

Redefining the Burden of Proof in Nigeria Election Petitions: Lessons from Comparative Jurisdictions for Advancing Electoral Integrity♦

♦Simon Kasimu Mokidi, Phd¹, Anita Uchenna Onochie, Phd², Samson Odogu Nmor, L.L.B (Hons.), L.L.M (Nig.), B.L³

¹Associate Professor of Law, Ambrose Alli University, Nigeria.

^{2,3}Law Lecturer, Department of Humanities and Social Science, School of General Studies, Auchi Polytechnic, Auchi, Edo State.

ABSTRACT

This paper examines the burden of proof in Nigerian election petitions through the lens of electoral integrity and democratic theory, with the aim of determining whether persistent public dissatisfaction with electoral adjudication stems from judicial failure or from structural deficiencies in the legal framework. Adopting a doctrinal and comparative research methodology, the study analyses constitutional provisions, the Evidence Act 2011, the Electoral Act 2022, and leading judicial decisions, complemented by comparative insights from Kenya, India, and the United States. The paper finds that Nigeria's evidentiary regime imposes an onerous and often impracticable burden on petitioners, reinforced by presumptions of regularity in favour of electoral outcomes declared by INEC, strict timelines, and limited access to electoral materials. These constraints, rather than judicial unwillingness, largely account for the difficulty of overturning flawed elections. Comparative analysis reveals that jurisdictions permitting evidentiary burden-shifting upon the establishment of prima facie irregularities are better equipped to safeguard electoral integrity. The paper recommends targeted statutory reforms, including limited transparency obligations on INEC, recalibration of evidentiary presumptions, and greater recognition of technology-driven evidence. It concludes that strengthening electoral integrity in Nigeria requires reform of the evidentiary framework governing election petitions rather than continued attribution of blame to the judiciary.

KEYWORDS: Burden Of Proof, Election Petitions, Electoral Integrity, Inec, Comparative Electoral Law, Democratic Accountability.

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1.INTRODUCTION

Elections constitute the cornerstone of representative democracy, providing the principal mechanism through which citizens exercise their sovereign will and confer legitimacy on those who govern. As Robert Dahl has argued, competitive elections are indispensable to polyarchy, serving as the institutionalised means of ensuring accountability, political participation, and the peaceful transfer of power.¹ In Nigeria, the centrality of elections to democratic governance is expressly recognised in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which declares that "sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority."² This constitutional guarantee is operationalised through periodic elections conducted in accordance with the provisions of the Electoral Act 2022.³

The Nigerian electoral process is broadly divided into three interrelated stages: the pre-election stage, the actual election stage, and the post-election stage. The pre-election stage encompasses activities such as the registration of political parties (where necessary), delimitation of constituencies, the registration and periodic review of the voters' register, issuing of guidelines by the election management body, the conduct of party primaries, and electioneering campaigns. The election stage encompasses the

¹ RA Dahl, *Polyarchy: Participation and Opposition* (Yale University Press 1971) 1–3. *Collins Dictionary*, available at <https://www.collinsdictionary.com>, defines election as a process in which people vote to chose a person or group of people to hold an office. In this paper, the term is used in relation to a process that enables voters in a given state or country to select leaders or their representatives and hold them accountable.

² Constitution of the Federal Republic of Nigeria 1999 (as altered), s 14(2)(a).

³ Electoral Act 2022

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employment or recruitment of electoral officers and party agents, and the actual casting of votes on Election Day. The post-election stage, by contrast, is concerned with the resolution of electoral disputes through judicial mechanisms and the swearing-in of duly elected candidates. These stages are indispensable to electoral integrity, as they determine not only the transparency and inclusiveness of the process but also the credibility and finality of electoral outcomes.

In practice, however, the voting and post-election stages often command the most significant public attention in Nigeria. Once results are declared and winners announced, aggrieved candidates and political parties frequently challenge the outcome before election petition tribunals and appellate courts. This reflects the widely held perception among citizens and observers that the electoral process is often marred by irregularities, manipulation, or outright fraud.

The integrity of electoral processes is a fundamental element of democratic governance, acting as a litmus test for public confidence in political systems.⁴ For elections to genuinely reflect the electorate's will, they must be conducted transparently and fairly, and accompanied by mechanisms that ensure accountability.⁵ Consequently, the legitimacy of elections becomes dependent not solely on the ballot but also on the judiciary's capacity to adjudicate disputes fairly and expeditiously. Thus, election petitions play a critical role in the electoral process, providing aggrieved parties with a means to challenge the legitimacy of an election.⁶ Nigerian courts, particularly the Supreme Court, have repeatedly underscored the judiciary's critical role in safeguarding the electoral process.⁷ The frequent resort to litigation underscores both the fragility of Nigeria's democratic consolidation and the urgency of strengthening electoral integrity as a prerequisite for sustainable democratic governance.

Once an election dispute has been submitted to the court, the judiciary is expected to adjudicate on the basis of both law and fact. In discharging this onerous responsibility, however, the judiciary has often been subjected to intense public criticism. Much of this criticism arises from the perception that the judiciary, as part of the Nigerian system, is not insulated from corruption and may therefore be incapable of delivering impartial justice. This perception was particularly pronounced after the 2023 general elections, when the popular catchphrase "*all eyes on the judiciary*" was adopted by the "Obedient Movement" as an expression of public skepticism and anticipation.

