strengthens electoral finality, but it simultaneously increases the importance of timely access to pre-election remedies. The effectiveness of the new framework will therefore depend upon whether courts can maintain a principled balance between finality, constitutional supremacy, political party autonomy and access to justice.

The article addresses five questions. First, what is the jurisdictional architecture created by the 2026 Act? Second, how does the Act regulate pre-election litigation, candidate qualification and locus standi? Third, what are the implications of the narrowing of post-election grounds under section 138? Fourth, what are the legal limits of INEC's regulatory powers, guidelines and administrative decisions? Fifth, does the new framework achieve an acceptable balance between electoral finality, effective remedies and access to justice?

The methodology is doctrinal. The analysis relies principally on the Constitution, the Electoral Act 2022, the Electoral Act 2026, relevant INEC instruments and judicial decisions. Judicial authorities are used only where the decision and proposition attributed to the court have been independently verified. This approach is important because several propositions previously attributed to cases in discussions of the 2026 Act have been stated too broadly or attributed to authorities that do not support them.

## 2. The New Jurisdictional Architecture under the Electoral Act 2026

The jurisdictional architecture of electoral litigation in Nigeria is primarily constitutional, with the Electoral Act operating within that constitutional framework. Section 1 of the Constitution establishes constitutional supremacy and provides that any law inconsistent with the Constitution is void to the extent of the inconsistency. Consequently, the jurisdiction of an election tribunal or court cannot be determined exclusively by reference to the Electoral Act.

The principal constitutional provisions are sections 239, 246 and 285. Section 239 confers original jurisdiction on the Court of Appeal in presidential election petitions. Section 285 establishes election tribunals and defines important aspects of their jurisdiction. Section 246 regulates appeals from election tribunals and establishes the finality of the Court of Appeal in the election petition appeals covered by that provision. The Supreme Court has repeatedly recognised the constitutional limitations on its electoral jurisdiction. In *Okonkwo v. Ngige* (2007), for example, the Supreme Court confirmed that the Court of Appeal is the final court in election petition appeals concerning governorship elections by virtue of section 246(3) of the Constitution.

The Electoral Act 2026 complements this constitutional structure. Section 134 provides that an election and return may only be questioned by an election petition presented before the competent tribunal or court in accordance with the Constitution and the Act. For presidential elections, the competent court is the Court of Appeal, while for other elections it is the election tribunal established under the Constitution or the Act. The provision

therefore concerns the jurisdictional route for questioning an election, not a general limitation period for pre election actions.

This distinction is critical. The original manuscript treated section 134 as though it established a fourteen day limitation period for pre election actions, a twenty one day period for election petitions and a fourteen day period for appeals. That interpretation is not supported by the text of section 134. The provision instead establishes the procedural exclusivity of the election petition mechanism and identifies the competent forum.

The 2026 Act also establishes an Area Council Election Tribunal under section 135 and an Area Council Election Appeal Tribunal under section 136. The jurisdictional structure must therefore be understood as a combination of constitutional and statutory institutions rather than as a single tribunal system created by the Electoral Act.

A significant consequence of this architecture is the distinction between pre election litigation and election petitions. Pre election proceedings generally arise from disputes concerning nomination, qualification, party primaries, sponsorship and other matters occurring before the election. Election petitions, by contrast, challenge the election or return itself. The distinction has been reinforced by section 285 of the Constitution and by the jurisprudence of the Supreme Court.

The constitutional distinction assumes even greater importance under the 2026 Act because the legislature has narrowed the express grounds upon which an election may be questioned. The removal of qualification from section 138 makes the jurisdictional classification of qualification disputes particularly important.

