

# A CRITICAL EXAMINATION OF THE EXCLUSION OF NON-QUALIFICATION AS A GROUND FOR ELECTION PETITIONS UNDER NIGERIA'S ELECTORAL ACT 2026 AND ITS IMPLICATIONS FOR FUTURE ELECTIONS

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## ABSTRACT

*The Electoral Act 2026 was enacted<sup>1</sup> to address the gaps and shortcomings identified in the Electoral Act 2022 following its application during the 2023 general elections. The primary objective of the 2026 Electoral Act is to provide for a more robust legal framework for the administration and management of the electoral process in Nigeria. However, a careful examination of the Act reveals that, despite its reforms, significant concerns remain unresolved. This study critically examined the amendments introduced by the Electoral Act 2026 and evaluated their implications for future elections and election petitions. The research was anchored on the theory of sociological jurisprudence, as propounded by Roscoe Pound, which views law as an instrument of social engineering designed to promote and protect societal interests. The study adopted a doctrinal research methodology, relying on statutory analysis, constitutional provisions, and relevant judicial authorities. The findings reveal that although certain amendments in the Electoral Act 2026 are commendable, some provisions may inadvertently restrict access to electoral justice, particularly for petitioners. Notably so because the removal of the ground of non-qualification that is firmly rooted in the 1999 Constitution raises serious constitutional and practical concerns. It was found that the amendment is likely to have negative implications for the resolution of future election disputes, potentially leading to petitions being struck out on the grounds of such an amendment. The study concluded with recommendations on further statutory reforms and suggestions to guide courts and election tribunals in interpreting and applying the provisions of the Electoral Act 2026. **Keywords:** Elections, Electoral Act, Grounds of petition, Qualification*

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<sup>1</sup> On 18 February, President Bola Ahmed Tinubu Signed the Electoral Bill 2026 into law.

## 1. INTRODUCTION

Following the transition of Nigeria from military dictatorship to civilian democracy in 1999, Nigeria has conducted six general elections. This has been the longest uninterrupted sequence of democratic rule in the history of Nigeria since independence.<sup>2</sup> Over the years, there have been concerted efforts to refine the principal legislation governing the conduct of elections in Nigeria. Some of the several amendments made to the Electoral Act since Nigeria returned to democracy in 1999 were in the years 2002, 2010, 2022, and, of recent, 2026. Under the 2002 and 2010 Electoral Acts, the grounds for presenting an election petition in Nigeria were classified into four. However, when the Electoral Act was amended in 2022, one of the four grounds for presenting an election petition was removed, thereby reducing the grounds to three. Hence removed the ground for unlawful exclusion of a candidate by the electoral umpire. With the removal, unlawful exclusion by the electoral umpire is no longer a ground for questioning an election under the 2022 Electoral Act.

The removal of the ground of unlawful exclusion led to the denial of justice to a lot of petitioners in the 2023 general elections. The tribunals and courts treated unlawful exclusion as a pre-election matter, which made it difficult for a petitioner to challenge the outcome of election, because at that time, their petition was statute-barred.<sup>3</sup> As a result of the amendment in 2022, there were cases where the petitioners complained that their petition could not have been filed as a pre-election matter because the cause of action arose on the election day. This arose in cases where the petitioners alleged that they had inspected and approved their party's symbol or logo before the election in line with the provisions of the law<sup>4</sup> but saw a different logo or unapproved logo on election day<sup>5</sup>. The court still treated it as a pre-election matter.

In 2026, the National Assembly was presented with another opportunity to amend the 2022 Electoral Act to cure some of the perceived injustice caused to petitioners by the removal of the ground of unlawful exclusion as a ground for presenting an election petition, but rather

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<sup>2</sup> Nigeria has had a checkered history of military interventions in governance since its independence in 1960. The nascent democracy held sway from independence until its end with the military coups of 1966, leading to military rule from 1966 to 1979. Following a brief civilian democratic rule from 1979 to 1983, the military once again seized power in the closing hours of 1983, and only yielded power in 1999, when the current Fourth Republic came into existence under the 1999 Constitution.