It is, however, necessary to clarify that the judiciary does not simply confer victory on a party in an election petition. Rather, the court is bound to act within the framework of enabling laws, and to give judgment only where a party has adduced credible evidence in support of its claims. Judicial intervention in electoral disputes has, on several occasions, altered the outcomes declared by the electoral umpire. Cases such as *Amaechi v. INEC*⁸, *Uzodinma v Ihedioha*⁹, *Osunbor v. Oshiomhole*¹⁰, *Peter Obi v INEC*¹¹, *Agagu v. Mimiko*¹², and *Fayemi v. Oni*¹³ demonstrate how both election tribunals and appellate courts have overturned election results in favour of petitioners. Yet the judiciary often becomes the target of public criticism, especially when judgments are rendered against petitioners from opposition parties. This problem is partly rooted in a widespread misconception: many people fail to appreciate that courts do not render decisions based on public sentiment or political leanings, but strictly on the facts presented and the governing law.

The Evidence Act 2011 provides the general rules applicable to all judicial proceedings in Nigeria. Section 131 of the Act lays down the principle that "*he who asserts must prove.*" In other words, the legal burden rests on the party that seeks the court's intervention in their favour. Applied to election petitions, this principle places the initial responsibility on the petitioner to establish his claims against the respondent, whether those claims relate to non-compliance with the provisions of the Electoral Act, corrupt practices, or a candidate's ineligibility.¹⁴

The Electoral Act 2022 reinforces the general principle of proof by setting out specific grounds upon which an election may be questioned. Section 134(1) identifies these grounds to include: the non-qualification of a candidate to contest the election; corrupt practices; non-compliance with the provisions of the Electoral Act; the return of a candidate who was not duly elected by a majority of lawful votes cast; or the unlawful exclusion of a petitioner or his candidate who was validly nominated. Each of these

⁴ P Norris, *Strengthening Electoral Integrity* (Cambridge University Press, 2017) 1 - 3

⁵ *Ibid*

⁶ Section 130 of the Constitution of the Federal Republic of Nigeria 1999 (As amended) and Sections 131, 133 and 138 of the Electoral Act 2022.

⁷ See *Awolowo v Shagari* (1979) 6–9 SC 37; *Buhari v Obasanjo* (2005) 13 NWLR (Pt 941) 1; *Atiku Abubakar v INEC & Ors* (2020) 12 NWLR (Pt 1737) 37.

⁸ [2008] 5NWLR (Pt 1080) 227

⁹ [2020] 1NWLR (Pt 1705) 1

¹⁰ (2008) JELR 56497 (CA)

¹¹ [2007] 11 NWLR (Pt. 1046) 495

¹² [2009] 10 NWLR (Pt 1142) 1

¹³ [2011] 17 NWLR (pt.1222) 326

¹⁴ See *Buhari v. INEC* [2008] 19 NWLR (pt.1120) 246 and *Fayemi v. Oni* [2011] 17 NWLR (pt.1222) 326. In *Hassan & Anor v INEC & Ors* [2019] LPELR-49207(CA) 11–13, the court ruled that, as in ordinary civil cases, the burden of proof in election petitions lies on the party challenging the election result.

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grounds imposes a corresponding evidentiary obligation on the petitioner. For instance, where a petitioner alleges non-compliance with the Electoral Act, it is not sufficient to merely prove that irregularities occurred. The petitioner must also demonstrate that such irregularities substantially affected the outcome of the election. This principle was firmly established in *Buhari v. Obasanjo*¹⁵, where the Supreme Court held that a petitioner alleging non-compliance bears a dual burden: to prove the irregularity and to establish that it had a substantial effect on the outcome. While this approach is consistent with evidentiary principles in civil litigation,¹⁶ its application in election petitions has raised concerns about fairness and practicality, given the peculiarities of Nigeria's electoral environment.¹⁷ Osadolor¹⁸ contends that "the shallow chant of 'he who asserts must prove' in the extant law is a conduit pipe for electoral injustice." He argues that the rebuttable presumption of the regularity of elections and declaration of results no longer serves the end of justice in our electoral process.

Petitioners face formidable challenges under this evidentiary framework. Section 168(1) of the Evidence Act prescribes a presumption of regularity in respect of official acts, including those performed by the Independent National Electoral Commission (INEC). As a result, election results declared by INEC are presumed correct and valid until credible evidence is brought to the contrary. Although rebuttable, this presumption places a significant burden on petitioners, who must produce sufficient evidence to dislodge it. Robert Clarke, SAN, commenting on the 2023 Presidential Election Petition judgment, observed that given this presumption, it is an almost insurmountable task for a petitioner to succeed, particularly when one considers the volume of evidence required to effectively challenge INEC's declarations.¹⁹

The difficulties are compounded by strict statutory timelines for filing and adjudicating petitions, which leave petitioners with little time to gather and present voluminous evidence.²⁰ INEC's control over critical electoral documents further creates barriers to access, while courts often require petitioner-specific evidence from polling units, making the evidentiary burden daunting.²¹ These procedural hurdles have fostered perceptions of systemic bias, undermining public confidence in the fairness and accountability of the election petition process.