**Table 1: Comparative Analysis of Jurisdiction**

| Issue                                 | ElectoralAct 2022 | ElectoralAct 2026 | Legal significance      |
|---------------------------------------|-------------------|-------------------|-------------------------|
| Proceedings to questionan election    | Section 130       | Section 134       | Renumbered              |
| Area Council Election Tribunal        | Section 131       | Section 135       | Renumbered              |
| Area Council Election Appeal Tribunal | Section 132       | Section 136       | Renumbered              |
| Persons entitled to petition          | Section 133       | Section 137       | Renumbered              |
| Grounds of petition                   | Section 134       | Section 138       | Majorsubstantive change |
| Defects not invalidating election     | Section 135       | Section 139       | Renumbered              |
| Nullification and remedies            | Section 136       | Section 140       | Renumbered              |
| Returned candidate pending appeal     | Section 138       | Section 141       | Renumbered              |

The comparison on table 1 demonstrates that the 2026 Act has not fundamentally replaced the constitutional election petition system. Instead, it has reorganised the statutory provisions and made important substantive changes within that architecture.

### 3. Pre Election Litigation, Candidate Qualification and Locus Standi

Pre election litigation occupies a particularly important position under the 2026 framework because the legislature has removed qualification as an express ground for an election petition. This increases the practical significance of the statutory provisions governing nomination and candidate eligibility before the election.

#### 3.1 Section 29 and candidate nomination

Section 29 of the 2026 Act requires every political party to submit its list of candidates to INEC not later than 120 days before a general election. The candidates must have emerged from valid primaries. The personal particulars submitted by candidates must be accompanied by affidavits confirming compliance with constitutional requirements. The provision also allows access to nomination documents.

This represents a substantial change from the 2022 Act. Section 29(1) of the 2022 Act required submission not later than 180 days before the election. Section 29 of the 2026 Act therefore reduces the statutory submission period from 180 days to 120 days.

The practical consequence is important. A political party now has a shorter statutory period between nomination and the election, while litigants concerned about qualification must act within a more compressed electoral timetable.

The section should also be read together with the Constitution. Candidate qualification ultimately derives from constitutional provisions including sections 65, 66, 106, 107, 131, 137, 177 and 182. Section 85 of the 2026 Act expressly recognises this relationship by preventing political parties from imposing nomination, qualification or disqualification criteria beyond those prescribed by the Constitution.

#### 3.2 False information and the pre election route

Section 29 is also significant because it provides access to nomination information. This creates a mechanism through which

interested persons may scrutinise the information supplied by candidates.

The legal significance of this provision must, however, be distinguished from a general public right to challenge every aspect of a candidate's nomination. The question of locus standi remains dependent upon the precise statutory provision invoked and the nature of the claimant's interest.

The Supreme Court's jurisprudence provides useful guidance. In *Enang v. Asuquo* (2023), the Court considered a dispute concerning party membership and nomination. The Court reaffirmed the principle that membership of a political party ordinarily belongs to the internal affairs of the political party. The decision therefore demonstrates that not every complaint relating to a candidate or political party automatically becomes a justiciable electoral dispute.

Similarly, *Ahiwe v. INEC* (2024) demonstrates the importance of distinguishing matters that are properly characterised as pre election disputes from matters that may be entertained by an election tribunal. The case involved an attempt to challenge the qualification and membership of a returned candidate after the election. The Supreme Court considered the boundary between pre election matters and the jurisdiction of an election tribunal.

The 2026 Act therefore places a premium on identifying the appropriate time and forum for litigation. A litigant who waits until after the election may encounter section 138 and discover that a complaint which was previously capable of being presented as a qualification ground is no longer expressly recognised as such.

### 3.3 Withdrawal and substitution

Section 31 of the 2026 Act retains the rule that a candidate may withdraw by written notice accompanied by a sworn affidavit, with the political party required to convey the withdrawal to INEC not later than 90 days before the election.

Section 33 retains the prohibition against changing or substituting a candidate except in cases of death or withdrawal. Where death or withdrawal occurs, the political party must conduct another primary within 14 days to produce and submit a replacement candidate.

The substantive provisions therefore remain broadly similar to the 2022 Act. The principal significance under the 2026 framework is that these provisions operate within a more compressed nomination timetable created by section 29.

A recent Federal High Court decision concerning INEC's 2027 timetable illustrates the importance of these statutory periods. The court held that INEC could not use its timetable to abridge statutory periods provided by sections 29 and 31. The decision underscores an important principle of administrative legality: an electoral timetable cannot lawfully contradict the parent statute.

### 3.4 Party primaries and section 84

The most important substantive alteration in candidate nomination is found in section 84.