<sup>3</sup> Section 285(9) of the 1999 Constitution provides that pre-election matters must be filed 14 days from the day of the occurrence of the decision, event or action complained of in the suit, *Manasseh v Goshwe & Ors* (2024) LPELR61673 (SC).

<sup>4</sup> Section 42(3) Electoral Act, 2022.

<sup>5</sup> *Abdurasheed Haruna & ANPP v. INEC* (unreported) Petition No. EPT/NS/SHA/08/2023

than reinstating the ground of unlawful exclusion, the National Assembly removed the ground of qualification, an important ground in presenting an election petition that is deeply rooted in the Constitution of the Federal Republic of Nigeria.<sup>6</sup>

The study critically examined the amendments in the 2026 Electoral Act and found that the amendments, particularly the removal of the ground of non-qualification as one of the grounds for the presentation of an election petition, will cause another injustice to petitioners. The study ended by making recommendations that will guide the courts in handling future election petitions under the 2026 Electoral Act and also guide the legislature in future amendments.

## 2. CONCEPTUAL CLARIFICATION

Before undertaking a critical examination of the Electoral Act, 2026 and the removal of grounds of non-qualification in the said Act, it is imperative to clarify certain key concepts to give focus to this research. The concepts are discussed below as follows:

- a) **Ground:** the word ‘ground’ means the fundamental constituent or the essential part of anything; a fundamental principle; the elements or rudiment of any study or branch of knowledge; a circumstance on which an opinion, inference, argument, statement or claim is founded or which has given rise to an action, procedure or mental feeling; a reason, motive often with additional implication. A valid reason justifying a motive or what is alleged as such.<sup>7</sup> A ground in the context of an election petition is the fundamental reason, basis, or justification for questioning the election. It is a legally recognized basis or reason upon which the validity of an election may be challenged before a competent court or tribunal. It is a specific statutory or constitutional complaint that, if proven, is capable of invalidating the return of a candidate. It is not a general dissatisfaction; a ground must be permitted by law. It is for this reason that an election petition cannot succeed outside the grounds permitted in the Electoral Act<sup>8</sup>. Thus, it is the foundation upon which the election petition is anchored so that if it is removed, the petition collapses like a pack of cards.
- b) **Non-qualification:** it refers to the failure of a candidate to satisfy the requirements set out in the Constitution and other statutes to contest for a particular elective office at the time

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<sup>6</sup> Sections 131, 137, 177, 182, 65, 66, 106 & 107 of the 1999 Constitution provides for qualification for contesting election into the office of the President, Governor, or as members of the National Assembly and the States’ Houses of Assembly.

<sup>7</sup> *Kalu v. Chukwumerije* (2012) 12 NWLR (Pt. 1315) 425 CA

<sup>8</sup> *Obasanjo v Yusuf* (2004) 9 NWLR (Pt. 877) 144 SC

of the election<sup>9</sup>. It is the legal condition that a person, though nominated and possibly declared elected, lacks pertaining to the mandatory qualification laid down by the Constitution of the Federal Republic of Nigeria, the Electoral Act, or any other legislation that governs elections. Non-qualification relates to the legal competence of the candidate to stand for an election. It is different from other election irregularities such as overvoting, procedural irregularities, and noncompliance. Some of the instances where non-qualification may arise are citizenship (where a candidate is not a citizen of Nigeria or has dual citizenship), age threshold (which depends on the office being contested), educational requirement (such as a school certificate or its equivalent), and political party sponsorship. Where a candidate is found not to have any or all the requirements prescribed by the Constitution,<sup>10</sup> such a candidate is disqualified.<sup>11</sup>