It is against this background that the evidentiary burden in Nigerian election petitions must be interrogated. The central question is whether recurrent dissatisfaction with judicial outcomes arises from judicial failings or from the structure of the legal framework itself. The necessity, therefore, is to examine more closely the burden of proof borne by petitioners and the manner in which it shapes the decisions of courts in electoral adjudication.

This paper also situates Nigeria within a comparative context, drawing lessons from Kenya, India, and the United States. Kenya's jurisprudence places strong emphasis on electoral integrity by requiring election management bodies to demonstrate compliance with legal standards once substantial allegations are raised. Indian position closely mirrors the Nigerian framework, while the United States, for its part, provides robust evidentiary frameworks and procedural safeguards to ensure fairness in contested elections. These jurisdictions, though distinct, highlight how electoral dispute resolution can balance the need for finality with the imperative of justice.

Building on these insights, this paper argues that Nigeria's crisis of electoral integrity is systemic rather than judicial in nature. The courts have merely become the visible face of a deeper problem rooted in the law itself and the political attitudes that influence its application. To achieve genuine electoral integrity, reform efforts must shift from blaming the judiciary to overhauling the electoral legal framework and addressing the entrenched political culture that enables manipulation. The paper advocates a re-examination of the standard of proof in election petitions, the adoption of a more transparent and technology-driven electoral process, and a renewed commitment by political actors to uphold democratic values. Only through such comprehensive reforms can Nigeria promote transparency, fairness, and accountability, not just in the resolution of electoral disputes but throughout the entire electoral process.

¹⁵ [2008] 19 NWLR (pt.1120) 246

¹⁶This include burden of proof, standard of proof, relevance, admissibility, and corroboration under the Evidence Act 2011

¹⁷AO Oluwadayisi and E Olowononi, 'Nigeria's Presidential Election Petitions and the Burden of Proof: A Review and Critique of Atiku v Buhari (2019)' *International Journal of Civil Law and Legal Research* (2021) 1(1): 17-24<<https://www.civillawjournal.com/article/4/1-1-8-291.pdf>> accessed 23 December 2024

¹⁸ FO, Osadolor, 'Burden and Standard of Proof in Election Petitions without Criminal Allegation', in *Journals of Politics and Law* (2019) 12 (3) 156–168 <<https://www.ccsenet.org/journal/index.php/jpl/article/view/0/40586>> accessed 25 December 2025

¹⁹ See "Robert Clarke SAN once commented on the presumption of regularity in result declared by INEC" available at <https://share.google/kXYpnCtZ2O0oMgfl>

²⁰K Leke and T Alatisé, 'Burden of Proof in Election Petition in Nigeria and the Implication of Section 137 of the Electoral Act, 2022' *NAUJILJ* (2023)14 (2) 26 – 34.

²¹*Kakih v. PDP* (2014) 15 NWLR (Pt. 1430) 374

2.ELECTORAL INTEGRITY THEORIES AND THE BURDEN OF PROOF

Electoral integrity provides the central theoretical lens through which the burden of proof in Nigerian election petitions must be understood and reassessed. Electoral integrity, broadly conceived, refers to the extent to which the entire electoral process conforms to democratic norms of fairness, inclusiveness, transparency, accountability, and respect for the electorate's will.²² It encompasses compliance with constitutional and statutory provisions, the neutrality and competence of electoral institutions, the equality of political competition, and the availability of effective remedies for electoral grievances.²³ In this sense, electoral integrity is both a normative ideal and a practical standard against which electoral systems and adjudicatory frameworks are assessed.

In this paper, the allocation of evidentiary responsibility is not treated as a neutral procedural rule but as a function of legislative design choices that embody particular conceptions of electoral integrity. This perspective is crucial to the core argument advanced in this paper: the persistent difficulties associated with election petitions in Nigeria are not primarily attributable to judicial unwillingness or incompetence, but rather to the restrictive statutory and doctrinal framework which the judiciary is bound to apply.

Nigerian courts operate within a legal regime overwhelmingly shaped by procedural and outcome-based theories of electoral integrity, both of which are deeply embedded in the Constitution and the Electoral Act. The procedural or legal-institutional theory conceives electoral integrity as substantial compliance with prescribed rules and accords a strong presumption of regularity to declared election results.²⁴ This presumption is not judicially invented; it is a logical consequence of a statutory framework that places the entire initial and continuing burden of proof on the petitioner.²⁵ Courts, therefore, insist on proof of non-compliance at a granular level, typically on a polling-unit-by-polling-unit basis, supported by certified electoral documents and eyewitness testimony. In this context, judicial insistence on strict proof reflects fidelity to the law rather than hostility to electoral justice.

The outcome-based theory further entrenches this evidentiary rigidity by requiring petitioners to establish that proven irregularities substantially affected the result of the election.²⁶ This requirement, now firmly codified in electoral legislation,²⁷ transforms the burden of proof into a predominantly quantitative exercise. Petitioners must demonstrate not only the occurrence of electoral wrongdoing but also its precise numerical impact on the final outcome. Courts have consistently applied this statutory test with exactitude, not out of formalistic inclination, but because the law leaves little room for inferential or contextual reasoning. Where electoral malpractice is systemic, diffuse, or process-based, the law nevertheless demands mathematical certainty, thereby limiting the judiciary's capacity to engage with the broader democratic implications of such failures.