Under the 2022 Act, section 84(2) permitted three methods of nomination: direct primaries, indirect primaries and consensus.

The 2026 Act removes indirect primaries from section 84(2). The statutory options are now direct primaries or consensus.

Section 86 provides that direct primaries shall be conducted in accordance with the guidelines of the relevant political party. This is significantly different from the 2022 Act, which contained detailed statutory procedures for direct and indirect primaries.

The legislative shift is therefore twofold. First, indirect primaries have been removed from the statutory options. Second, detailed statutory regulation of direct primaries has been reduced, with greater reliance placed on party guidelines.

This produces a tension between legislative regulation and political party autonomy. The tension became concrete in *Zenith Party v. INEC*, CA/ABJ/CV/750/2026. The Court of Appeal declared section 84(2), together with sections 77(5), 77(6) and 77(7), unconstitutional on the basis that the provisions conflicted with constitutional protections relating to political parties.

The decision is particularly significant because it demonstrates that the validity of the 2026 Act cannot be analysed solely through ordinary statutory interpretation. Section 1 of the Constitution imposes a hierarchy in which statutory regulation must yield where it conflicts with constitutional provisions.

### 3.5 Consensus candidature

Section 87 retains consensus as a lawful nomination mechanism but introduces safeguards. A political party adopting consensus must secure written consent from all cleared aspirants, indicating voluntary withdrawal and endorsement of the consensus candidate. Where the necessary consent cannot be obtained, the party must revert to direct primaries.

This is an important distinction between genuine consensus and unilateral political imposition. A declaration by party leaders that an individual is a consensus candidate does not by itself satisfy section 87. The statutory requirement concerns the consent of all cleared aspirants.

The provision consequently creates a potential area of pre election litigation. An aspirant who alleges that the statutory requirements for consensus were not satisfied may have grounds to seek judicial intervention, subject to the constitutional and statutory jurisdictional requirements.

### 3.6 Political appointees and section 88

Section 88 provides that a political appointee at any level cannot be a voting delegate or be voted for at a convention, congress or primary for the purpose of nominating candidates. It also expressly permits an aspirant who alleges non-compliance with the Act or party guidelines in candidate selection to apply to the Federal High Court for redress. Where the court finds statutory non compliance, the party's candidate is excluded from the election for the relevant position.

This provision is particularly significant for the jurisdictional architecture because it expressly identifies the Federal High Court as a forum for a defined class of pre-election disputes.

Section 88(4), however, provides that nothing in the section empowers a court to stop the holding of a primary or general election pending determination of a suit. The legislative policy is therefore clear: judicial review is available, but courts are discouraged from granting orders capable of disrupting the electoral timetable.

#### 4. The Narrowing of Post Election Petition Grounds under Section 138

The most consequential change introduced by the 2026 Act is the reformulation of section 138.

Section 134 of the 2022 Act became section 138 of the 2026 Act because the election petition provisions were renumbered. Under the 2022 Act, section 134(1) provided three grounds:

- i. that the person whose election was questioned was not qualified to contest;
- ii. that the election was invalid because of corrupt practices or non-compliance with the Act;
- iii. that the respondent was not duly elected by a majority of lawful votes.

Section 138 of the 2026 Act provides only two grounds:

- i. the election was invalid by reason of corrupt practices or non-compliance with the Act;
- ii. the respondent was not duly elected by a majority of lawful votes.

Qualification is absent.

This is not a mere renumbering exercise. It is a substantive legislative change.

##### 4.1 The significance of removing qualification

The immediate consequence is that qualification is no longer an express statutory ground for an election petition. This appears to strengthen the legislative preference for resolving qualification disputes before the election.

The change must nevertheless be interpreted alongside the Constitution. Sections 131, 137, 177 and 182 prescribe constitutional qualifications and disqualifications for presidential and governorship candidates, while corresponding provisions apply to legislative elections. Section 85 of the Electoral Act 2026 expressly refers back to these constitutional provisions.

The critical question is therefore whether the removal of qualification from section 138 completely prevents a tribunal from considering a constitutional qualification issue after an election.