### 3. THEORETICAL FRAMEWORK

Having clarified the key concepts in this research to achieve clarity, it has become imperative to situate it within a broader analytical structure. A theoretical framework becomes the platform through which the topic can be interrogated and examined. There are several jurisprudential approaches to law, such as the natural school<sup>12</sup>, which sees law through the lens of moral order; legal positivism<sup>13</sup>, which focuses on the authority and the validity of an enactment; and the historical school,<sup>14</sup> which views law as an expression of societal evolution. However, the theoretical framework that is suitable for this research is the sociological school of jurisprudence,<sup>14</sup> which sees law as an instrument of social engineering. The sociological school

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<sup>9</sup> *AD v Fayose* (2005) 10 NWLR (Pt.392) 151.

<sup>10</sup> Sections 131 & 177 of the 1999 Constitution contain the requirements to contest for president and governor, respectively, while sections 65 and 106 of the Constitution, 1999 provide for requirements to contest for Senate and State Houses of Assembly elections.

<sup>11</sup> Sections 65, 106, 131 & 177 of the Constitution, 1999.

<sup>12</sup> Thomas Aquinas (1224-1274) AD, an Italian Roman Catholic Reverend Father, theologian and philosopher who is regarded as the father of the natural school in his work *Summa Theologica*. See also Mark C. Murphy, 'Natural Law Theory' in Martin P. Golding & Williams A. Edmundson (eds) *Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing, Malden, 2005) p. 15-26.

<sup>13</sup> John Austin (1790-1973), an English jurist and professor of law; and Hans Kelsen (1881-1973), an Austrian Supreme Court Justice and Professor of law, are regarded as the fathers of the positive school of law. See Brian H. Bix, 'Legal Positivism' in Martin P. Golding & Williams A. Edmundson (eds) *Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing, Malden, 2005) p. 29-45. <sup>14</sup> The historical school of law was founded by Frederick Karl Von Savigny (1779-1861) an eminent German Lawyer and author.

<sup>14</sup> Roscoe Pound (1870-1964), an American jurist, botanist, and professor of jurisprudence who stated that law is an instrument of social engineering, social change, or social development to reconcile competing interests in society.

shifts attention from the mere validity of the law to its practical operation and social consequences, given the fact that non-qualification as a ground of election raises questions about democratic accountability and electoral justice. The sociological approach provides the most suitable framework for evaluating whether the Electoral Act, 2026, advances or undermines the social interests it is meant to protect or the interests of the political class. Accordingly, this research adopts the sociological school of jurisprudence as the most suitable theoretical framework for assessing the social implications of the amendment of the Electoral Act 2026 and the removal of the ground of non-qualification in particular.

#### **4. GROUNDS OF PETITION UNDER THE ELECTORAL ACT 2022**

Before the 2026 Electoral Act, the 2022 Electoral Act was the principal legislation that governed the conduct of elections in Nigeria. Section 134 (1) of the Electoral Act 2022 provides for the grounds on which an election may be challenged. These grounds are as follows:

- a. That a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- b. That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act, or
- c. That the respondent was not duly elected by the majority of lawful votes cast at the election.<sup>15</sup>

It is a settled principle of law that these grounds stated above are the foundation of the subject matter or substantive jurisdiction of a tribunal or Court. Thus, where a petition is brought outside these grounds, the court or tribunal will be robbed of its jurisdiction.<sup>16</sup> Curiously, the Electoral Act, 2022, excluded the hitherto fourth ground under its precursor Act of 2010, which is ‘that the petitioner or its candidate was validly nominated by his political party and was unlawfully excluded from the election.’ The removal of this ground in the 2022 Act robbed the court or tribunal of its jurisdiction over a petition purportedly brought under this ground. As a result of the removal, injustices were meted out to petitioners whose party logos were excluded from the ballot, as their grievances were deemed statute-barred even after the time for filing a pre-election matter had elapsed.

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<sup>15</sup> Section 134 Electoral Act, 2022.