Electoral justice theory, which emphasises the availability of judicial remedies as a component of electoral integrity, is also reflected in Nigeria's elaborate tribunal system. However, the manner in which evidentiary rules are applied reveals that election petitions are legislatively structured to mirror ordinary civil proceedings. Judges are required to apply the orthodox rules of pleading and proof, notwithstanding the public-interest character of elections and the pronounced informational asymmetry between petitioners and electoral authorities. In this sense, the judiciary's role is largely reactive and constrained: courts may adjudicate disputes, but they cannot recalibrate evidentiary burdens that have been expressly or implicitly fixed by statute.

Other theories of electoral integrity, such as transparency, participation, institutional independence, and technology-based integrity, have been incorporated into Nigeria's electoral discourse at the policy level but have not been translated into corresponding evidentiary flexibility within the governing legal framework. Although electoral technologies and transparency mechanisms exist, the law imposes no meaningful obligation on electoral authorities to explain failures when challenged. Instead, the burden remains firmly on petitioners to access, tender, and interpret electoral data that is primarily controlled by state institutions. Judicial deference in this regard flows less from institutional timidity than from the absence of legislative provisions authorising burden-shifting or adverse evidential inferences.

Viewed through this theoretical prism, criticisms that locate the problem of electoral justice primarily in judicial attitude or interpretation are incomplete. Nigerian courts have consistently demonstrated a willingness to interrogate electoral processes within the limits permitted by law. The more fundamental constraint lies in a legislative framework that equates electoral integrity

²²SO Nmor and AU Onochie, 'Electoral Integrity in Nigeria: Challenges, Strategies and Pathways to Reform' *LSJR* (2024) 5(1) 76–77 <<https://www.nigerianjournalonline.com/index.php/LASJURE/article/view/5794>> accessed 25 December 2025

²³*Ibid.* p 76 - 85

²⁴CJ Ubanyionwu, 'Appraisal of Presumption of Regularity of Election Results Declared by INEC and Electoral Violence in Nigeria' *Journal of Customary and Religious Law* (2024) 1(1) 88–102 <<https://journals.unizik.edu.ng/jocar/article/view/4193/3425>> accessed 26 December 2025

²⁵(n 16)

²⁶CJ Ubanyionwu, 'Theories and Historical Evolution of Substantial Compliance Doctrine in Election Petition Cases in Nigeria' *Nigerian Journal of Legal Studies* (2025) 14, 45–67 <<https://nigerianjournalonline.org/index.php/NJLS/article/view/2485/2325>> accessed December 2025

²⁷Section 135(1) of the Electoral Act 2022

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with procedural regularity and numerical certainty, while undervaluing participatory fairness, systemic accountability, and the realities of electoral administration in a developing democracy. As currently constituted, the law leaves judges with limited doctrinal tools to address structural electoral failures, regardless of how evident they may appear.

Situating the burden of proof within the theories of electoral integrity, therefore, reinforces the central claim of this work that advancing electoral integrity in Nigeria requires a recalibration of the legal rules governing proof in election petitions, rather than a reorientation of judicial disposition. Comparative jurisdictions that have adopted more context-sensitive evidentiary frameworks demonstrate that legislative reform, particularly in relation to burden allocation and evidential presumptions, can enhance judicial effectiveness without compromising legal certainty. In this sense, the path to stronger electoral integrity in Nigeria lies not in blaming the judiciary, but in equipping it with a legal framework that better aligns evidentiary rules with democratic realities.

3. THEORIES OF ELECTION AND THEIR RELEVANCE TO ELECTORAL INTEGRITY IN NIGERIA

A proper understanding of the debate on the burden of proof and electoral integrity in Nigeria demands an examination that goes beyond judicial practice to the historical and theoretical foundations of the country's electoral experience. The trajectory of Nigeria's political history reveals that elections have often functioned less as genuine mechanisms for reflecting the people's will and more as instruments for legitimising political authority. When the evolution of Nigeria's electoral process is examined through the prism of key electoral theories, namely legitimisation, elite, mandate, accountability, and participatory models, it becomes clear why the judiciary has come to occupy a central, albeit frequently misunderstood, position in the pursuit of credible elections.

From the colonial period, Nigeria's elections largely mirrored the legitimisation theory advanced by David Easton and Samuel Huntington²⁸, which conceives elections as rituals designed to validate authority rather than as authentic expressions of public choice. The limited franchise established under the 1922 Clifford Constitution, confined to a small class of male property owners in Lagos and Calabar, epitomised this theory.²⁹ Elections, in that sense, served to confer an appearance of legitimacy on the colonial regime while excluding the overwhelming majority of Nigerians from participation. The process was, therefore, a symbolic performance of consent rather than a democratic expression of will.

This logic persisted into the First Republic (1960–1966), when Nigeria's political culture reflected the elite theory articulated by Vilfredo Pareto, Gaetano Mosca, and Robert Michels.³⁰ Political power became concentrated within regional elites who dominated the leading political parties—the Northern People's Congress (NPC), the National Council of Nigerian Citizens (NCNC), and the Action Group (AG). Elections were frequently manipulated to perpetuate elite dominance, often through ethnic mobilisation, patronage, and electoral fraud. The controversies surrounding the 1964 federal elections and the 1965 Western Regional elections, both marked by violence and irregularities,³¹ embodied Michels's "iron law of oligarchy": the tendency of elites to entrench themselves within ostensibly democratic systems.³² As faith in the electoral process collapsed, the judiciary began to be seen as the final arbiter of fairness, though its role remained peripheral at the time. The crisis of legitimacy that followed, rather than judicial intervention, paved the way for the January 1966 military coup.