The safest doctrinal position is that the statute has deliberately removed qualification as an independent ground of petition. This should not, however, be confused with the proposition that the Constitution has ceased to regulate qualification. The Constitution remains supreme under section 1. The future judicial question is

therefore likely to concern the relationship between constitutional disqualification and the statutory limits imposed by section 138.

The issue is already the subject of legal controversy. Commentators have noted that certificate forgery and other constitutional disqualifications are no longer expressly included among the grounds in section 138.

##### 4.2 The constitutional problem

The apparent legislative policy is understandable. Qualification disputes can be litigated repeatedly after elections, producing uncertainty concerning elected officials. Moving qualification disputes to the pre-election stage promotes finality.

Yet the policy has a potential constitutional difficulty. Some facts relevant to qualification may be concealed and may become discoverable only after the election. If no post-election jurisdiction exists to consider such matters, the statutory framework could potentially leave a constitutionally disqualified person in office despite the constitutional disqualification.

This tension cannot be resolved simply by asserting that the Electoral Act is supreme within electoral matters. The Constitution is the supreme law.

The appropriate judicial approach should therefore distinguish between two propositions. First, courts should respect the express limitation in section 138. Second, they must not interpret the statute in a manner that nullifies an inconsistent constitutional provision. The ultimate resolution will depend on the precise constitutional provision invoked and the nature of the relief sought.

##### 4.3 Section 138(2) and INEC instructions

Section 138(2) introduces another significant limitation. An act or omission contrary to an INEC instruction or directive, but not contrary to the Act, does not by itself constitute a ground for questioning the election.

This provision has important implications for the legal status of INEC guidelines. It suggests that not every breach of an administrative instrument can independently invalidate an election. The petitioner must connect the complaint to the Act or to a recognised statutory ground.

This is particularly relevant to electoral technology. A breach of an INEC guideline concerning electronic procedures may have evidential importance, but section 138 requires careful analysis of whether the alleged breach also constitutes non-compliance with the Act.

##### 4.4 Penalties for petitions outside the statutory grounds

Section 138(3) introduces monetary penalties where a political party or candidate questions an election on grounds outside those specified in subsection (1). The provision imposes a minimum penalty of ₦5 million on counsel and ₦10 million on the petitioner.

This is a substantial procedural innovation. It may discourage speculative petitions and promote disciplined pleading. However, it also creates a potential chilling effect where the boundary between

a permissible ground and a constitutionally based complaint is uncertain.

Courts should consequently apply the provision carefully. A costs or penalty regime designed to prevent abuse should not become a mechanism for suppressing legitimate constitutional litigation.

## 5. INEC Regulatory Power, Guidelines and Judicial Review

The relationship between INEC's regulatory authority and judicial control is another important feature of the 2026 framework.

Section 76 provides that a decision by INEC not to register an association as a political party may be challenged before the Federal High Court within 14 days of receipt of the decision.

The provision is substantially similar to section 76 of the 2022 Act. The principal difference lies elsewhere in the regulation of political parties.

Section 151 of the 2026 Act provides that INEC may, subject to the Act, issue regulations, guidelines or manuals for the purpose of giving effect to the Act and administering it.

The corresponding provision in the 2022 Act was section 148. Section 151 of the 2022 Act was instead the repeal provision.

This is an important point that must not be overlooked in comparative analysis.

**Table 2: Comparative Treatment of INEC Regulatory Power**

| Issue                                                      | 2022 Act                          | 2026 Act                                                 |
|------------------------------------------------------------|-----------------------------------|----------------------------------------------------------|
| INEC power to issue regulations                            | Section 148                       | Section 151                                              |
| Decision on political party registration                   | Section 76                        | Section 76                                               |
| Judicial review of non registration                        | 14 days                           | 14 days                                                  |
| Guidelines and manuals                                     | Expressly authorised              | Expressly authorised                                     |
| Primary legislation governing election result transmission | Section 60(5) left method to INEC | Section 60(3) expressly provides electronic transmission |

Table 2 looked at comparative treatment of INEC regulatory power. Section 151 authorises regulations, guidelines and manuals, but expressly makes the power subject to the Act. Consequently, INEC cannot use a guideline to amend, contradict or enlarge the substantive requirements of the statute.