<sup>16</sup> *Madukolum & Ors v Nkemdilim* (1962) NSCC 374.

With the injustice occasioned by this removal, one would have expected the ground to be reintroduced in the 2026 Act; instead, the Act went further to remove another ground, creating the potential for even greater mischief in future elections and election dispute resolutions.

## **5. OVERVIEW OF REFORMS AND CHANGES IN THE ELECTORAL ACT 2026**

This section provides an overview of the key reforms introduced by the Electoral Act 2026, with particular emphasis on those changes that directly affect election petitions and the delivery of electoral justice in Nigeria. Some of the innovations or changes include, but are not limited to, the following:

### **a) Mandatory Electronic Transmission<sup>17</sup>:**

The Electoral Act 2026 makes it mandatory for every Presiding Officer to electronically transmit the results from each of the polling units to the IREV portal, and such transmission shall be done after the prescribed Form EC8A has been signed and stamped by the Presiding Officer and countersigned by the candidates' or polling agents, where available at the polling unit. However, the said section has a proviso to the extent that if the electronic transmission of the result fails as a result of poor network or communication failure, and it becomes practically impossible to transmit the result electronically, the signed and stamped Form EC8A by the Presiding Officer, and countersigned by the candidates or polling agents where available, shall in such case be the primary source of collation and declaration of results. The proviso is based on the experience of the 2023 general elections, where there was a purported technical glitch.

The bone of contention with this provision is that the law still fails to guarantee election transparency and accountability. It is argued that giving the Presiding Officer the option of using a manual transmission will still compromise the integrity of the election, and it will encourage rigging. The electronic transmission should be made compulsory, and it should be done 'in real time.' It is an irony that the same Electoral Act, 2026, makes Bimodal accreditation compulsory under section 47, to the extent that where BVAS devices fail, or network issues prevent proper accreditation, the election in that polling unit must be postponed and rescheduled within 24 hours. The law treats accreditation technology as indispensable to electoral integrity, yet when it comes to the electronic transmission of results, which uses the same technology optional, the reliance on

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<sup>17</sup> Section 60(3) Electoral Act, 2026.

technology is made optional. The question that demands an answer is: what is the rationale for treating accreditation as technologically sacrosanct, while the transmission of results is flexible under similar technological constraints?

**b) Consensus and direct primary<sup>18</sup>:**

The Electoral Act, 2026, expunged the provision for indirect election in the party's primaries. The Act recognizes only consensus and direct primaries. Where consensus fails, a party is at liberty to adopt a direct primary. The Direct primary reflects a shift towards popular, participatory democracy<sup>19</sup>. The provision for direct primary and the elimination of indirect primary is premised on the desire to stop the commercialization of party primaries by rich, unpopular politicians. With the direct primary, the beneficiary of any party's ticket must be a party man and not necessarily a money-bag politician. This provision is quite laudable as it will enhance a popularity contest.

**c) Grounds of petition<sup>20</sup>:**

Unlike the previous Electoral Acts, the Electoral Act, 2026 provides for only two grounds upon which an election petition may be founded. Section 138 of the Electoral Act is reproduced hereunder:

An election may be questioned on the ground that the:

- a. Election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
- b. Respondent was not duly elected by majority of the lawful votes cast at the election.

The Act removes non-qualification as a ground for an election petition, notwithstanding that the qualification of a candidate to contest an election is firmly rooted in the Constitution. This raises a fundamental question: should the issue of qualification of a candidate in an election be confined strictly to the realm of pre-election dispute, or does it retain a post-election character by virtue of its constitutional foundation? If it is treated as a pre-election matter, a further difficulty will arise. What becomes of a petitioner who only discovers after the general election that the declared winner was, for example, not constitutionally qualified because he submitted a fake

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<sup>18</sup> Section 87 Electoral Act, 2026.

<sup>19</sup> The Nation Newspaper, February 25, 2026.