The Second Republic (1979–1983) represented an attempt to align Nigeria's elections with the mandate and competition theories of democracy, rooted in the social contract philosophy of John Locke and Jean-Jacques Rousseau. The 1979 Constitution sought to entrench a political order founded on popular consent and multiparty competition. However, the Supreme Court's decision in *Awolowo v Shagari*,³³ arising from the controversial interpretation of the "two-thirds of all the states" requirement, reflected the persistence of the legitimisation model. By prioritising political stability over strict legal interpretation, the Court effectively reinforced the symbolic role of elections as instruments for validating power rather than ensuring procedural integrity. The judgment became emblematic of a judicial philosophy that privileged continuity and stability over perfection in electoral justice.

²⁸D Easton, *A Systems Analysis of Political Life* (Wiley, 1965); SP Huntington, *Political Order in Changing Societies* (Yale University Press, 1968)

²⁹IK Ahmed and OE Olajide, 'Electoral Malpractices and Crises In Nigeria: Historical Perspectives' *IJR* (2021) 8(2) 360 – 361 <<https://journals.pen2print.org/index.php/ijr/article/viewFile/20426/19957>> accessed 26 December 2025

³⁰V Pareto, *The Mind and Society* (Harcourt Brace, 1935); G Mosca, *The Ruling Class* (McGraw Hill, 1939); R Michels, *Political Parties* (Free Press, 1962).

³¹Ediagbonya Michael *et al*, 'Election Rigging and Violence in Nigeria in Historical Perspective: A Case Study of 1959, 1964, 1965 and 1983 Elections' *International Journal of Multidisciplinary Research and Analysis* (2023) 6(1)1–13 <<http://ijmra.in/v6i1/Doc/4.pdf>> accessed 26 December 2025

³²Michels Robert, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (London: Free Press, 1915).

³³*Awolowo v. Shagari* (1979) All NLR 120 (SC).

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The June 12, 1993 presidential election, during the aborted Third Republic, provided the clearest expression of the participatory and developmental theories associated with John Stuart Mill and Carole Pateman.³⁴ Nigerians, transcending ethnic and religious divides, voted overwhelmingly for a candidate seen as embodying national unity. The annulment of that election by the military regime, however, nullified the people's mandate and reaffirmed the enduring influence of elite manipulation and legitimisation politics in Nigeria's electoral history.³⁵ The episode deepened public reliance on the judiciary as the ultimate channel for electoral redress and entrenched scepticism about the political process.

With the advent of the Fourth Republic in 1999, Nigeria's elections began oscillating between the ideals of mandate and accountability theories, on the one hand, and the realities of elite and legitimisation politics, on the other. Section 14(2)(a) of the 1999 Constitution (as amended) declares that sovereignty belongs to the people from whom government derives its authority, echoing the Lockean and Rousseauian notion of consent.³⁶ Yet, in practice, elections continued to serve as contests for power and patronage rather than genuine expressions of the people's will. The general elections of 2003, 2007, and 2011 were characterised by widespread irregularities, ballot manipulation, and institutional compromise. Judicial pronouncements in cases such as *Buhari v Obasanjo*³⁷ and *Atiku Abubakar v INEC & Ors*³⁸ revealed the courts' attempt to balance the preservation of legal certainty with the pursuit of political stability.

It is within this historical and theoretical framework that the burden of proof in election petitions assumes profound significance. Section 135(1) of the Electoral Act 2022 imposes upon the petitioner the onerous duty of proving not only that substantial non-compliance occurred but also that such non-compliance materially affected the result of the election. Although this requirement is intended to deter frivolous petitions, it often functions as a shield for electoral malpractice by imposing an almost insurmountable evidential threshold. The provision reflects the lingering influence of the legitimisation model; it prioritises continuity and political order over the integrity of the electoral process. Consequently, courts are frequently constrained to affirm flawed elections, not because they condone malpractice, but because the law demands a level of proof that is practically unattainable within Nigeria's electoral environment.

The challenge, therefore, is not the judiciary's fidelity to the law but the restrictive nature of the law itself, designed and perpetuated by the political elite who benefit from its deficiencies. This paradox defines Nigeria's electoral system: the judiciary is often the focus of public discontent, yet it operates within a statutory framework that limits its ability to deliver true electoral justice.

The 2015 general elections, which marked Nigeria's first peaceful transfer of power between political parties, seemed to affirm aspects of the accountability theory propounded by Joseph Schumpeter and Morris Fiorina³⁹, which conceive elections as opportunities for citizens to reward or sanction those in power. However, subsequent elections in 2019 and 2023 exposed the persistence of deep structural flaws. Although the introduction of the Bimodal Voter Accreditation System (BVAS) under the Electoral Act 2022 has improved transparency in voting and collation processes,⁴⁰ the unrelenting evidentiary burden placed on petitioners continues to undermine public confidence in the judiciary and the electoral process as a whole.