The Supreme Court's decision in *INEC v. Musa* (2003) remains relevant to this question because it concerned the constitutional and statutory limits of INEC's regulatory authority over political parties. The Court emphasised that regulatory power must have constitutional or statutory foundation.

The principle is especially important after the 2026 Court of Appeal decision concerning sections 77 and 84. The case

demonstrates that legislative regulation itself is subject to constitutional limitations. INEC's guidelines, being subordinate to the statute, are necessarily subject to an even greater limitation.

### 5.1 Section 60 and electronic transmission

Section 60 illustrates the movement from administrative discretion towards statutory regulation of electoral technology.

Under section 60(5) of the 2022 Act, the Presiding Officer was required to transfer results in the manner prescribed by INEC. The statutory language did not expressly require electronic transmission.

The 2026 Act goes further. Section 60(3) expressly requires the Presiding Officer to electronically transmit polling unit results to the IReV portal after the prescribed Form EC8A has been signed and stamped. However, the Act provides that where electronic transmission fails because of communication failure, the signed Form EC8A remains the primary source for collation and declaration.

The change is doctrinally significant. A technological requirement that previously depended substantially on INEC's regulatory framework now has direct statutory recognition.

At the same time, the proviso prevents electronic transmission from becoming an absolute condition of validity. The signed physical result remains legally significant where transmission fails because of communication failure.

The provision therefore creates a dual evidential architecture: electronic transmission is mandatory, but the physical polling unit result remains the primary source where statutory conditions for electronic transmission failure are established.

### 5.2 Judicial review and electoral administration

Judicial review should not be confused with an appeal on the merits. The fundamental question is whether INEC acted within the authority conferred by the Constitution and statute, complied with mandatory legal requirements and exercised its discretion lawfully.

The 2026 litigation concerning INEC's election timetable demonstrates the continuing relevance of this principle. Where an administrative timetable purports to shorten a statutory period, the court may intervene because the administrative body cannot lawfully amend an Act of the National Assembly through an administrative instrument.

The same principle should govern INEC guidelines. Where a guideline merely operationalises the Act, compliance may be required. Where it conflicts with the Act or Constitution, the higher law prevails.

## 6. Electoral Finality, Remedies and Access to Justice

Electoral finality is a legitimate constitutional and institutional objective. Elections must eventually produce recognised winners capable of governing without indefinite judicial uncertainty.

The law nevertheless cannot pursue finality at the expense of the constitutional right of access to justice. The challenge is therefore to establish a system that is final because disputes have been properly resolved, rather than final merely because access to a remedy has been unnecessarily restricted.

#### 6.1 Section 139 and substantial compliance

Section 139 of the 2026 Act provides that an election should not be invalidated for non compliance where the election was substantially conducted in accordance with the principles of the Act and the non compliance did not substantially affect the result. It also protects elections from invalidation based merely on defects in the title of electoral officers and certain mistakes concerning dates in results.

This provision continues the long standing substantial compliance doctrine.

The Supreme Court's jurisprudence demonstrates the demanding evidential burden imposed on petitioners. In *Buhari v. Obasanjo* (2005) and *Buhari v. INEC* (2008), the Court emphasised that proving non compliance is not sufficient by itself. A petitioner relying upon non compliance must establish that the non compliance substantially affected the result.

The doctrine is justified by the need to distinguish between irregularities that undermine the integrity of an election and those that are merely technical.

#### 6.2 Section 140 and remedies

Section 140 provides the principal statutory remedies where an election is found invalid. The tribunal or court may nullify the election and order a fresh election within 90 days following the relevant final decision. Where the successful challenge is based on failure of the returned candidate to secure the majority of valid votes, the court may declare elected the candidate who obtained the highest number of valid votes and satisfied the constitutional and statutory requirements.

The provision therefore recognises two different remedial situations.

The first is an invalid election requiring a fresh election. The second concerns the identity of the candidate who actually secured the highest lawful vote where the returned candidate did not satisfy that requirement.

This distinction is important because electoral litigation should not automatically result in the installation of a runner up. The appropriate remedy depends on the statutory basis upon which the election is invalidated.