<sup>20</sup> Section 138 Electoral Act, 2026.

certificate to INEC? It is argued that denying post-election recourse to such an individual would appear to insulate constitutional violations from judicial scrutiny, merely because they were discovered after the elections had been concluded.

## **6. ARGUMENTS AGAINST THE REMOVAL OF THE GROUND OF NONQUALIFICATION IN THE ELECTORAL ACT 2026**

One of the most controversial innovations introduced in the Electoral Act 2026 is the removal of non-qualification as a ground upon which an election may be challenged before an electoral tribunal. The amendment effectively confines disputes relating to the constitutional qualification or disqualification of candidates to pre-election proceedings.<sup>21</sup> Although the amendment is intended to reduce post-election litigation and promote certainty in the electoral process, it has attracted significant criticism from constitutional scholars, legal practitioners and election law experts.<sup>22</sup> Several compelling arguments show that the removal of this ground is inconsistent with constitutional principles, undermines electoral accountability, and poses serious risks to democratic governance.

The Constitution of the Federal Republic of Nigeria prescribes the qualifications and disqualifications for elective office, including the offices of the President, Vice President, Governor, Deputy Governor, and members of the National and State Houses of Assembly.<sup>23</sup> These Constitutional provisions constitute a mandatory condition precedent to eligibility for election. Since the Constitution is the ground norm, any statutory provision that prevents a court or election tribunal from determining whether an elected person satisfied these constitutional requirements raises serious questions of constitutional validity. An ordinary Act of the National Assembly cannot directly or indirectly restrict enforcement of constitutional qualifications prescribed by the Constitution.<sup>24</sup> Furthermore, 29(5) of the Electoral Act, 2026 has limited the class of persons that can institute a pre-election matter challenging the constitutional qualification of a party's candidate. The provisions of s. 29 (5) and (6) are as follows:

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<sup>21</sup> Section 29(5) of the Electoral Act, 2026 provides that any aspirant who believes that the information given by a candidate of his own political party is false may file a suit at the Federal High Court

<sup>22</sup> H.S Imam, 'The Removal of Qualification Grounds in Election Petitions under the Electoral Act 2026: a Constitutional Question' in Loyal Nigeria Lawyer, <<https://loyalnigerianlawyer.com/the-removal-of-qualificationgrounds-in-election-petitions-under-the-electoral-act-2026-a-constitutional-question/>> viewed on 15 July 2026.

<sup>23</sup> Sections 65, 106, 131 & 177 of the 1999 Constitution (as amended).

<sup>24</sup> Section 1 (3) 1999 Constitution, as amended; see H.S Imam, *ibid*.

29 (5). An aspirant who participated in the primaries of his political party who has reasonable grounds to believe that any information given by the political party's candidate in the affidavit or any document supplied by that candidate in relation to his constitutional requirements to contest the election is false, may file a suit in the Federal High Court in the Federal Capital Territory or in the jurisdiction the cause of action arose against the candidate seeking a declaration that the information contained in the affidavit is false

29 (6). Where the court determines that any of the information contained in the affidavit is false only as it relates to constitutional requirements of eligibility, the court shall issue an order disqualifying the candidate and the sponsoring political party

Thus, only the members of the same party as the candidate whose depositions on his qualification are under challenge can competently file the pre-election action on disqualification. Even then, the claimant must have contested the party primary with the impugned candidate before he can validly institute such action.

The limitation immediately raises concerns that the avenues for access to electoral justice may be unduly restricted or impaired. It also constitutes an implicit curtailment of the constitutional rights of Nigerians to ensure strict compliance with the constitutional and statutory qualification requirements for persons seeking election to public office. The statutory restriction on *locus standi* under the Electoral Act 2026 reduces the fundamental constitutional question of the eligibility of candidates for public office to mere internal affairs of political parties, thereby undermining constitutional accountability and the development of a robust multi-party democratic system.