Ultimately, the persistent judicialisation of Nigerian elections should not be mistaken for judicial overreach. Rather, it reflects the long historical evolution of a system in which elections have rarely served their true democratic purpose. The judiciary, operating under restrictive laws, becomes the reluctant custodian of electoral legitimacy because other institutions have failed to command public trust. Achieving electoral integrity, therefore, requires more than judicial reform; it calls for a fundamental restructuring of the electoral legal framework, a cultural shift among political actors, and the establishment of standards that favour truth and accountability over mere stability. Until the electoral process genuinely reflects the mandate and accountability ideals of democracy, the burden of proof will continue to serve as both a legal and symbolic expression of Nigeria's struggle between legitimacy and justice.

³⁴JS Mill, *Considerations on Representative Government* (Prometheus Books, 1991); C Pateman, *Participation and Democratic Theory* (Cambridge University Press, 1970).

³⁵EN Okorie, 'Annulment of June 12 1993 Presidential Election and the Elusive Question for Democracy in Nigeria' *South East Political Review* (2020) 5(1) 27 – 40 <<https://journals.aphriapub.com/index.php/SEJPS/article/view/1334/1277>> accessed 26 December 2025

³⁶J Locke, *Second Treatise of Government* (Cambridge University Press, 1988); J. J. Rousseau, *The Social Contract* (Penguin, 1968).

³⁷*Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 (SC)

³⁸*Atiku Abubakar v. INEC & Ors* (2019) LPELR-49473 (CA).

³⁹JA Schumpeter, *Capitalism, Socialism and Democracy* (Harper, 1942); MP Fiorina, *Retrospective Voting in American National Elections* (Yale University Press, 1981).

⁴⁰A Ogbadebo, 'The Role of Bvas in Safeguarding Electoral Integrity: An Evaluation of The 2023 General Elections in Fct, Abuja' *Journal of Social Political Sciences* (2025) 6(1) 1-14 <<https://doi.org/10.52166/jsps.v6i1.251>> accessed 26 December 2025

4. THE LEGAL FRAMEWORK ON THE BURDEN OF PROOF IN NIGERIAN ELECTION PETITIONS

The adjudication of election petitions in Nigeria is grounded in a statutory framework that assigns the burden of proof primarily to petitioners. Sections 131 and 132 of the Evidence Act 2011 provide that a party asserting a claim must prove the facts on which it relies, while the legal burden remains with the party who would fail if no evidence were presented. In election petitions, this principle requires petitioners to demonstrate both that substantial non-compliance with the Electoral Act occurred and that such non-compliance materially affected the election outcome. The standard of proof is generally on the balance of probabilities, but allegations of corrupt practices demand a stricter standard akin to proof beyond reasonable doubt.⁴¹

Courts have consistently distinguished between the legal burden, which never shifts from the petitioner, and the evidential burden, which may shift to the respondent, usually INEC, once the petitioner establishes a credible *prima facie* case. This interplay is evident in cases such as *Omoboriowo v. Ajasin*,⁴² *Awuse v. Odili*,⁴³ *Buhari v. INEC*,⁴⁴ *Fayemi v. Oni*,⁴⁵ *Atiku v. INEC*,⁴⁶ and *Obi v. INEC*,⁴⁷ where petitioners were required to provide detailed, polling-unit-specific evidence to substantiate claims of irregularities.⁴⁸ While respondents may then counter such evidence, the ultimate responsibility to prove the case remains with the petitioner.

The practical challenges of meeting this dual burden are formidable. Petitioners face strict timelines, often limited to a few weeks, for filing petitions and gathering evidence across multiple states. Access to crucial electoral materials, including certified results and biometric data, is controlled by INEC and frequently delayed.⁴⁹ The volume of documentation and number of witnesses required, compounded by the courts' insistence on direct, non-hearsay evidence, further exacerbates these difficulties. These structural and procedural constraints underscore that the perceived failure of election petitions often reflects the rigidity of the legal framework rather than judicial unwillingness or incompetence.

By consolidating principles, precedents, and practical hurdles, this framework highlights the need to recalibrate evidentiary burdens to ensure fairness without undermining electoral integrity.

5. CHALLENGES OF THE CURRENT BURDEN OF PROOF SYSTEM IN NIGERIAN ELECTION PETITIONS

The current burden of proof system in Nigerian election petitions presents formidable practical challenges that underscore the structural constraints imposed on petitioners. Statutory timelines for filing, hearing, and determining petitions are among the most rigid globally. Petitioners must file within 21 days of result announcements,⁵⁰ while tribunals are required to conclude proceedings within 180 days, with an additional 60 days for appeals.⁵¹ These compressed deadlines create immense pressure, particularly in national elections spanning thousands of polling units, forcing petitioners to prioritise expediency over thoroughness and often leaving valid claims inadequately substantiated.

Access to critical electoral materials further compounds these difficulties. INEC, as custodian of voter registers, accreditation data, and certified election results, often controls access to evidence essential for petitioners to establish non-compliance. Delays, bureaucratic hurdles, and procedural restrictions impede timely access, creating informational asymmetries that disadvantage petitioners, particularly smaller parties or independent candidates.⁵² Even when access is granted, the sheer volume of documentation and the need to summon witnesses from multiple polling units impose logistical, financial, and operational burdens that can overwhelm petitioners.