#### 6.3 Section 141 and electoral continuity

Section 141 does not establish a 180 day dismissal rule or a 60 day automatic dismissal rule. Rather, it deals with the continuation in office of a returned candidate pending determination of an appeal.

Where an election is nullified and an appeal is filed within the prescribed period, the returned candidate remains in office pending

determination of the appeal. Similarly, where a tribunal or court determines that a returned candidate was not validly elected, the candidate remains in office pending expiration of the applicable appeal period.

This is a continuity provision. Its purpose is to prevent a temporary legal decision from creating a governmental vacuum before the appellate process is exhausted. This correction is particularly important because the original manuscript incorrectly attributed provisions concerning automatic dismissal of petitions and appeals to section 141.

#### 6.4 Section 143 and procedural control

Section 143 provides that the rules governing election petitions and appeals are contained in the First Schedule. It also permits the President of the Court of Appeal to issue practice directions.

Practice directions are important because electoral litigation is time sensitive. Yet practice directions remain subordinate to the Constitution and enabling legislation. The Supreme Court's decision in *Buhari v. INEC* demonstrates that procedural instruments cannot override substantive statutory or constitutional requirements.

#### 6.5 Finality versus justice

The 2026 Act therefore adopts a strong finality orientation through several mechanisms:

- i. early resolution of nomination and qualification issues;
- ii. strict statutory control of candidate substitution;
- iii. restricted grounds for post-election petitions;
- iv. protection of returned candidates pending appeal;
- v. substantial compliance principles;
- vi. statutory regulation of electoral procedure.

These mechanisms have institutional justification. Endless electoral litigation can undermine governmental legitimacy and democratic stability.

The danger is that finality may become detached from substantive justice. The most obvious example is section 138 and the removal of qualification as an express petition ground. The legislative solution may be workable if courts and litigants can reliably identify and determine qualification disputes before elections. It becomes problematic if genuine constitutional disqualifications are systematically incapable of judicial determination after the relevant facts emerge.

The proper judicial response should therefore be neither automatic expansion of section 138 nor mechanical rejection of constitutional claims. Courts should apply the statute faithfully while preserving the supremacy of the Constitution.

### 7. Comparative Synthesis of the Electoral Act 2022 and Electoral Act 2026

The most significant changes relevant to electoral litigation may be summarised as follows in Table 3.

**Table 3: Comparative Synthesis of the Electoral Act 2022 and Electoral Act 2026**

| Provision                         | 2022 Act                                                                | 2026 Act                                                                                                | Principal consequence                        |
|-----------------------------------|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|----------------------------------------------|
| Section 29                        | Candidate lists generally 180 days before election                      | Candidate lists 120 days before election                                                                | Shorter nomination timetable                 |
| Section 31                        | Withdrawal up to 90 days                                                | Withdrawal up to 90 days                                                                                | Substantially retained                       |
| Section 33                        | Replacement following death or withdrawal, fresh primary within 14 days | Same basic rule                                                                                         | Substantially retained                       |
| Section 60                        | Transfer in manner prescribed by INEC                                   | Express electronic transmission to IReV, Technology moves into subject to communication failure proviso | primary legislation                          |
| Section 76                        | Judicial review of non registration within 14 days                      | Same                                                                                                    | Continuity                                   |
| Section 84                        | Direct, indirect or consensus                                           | Direct or consensus                                                                                     | Indirect primaries removed                   |
| Section 85                        | Party qualification restrictions                                        | Substantially retained                                                                                  | Constitutional qualifications remain central |
| Section 86                        | Detailed statutory direct primary procedure under section 84            | Direct primaries according to party guidelines                                                          | Greater reliance on party rules              |
| Section 87                        | Consensus under section 84(9)                                           | Consensus separately regulated                                                                          | Written consent remains essential            |
| Section 88                        | Political appointee restriction formerly within section 84              | Separate provision                                                                                      | Greater structural prominence                |
| Election petition provisions      | Sections 130 to 140                                                     | Sections 134 to 143                                                                                     | Renumbering and structural reorganisation    |
| Persons entitled to petition      | Section 133                                                             | Section 137                                                                                             | Renumbered                                   |
| Grounds of petition               | Section 134, three grounds including qualification                      | Section 138, two grounds                                                                                | Qualification removed expressly              |
| Defects                           | Section 135                                                             | Section 139                                                                                             | Renumbered                                   |
| Remedies                          | Section 136                                                             | Section 140                                                                                             | Renumbered                                   |
| Returned candidate pending appeal | Section 138                                                             | Section 141                                                                                             | Renumbered                                   |
| Regulations                       | Section 148                                                             | Section 151                                                                                             | Regulatory provision relocated               |
| Repeal                            | Section 151                                                             | New repeal and citation structure                                                                       | 2022 Act replaced                            |