It is also observable that the provisions of s. 29 (4) of the Electoral Act 2026 recognise the right of "any person" to apply to the INEC for copies of the nomination forms, affidavits, and other documents submitted by candidates. INEC is also mandated to provide the certified copy of such submitted documents within 14 days after the payment of the prescribed fee. However, in a curious legislative development, the succeeding provisions of s. 29 (5) of the Act deprive any person who has lawfully obtained copies of a candidate's nomination documents and detected falsehoods or inconsistencies therein of the right to challenge the candidate's constitutional eligibility in a pre-election action. Instead, the right to institute such proceedings is reserved exclusively for a member of the candidate's political party who participated in the party's primary election in which the candidate emerged. Therefore, a person who is not a member of the candidate's political party lacks

the requisite *locus standi* to challenge any false information in the candidate's affidavit or other nomination documents, notwithstanding that such person was lawfully granted access to copies of those documents by INEC.<sup>25</sup> The removal of disqualification as a justiciable ground in post-election petitions under the Electoral Act, 2026 has brought the Act into direct conflict with the Constitution. Therefore, s.138 of the Electoral Act, to the extent of its inconsistency with the constitutional intendment on qualification and disqualification, may be liable to be declared unconstitutional and void.<sup>26</sup>

Closely related to this is the argument that the amendment may impermissibly limit the constitutional jurisdiction of the electoral tribunals. Election tribunals are constitutionally empowered to determine whether a person has been validly elected into public office.<sup>27</sup> The concept of a valid election extends beyond the conduct of voting and collation of results; it necessarily includes the legal capacity of the declared winner to contest the election. A candidate who lacks the constitutional qualifications to contest cannot, in law, be regarded as having been validly elected. Consequently, excluding the questions of qualification from the jurisdiction of the election tribunals arguably narrows a constitutional mandate through ordinary legislation, contrary to established principles of constitutional interpretation.<sup>28</sup>

Another major criticism is that the amendment weakens the integrity of the electoral process by encouraging electoral fraud and misrepresentation. Qualification disputes usually involve allegations of forged certificates, false declarations of age, dual citizenship where prohibited, falsification of personal information, or other constitutional disqualifications.<sup>29</sup> The inability of election tribunals to consider such issues after an election may embolden unscrupulous candidates to secure electoral victory through deception, knowing that once elected, constitutional defects may no longer constitute a basis for nullifying the election.<sup>30</sup>

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<sup>25</sup> *Ajayi v Adelami* (2025) 20 NWLR (Pt.2022) 21. The Supreme Court held that similar provisions in the Electoral Act, 2022, which permitted any person to apply and obtain copies of a candidate's nomination affidavits and accompanying documents, did not, *ipso facto*, confer *locus standi* on the applicant to institute a pre-election action based on those materials. The Court further reasoned that to hold otherwise would amount to judicial legislation by conferring a right of action that the legislature neither expressly nor impliedly intended.

<sup>26</sup> Section 1(3) Constitution; *Adeleke v Oyetola* (2020) 6 NWLR (Pt.1721) 440 SC

<sup>27</sup> S. 239 & 285 Constitution

<sup>28</sup> *PDP v. Saror* (2022) 11 NWLR (Pt. 1842) 591

<sup>29</sup> *Action Congress v INEC* (2007) 12 NWLR (Pt. 1048) 220.

<sup>30</sup> H.S Imam, *ibid*.

Finally, the amendment has generated substantial criticism from legal scholars and practitioners because it weakens constitutional safeguards, restricts access to electoral justice, and diminishes judicial oversight of the electoral process.<sup>31</sup> The amendment prioritizes electoral finality at the expense of constitutional accountability.