The evidentiary framework itself adds to these challenges. Nigerian courts require direct, non-hearsay evidence and often demand granular proof at the polling-unit level. Documentary evidence, including data from biometric systems, must be corroborated by eyewitness testimony to be admissible, a requirement that can be practically impossible to satisfy given the dispersion of polling officials and agents.⁵³ Technical exclusions of otherwise compelling evidence, coupled with strict adherence to procedural rules, frequently preclude petitioners from fully demonstrating irregularities. These combined factors—time constraints, restricted access, voluminous evidentiary requirements, and rigid admissibility rules—highlight systemic inequities within the current

⁴¹Sections 134 and 135(1) of the Evidence Act; *Hassan & Anor. v. INEC & Ors* [2019] LPELR-49207, pp. 11–13.

⁴²(1984) LPELR-2643(SC)

⁴³(2003) LPELR-10795(CA)

⁴⁴(n14)

⁴⁵(n13)

⁴⁶(2023)- LPELR 61556(SC)

⁴⁷(2023) LPELR-61532(SC)

⁴⁸*PDP v. INEC* (2014) 17 NWLR (pt. 1437) 525 at 568; *Gundiri v Nyako* (2014) 2 NWLR (Pt. 1391) 211 at 246

⁴⁹(n 8) p 21 - 23

⁵⁰Section 132(7)

⁵¹Section 132(9)

⁵²VN Enebeli, 'An Appraisal of the Challenges in Election Petitions in Nigeria' *Journal of Law, Policy and Globalization* (2023) vol 137, 32 -33 <<https://iiste.org/Journals/index.php/JLPG/article/view/61710/63693>> accessed 26 December 2025

⁵³ See *Oyetola v. Adeleke* (2023) LPELR-59876 (SC), [2023] 14 NWLR (Pt.1687)

burden-of-proof framework, emphasising that perceived failures of electoral adjudication often reflect legislative and procedural design rather than judicial unwillingness or incompetence.

6. COMPARATIVE PERSPECTIVES ON THE BURDEN OF PROOF IN ELECTION PETITIONS

6.1 Kenya

Kenya provides a useful comparative lens for interrogating the allocation of the burden of proof in election petitions and reinforces the argument that the effectiveness of judicial intervention in electoral disputes is largely shaped by the governing legal framework rather than judicial disposition. In Kenya, the burden of proof operates within a relatively balanced statutory and constitutional architecture that requires petitioners to substantiate allegations of electoral irregularities while simultaneously promoting transparency, accountability, and institutional responsibility within the electoral management body.

Elections in Kenya are regulated by the Constitution of Kenya, 2010; the Elections Act, 2011; the Independent Electoral and Boundaries Commission Act, 2011; and the Electoral Offences Act, 2016. As observed by Chacha and Sandra⁵⁴, the constitutional framework, particularly Articles 10, 38, 81, 86, 88, and 138, entrenches core electoral values, including integrity, transparency, accuracy, accountability, impartiality, simplicity, verifiability, security, and efficiency. These principles serve not merely as aspirational norms but as enforceable benchmarks against which electoral processes are judicially assessed.

Central to Kenya's distinctive approach is section 83 of the Elections Act 2011, which prescribes the standard of proof in election petitions. The provision stipulates that an election shall not be invalidated on the ground of non-compliance with electoral laws *if* either the election was conducted in accordance with constitutional principles *or* the non-compliance did not affect the result of the election. The deliberate use of the disjunctive “or” is significant, as it affords courts greater interpretative flexibility in evaluating electoral disputes.⁵⁵ This contrasts sharply with the Nigerian position, where the conjunctive use of “and” effectively compels petitioners to prove both substantial non-compliance and its impact on the election result, thereby imposing an onerous and often impracticable evidentiary burden.

It is against this statutory backdrop that the decision of the Supreme Court of Kenya in *Raila Amolo Odinga & Another v. Independent Electoral and Boundaries Commission & Others*⁵⁶ must be understood.⁵⁷ In that case, the Court held that although petitioners bear the initial burden of establishing a prima facie case of electoral irregularities, the evidential burden shifts to the electoral body once that threshold is met. The Independent Electoral and Boundaries Commission (IEBC) was thus required to rebut the allegations or demonstrate that the identified irregularities did not substantially affect the integrity of the election. Its failure to produce critical electoral materials, including system logs, or to satisfactorily explain identified discrepancies, led to the annulment of the presidential election for non-compliance with constitutional and statutory requirements.

This and similar decisions underscore the judiciary's commitment to electoral accountability, while also illustrating how an enabling legal framework can facilitate meaningful judicial oversight. By recognising the inherent informational disadvantage faced by petitioners, particularly their limited access to sensitive electoral data, Kenya's legal regime mitigates undue evidentiary burdens and promotes substantive fairness. The Kenyan experience thus supports the broader argument of this paper: that advancing electoral integrity depends less on judicial activism or restraint and more on recalibrating the statutory rules governing the burden and standard of proof in election petitions.

6.2 India

India's framework on the burden and standard of proof in election petitions is primarily governed by the Representation of the People Act, 1951 (RPA), enacted pursuant to the constitutional mandate of Parliament and the Election Commission of India (ECI) to safeguard electoral integrity. Section 100 of the RPA specifies the grounds upon which an election may be declared void, including disqualification, corrupt practices, and material non-compliance with electoral law.⁵⁸ Corrupt practices are defined by reference to section 123, while section 8A prescribes disqualification as a consequence thereof. Election petitions are adjudicated by the High Courts, with appeals to the Supreme Court.