Table 3 demonstrates that the 2026 Act is neither wholly revolutionary nor merely cosmetic. Some provisions have simply moved numerically, while others materially change the substantive law.

The most consequential reforms are therefore concentrated in candidate nomination, electronic transmission, political party regulation and the grounds of election petitions.

## 8. Discussion

The Electoral Act 2026 can be understood as an attempt to reposition electoral litigation within a broader principle of electoral



finality. Rather than allowing every dispute to migrate into post election proceedings, the legislation places greater emphasis on resolving nomination and qualification disputes before the poll.

This approach has considerable merit. Election petitions are inherently disruptive because they challenge an electoral outcome after voters have expressed their preferences. If disputes concerning candidate eligibility can be resolved before voting, the legitimacy of the electoral outcome is potentially strengthened.

The difficulty is that pre-election litigation must be practically accessible. A right to bring a suit is of little value if the relevant information is unavailable, the statutory window is too short or the appropriate forum is uncertain.

Section 29 attempts to address part of this problem by requiring candidate information and affidavits to be submitted and made available. The availability of nomination documents may therefore become an important component of electoral accountability.

The second major issue is political party autonomy. Nigerian electoral jurisprudence historically treated many disputes within political parties as non-justiciable. *Dalhatu v. Turaki* (2003), for example, reaffirmed the principle that nomination and sponsorship were traditionally regarded as matters within the domestic affairs of political parties.

The Electoral Act 2022 modified that traditional position by expressly regulating party primaries. The 2026 Act initially went further in some respects by restricting the available methods of nomination. The Court of Appeal's decision concerning section 84(2), however, illustrates the constitutional limit of legislative intervention in party affairs.

The resulting jurisprudence should therefore not be characterised simply as either party autonomy or judicial intervention. The better approach is constitutional institutionalism. Political parties enjoy constitutionally protected autonomy, but that autonomy operates within the constitutional and statutory framework governing elections. Conversely, the legislature may regulate electoral processes but cannot enact provisions inconsistent with the Constitution.

The third issue concerns INEC. Section 151 provides a necessary regulatory function because electoral administration cannot be conducted solely through primary legislation. Elections involve complex operational matters requiring detailed procedures. Nevertheless, regulation must remain within statutory boundaries.

The 2026 treatment of electronic transmission illustrates a useful model. The legislature has established the core obligation in section 60, while leaving operational implementation to INEC. This creates a hierarchy in which the Act supplies the substantive rule and INEC supplies administrative detail.

Finally, section 138 demonstrates the delicate balance between finality and justice. Restricting election petitions to two grounds may reduce speculative litigation and accelerate the resolution of electoral disputes. But the success of this policy depends on effective pre election mechanisms.

The central policy question is therefore not whether Nigeria should have electoral finality. It plainly should. The real question is how finality should be achieved. The preferable model is finality through timely and effective adjudication, rather than finality through the elimination of meaningful remedies.

## Conclusion

The Electoral Act 2026 represents an important restructuring of Nigeria's electoral dispute resolution framework. Its significance lies not merely in the renumbering of provisions inherited from the Electoral Act 2022 but in the redistribution of the points at which electoral grievances may be judicially presented.

The first major development is the clarification of the statutory election petition architecture. Section 134 establishes the mechanism and competent forum for questioning an election, while sections 135 and 136 establish Area Council election adjudicatory institutions. The constitutional provisions remain foundational, particularly sections 239, 246 and 285.