The following can be argued in favour of the statutory exclusion of disqualification as a ground for post-election petitions: firstly, making the issue of qualification a pre-election matter gives jurisdiction over such disputes to the Federal High Court, which may likely be a suitable forum owing to that Court's procedural system.<sup>32</sup> Secondly, pre-election matters litigated at the Federal High Court are constitutionally appealable to the Supreme Court, whereas election petitions, with the exception of governorship and presidential election disputes, have limited appealability.<sup>34</sup> Moreover, such removal will engender vigilance and diligence on the part of the Independent National Electoral Commission INEC as well as the political parties to sieve or vet the candidates for compliance with the constitutional requirements.<sup>33</sup> Such removal will also act for the effective and swift disposal of election petitions within the constitutionally prescribed timelines, and aid the timely conclusion of election petitions in all, while it will reduce the volume of petitions, and ensure genuine participatory democracy since electoral outcomes are decided at the polls rather than by the judicial process.<sup>34</sup> Nevertheless, the need for transparency and electoral integrity will support the continued availability of as a ground of post-electoral contests in a nascent democracy, as is the case in Nigeria.

## **7. THE IMPLICATIONS OF THE REMOVAL OF THE GROUND OF NONQUALIFICATION ON THE RESOLUTION OF FUTURE ELECTION DISPUTES**

The removal of non-qualification as a ground for election petitions under the Electoral Act 2026 has significantly altered Nigeria's electoral dispute-resolution landscape. By confining qualification disputes to pre-election proceedings, the amendment seeks to reduce post-election litigation and

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<sup>31</sup> Premium Times, 'Lawyer files suit against Electoral Act's provision disallowing election winners constitutional qualifications' <<https://www.premiumtimesng.com/news/top-news/881680-lawyer-files-suit-against-electoral-acts-provision-disallowing-querying-election-winners-constitutional-qualifications.html>> accessed 20 July 2026.

<sup>32</sup> the Federal High Court (Pre-election) Practice Directions (Amendment) 2026. Under the directions, pre-action matters are required to be commenced by originating summons. However, in cases of allegations of fraud or forgery, parties may be required to file written witness depositions. <sup>34</sup> *Salik v Idris* (2014) 15 NWLR (Pt.1429) 36

<sup>33</sup> Section 29 Electoral Act 2026.

<sup>34</sup> Section 285 Constitution of the federal republic of Nigeria 1999

promote electoral certainty.<sup>35</sup> However, it also raises important constitutional concerns. One immediate implication is the likely increase in pre-election litigation, as political parties and aspirants will be compelled to challenge the candidate's eligibility before the elections. This places greater responsibility on the political parties to conduct thorough screening of candidates and on stakeholders to identify and address qualification issues early in the electoral process.

The amendment also creates the risk that constitutionally disqualified candidates may remain in office where evidence of disqualification emerges only after the election. This weakens the ability of election tribunals to enforce constitutional eligibility requirements and may undermine electoral accountability and public confidence in the electoral process. Furthermore, the amendment is likely to generate constitutional challenges concerning the extent to which the National Assembly can restrict the jurisdiction of election tribunals over matters relating to constitutional qualifications. It may also lead to jurisdictional conflict between pre-election courts and the election tribunals regarding the proper forum for determining qualification-related issues.

While the amendment may contribute to the timely resolution of election disputes, its longterm success will depend on judicial interpretation and effective implementation. Unless complemented by robust pre-election scrutiny and enforcement mechanisms, the amendment may weaken constitutional governance by limiting judicial oversight over the eligibility of elected officials.

## **8. PROPOSED STATUTORY AMENDMENT**

It will be proposed that there is yet enough time for the amendment of the provisions of section 137 of the Electoral Act, with a view to ensuring that it ceases to be in a collision course with section 1(3) of the Constitution. Thus, two broad ways can be suggested, namely, that the Act be amended to include the ground of qualification or disqualification. Alternatively, in the event that the provisions of the section are maintained as they are, then an amendment may be made to enlarge the scope of persons vested with the *locus standi* in the pre-election matters involving candidates' constitutional qualifications, relying on the South African model.<sup>36</sup> Thus, the provisions of s. 137 might be amended to make "any person" who has a verifiable cause to contest

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<sup>35</sup> H.S Imam, 'The Removal of Qualification Grounds in Election Petitions under the Electoral Act 2026: a Constitutional Question' in Loyal Nigeria Lawyer, <<https://loyalnigerianlawyer.com/the-removal-of-qualificationgrounds-in-election-petitions-under-the-electoral-act-2026-a-constitutional-question/>>accessed on 15 July 2026.