Second, the 2026 Act places greater importance on pre election litigation. Section 29 reduces the candidate submission period from 180 days to 120 days, while sections 31 and 33 retain the rules governing withdrawal and substitution. Sections 85 and 88 further provide statutory mechanisms relevant to candidate qualification and party nomination disputes.

Third, section 138 represents the most significant change in post election litigation. The 2026 Act removes qualification as an express ground for an election petition and retains only corrupt practices or non compliance with the Act and failure to secure a majority of lawful votes. This legislative choice strengthens electoral finality but creates important constitutional questions concerning the treatment of disqualification that may become apparent only after an election.

Fourth, the Act strengthens the statutory foundation of electoral technology. Section 60 expressly requires electronic transmission of polling unit results while preserving the signed Form EC8A as the primary source where communication failure prevents electronic transmission. This provides greater certainty than the 2022 framework, which left the mode of transfer substantially to INEC's regulatory instruments.

Fifth, section 151 preserves INEC's regulatory authority while subjecting that authority to the Act. INEC guidelines therefore remain important but cannot contradict the Constitution or the enabling legislation. The recent litigation concerning sections 77 and 84 demonstrates that both legislative and administrative regulation of political parties remain subject to constitutional scrutiny.

The ultimate success of the Electoral Act 2026 will depend on whether these provisions are interpreted coherently. The courts must preserve the legislative objective of electoral finality without allowing procedural restrictions to defeat constitutional rights. Political parties must enjoy legitimate autonomy without treating autonomy as immunity from statutory obligations. INEC must

exercise regulatory authority confidently but within the limits of the Constitution and its enabling legislation.

The central lesson of the 2026 framework is therefore that electoral finality and electoral justice should not be treated as opposing objectives. Properly designed and interpreted, finality should be the consequence of an electoral system in which grievances are identified early, heard by the appropriate court, determined according to law and resolved through effective remedies.

## Recommendations

**First, the relationship between constitutional qualification and section 138 should be clarified.** The National Assembly should consider whether an express statutory mechanism is required for circumstances in which evidence of constitutional disqualification emerges only after the election. Such clarification would reduce uncertainty without necessarily reopening every election to qualification litigation.

**Second, pre election judicial remedies should be made genuinely effective.** Since the 2026 Act places greater emphasis on resolving nomination and qualification disputes before elections, courts and relevant registries must be capable of determining such disputes rapidly enough to make the remedy meaningful.

**Third, INEC should ensure that its timetable conforms strictly to statutory periods.** Administrative convenience should not be permitted to shorten periods expressly granted by the Electoral Act. Recent litigation concerning sections 29 and 31 demonstrates the importance of this principle.

**Fourth, INEC regulations, guidelines and manuals should clearly identify their statutory source.** Each major regulatory instrument should state the enabling provision and distinguish mandatory statutory requirements from administrative procedures.

**Fifth, the statutory treatment of electronic transmission should be supported by clear evidential rules.** Section 60 establishes electronic transmission but also preserves Form EC8A where communication failure occurs. INEC should therefore develop transparent procedures for establishing communication failure and preserving electronic and physical evidence.

**Sixth, the constitutionality of provisions regulating political party nomination should be continuously monitored.** The decision of the Court of Appeal concerning section 84(2) demonstrates that electoral legislation must remain consistent with constitutional provisions protecting political parties.

**Seventh, election petition penalties should be applied cautiously.** Section 138(3) should be used to discourage abuse of the electoral process, not to deter genuine constitutional arguments where the boundaries of section 138 remain uncertain.

**Eighth, judicial training in electoral litigation should be strengthened.** Judges and election tribunal members should receive continuing training in constitutional election law, electronic evidence, electoral technology, party regulation, statutory interpretation and case management.

**Ninth, political parties should strengthen internal dispute resolution mechanisms.** Internal mechanisms should resolve genuinely internal disputes while preserving access to courts where statutory or constitutional rights are implicated.

**Tenth, the National Assembly should periodically undertake a consolidated review of the Electoral Act.** Repeated renumbering and movement of provisions can create avoidable confusion for litigants, courts, academics and electoral administrators. Future amendments should prioritise structural clarity as well as substantive reform.

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