<sup>36</sup> Sections 29 & 30 of the South African Electoral Act 1998.

the facts deposed to in affidavits by parties' candidates capable of objection within a stipulated period after the mandatory publication by the INEC. It shall be the statutory duty of INEC to investigate and decide on the validity of the objection. Where the objection succeeds, the candidate will be disqualified. Where the objection is found unsubstantiated, it shall be dismissed by INEC. The decision of INEC in this regard will then be judicially reviewable. This latter option ensures that all the benefits of the statutory classification of constitutional qualification as pre-election matters are preserved while the integrity of the electoral process remains sacrosanct.<sup>37</sup>

## **9. CONCLUSION AND RECOMMENDATIONS**

The Electoral Act 2026 introduces significant reforms aimed at improving Nigeria's electoral process by reducing post-election litigation and promoting the timely resolution of electoral disputes. Among its contentious innovations is the removal of non-qualification as a ground for election petitions. While the amendment seeks to ensure electoral finality by confining qualification disputes to pre-election proceedings, it raises fundamental constitutional and policy concerns.

The exclusion of non-qualification from post-election adjudication has the potential to weaken constitutional accountability, limit the jurisdiction of election tribunals, and permit constitutionally ineligible candidates to retain public office where disqualifying facts emerge only after elections. It also departs from Nigeria's established electoral jurisprudence, which has consistently recognized constitutional qualification as an essential component of a valid election.

Accordingly, although the objectives of reducing protracted election litigation are laudable, it should not be pursued at the expense of constitutional supremacy, the rule of law, and the integrity of the electoral process.

To address the challenges arising from this amendment, the following recommendations are proposed:

- i. Legislative review: the National Assembly should reconsider the removal of nonqualification as a ground for election petition and amend the Electoral Act 2026 to

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<sup>37</sup> It is also noteworthy that the provisions of the abrogated s. 31(5) of the Electoral Act 2010 (as amended) granted any person who had reasonable grounds to believe that any information supplied by a candidate was false the right to institute a pre-election action in either the Federal or the States' High Courts to challenge the information.

restore the jurisdiction of election tribunals to determine constitutional qualification where appropriate.

- ii. Alternatively, the provisions of s. 29 (5) of the Electoral Act, 2026 may be amended to give the right to every Nigerian with a reasonable cause to object to any wrong or incorrect claim of qualification made by a candidate presented for an election. The objection can be heard by INEC, in the first instance, and the objector should be allowed or permitted the right to institute a pre-election judicial review of the decision of INEC at the Federal High Court.
- iii. Another option is to allow access to the affidavit of satisfaction of qualification to be objected to by any person or citizen who has a cause to raise such objection. INEC will be saddled with the duty to investigate and decide on the merit of the objection. A meritorious objection will lead to the disqualification of the candidate. The decision of INEC in this instance will be reviewable at the Federal High Court.
- iv. Stronger candidates' screening: political parties should adopt more rigorous internal screening mechanisms to ensure that only candidates who satisfy constitutional and statutory requirements are nominated for elective offices.
- v. Enhanced verification by INEC: although INEC'S powers are limited, the Commission should strengthen its verification processes and collaborate with the relevant institutions to ensure the authenticity of documents submitted by candidates.
- vi. Expedited pre-election proceedings: courts should continue to prioritize the speedy determination of pre-election disputes involving candidates' qualifications to ensure that such matters are resolved before elections whenever possible.