Procedurally, section 87 of the RPA provides that election petitions shall, as nearly as may be, be tried in accordance with the Code of Civil Procedure, 1908. This statutory alignment imports the general principles of evidence contained in the Indian Evidence Act, 1872. Sections 101 and 102 of that Act place the burden of proof on the party asserting the existence of facts and on the party who would fail in the absence of evidence. In election petitions, this burden lies squarely on the petitioner.

⁵⁴ C Odera and S Kavagi, ‘The last Word: A look at Section 83 of the Election Act, 2011’ available at <https://www.klrc.go.ke> (accessed 25 December, 2025)

⁵⁵ *Ibid*

⁵⁶ [2017] eKLR

⁵⁷ See Harrison Mbori Otieno, ‘The fulcrum for the Invalidation of Kenya's 2017 Presidential Election: section 83 of the Elections Act’, available at <https://ohrh.law.ox.ac.uk> (accessed 25 December 2025)

⁵⁸ See R Innocent, ‘Reassessing Burden of Proof in Indian Election Disputes’, available at <https://www.livelaw> (accessed 25 December, 2025)

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Indian courts have consistently adopted a strict interpretation of this burden. In *Nayini Narasimha Reddy v. Dr K. Laxman*⁵⁹, the High Court held that a petitioner must not only establish the occurrence of a statutory ground under section 100(1)(d) of the RPA but must also prove that the result of the election was materially affected. The court emphasised that such matters cannot be resolved on probabilities or conjecture, reinforcing the presumption of correctness attached to officially declared results. This strict approach has been criticised as imposing an almost impossible burden on petitioners, a concern articulated in *Inayatullah v. Diwanchand Mahajan*.⁶⁰ Nevertheless, limited flexibility has been recognised where a *prima facie* case is established, as in *Raj Narain v. Indira Nehru Gandhi*⁶¹, where the evidential burden shifted and the election was ultimately voided.

Scholarly commentary suggests that, despite section 87's reference to civil procedure, Indian courts have effectively elevated the standard of proof in election petitions, particularly those alleging corrupt practices, to a level approximating proof beyond reasonable doubt. Rinoy argues that this has led to the failure of many meritorious petitions and advocates the adoption of a "clear and convincing evidence" standard as a more balanced alternative.⁶²

The Indian position closely mirrors the Nigerian framework. In Nigeria, sections 131–136 of the Evidence Act, 2011 similarly place the burden of proof on the petitioner, while the Electoral Act and judicial precedent accord a strong presumption of regularity to results declared by the Independent National Electoral Commission (INEC). Nigerian courts have likewise required strict proof of non-compliance and corrupt practices, often treating such allegations as quasi-criminal and demanding proof approaching the criminal standard. As in India, petitioners must also demonstrate that the alleged irregularities substantially affected the outcome of the election.

The comparative lesson is clear. The persistent difficulty in successfully challenging flawed elections in both jurisdictions is not primarily a function of judicial activism or restraint, but of statutory choices that impose heavy evidentiary burdens and elevated standards of proof. Judges are constrained by these legislative frameworks and cannot meaningfully relax evidentiary requirements without undermining the law itself. Advancing electoral integrity in Nigeria therefore depends less on recalibrating judicial attitudes and more on reforming the statutory rules governing the burden and standard of proof in election petitions, particularly through clearer burden-shifting mechanisms and more proportionate evidentiary standards.

6.3 United States

In the United States, the burden of proof in election contests lies squarely on the petitioner,⁶³ reflecting a commitment to preserving the stability of electoral outcomes while ensuring fairness in dispute resolution. U.S. courts typically apply the "clear and convincing evidence" standard, requiring petitioners to present substantial evidence to overturn declared results.⁶⁴ This standard safeguards public trust in electoral integrity and democratic institutions. A notable case, *Bush v. Gore*,⁶⁵ exemplifies this principle from the 2000 U.S. presidential election. Here, petitioners challenged Florida's recount process, alleging violations of constitutional standards. The U.S. Supreme Court demanded clear evidence of unconstitutional procedures, rejecting claims based on theoretical concerns of fairness. This insistence on substantive proof underpins the judiciary's commitment to rigorous evidentiary standards while avoiding speculative or politically motivated decisions. In local election disputes, petitioners must identify specific discrepancies or irregularities that could affect the outcome.⁶⁶ Procedural safeguards provide petitioners with access to election materials and the opportunity to respond to respondents' counterclaims, such as those by electoral boards. These mechanisms ensure procedural fairness and mitigate barriers petitioners face when pursuing credible claims. The U.S. model strikes a balance between deterring frivolous challenges and protecting legitimate grievances, reinforcing public confidence in both electoral systems and judicial processes.

Collectively, the experiences of Kenya, India, and the United States demonstrate that the success of election petitions depends primarily on statutory design rather than judicial attitude. Kenya shows how a values-driven constitutional framework and flexible burden-shifting rules enable effective judicial oversight and electoral accountability. India and Nigeria, by contrast, reveal how rigid statutory burdens, elevated standards of proof, and strong presumptions of regularity severely limit judicial intervention, making successful challenges rare. The United States adopts a middle course, preserving electoral stability through a high evidentiary threshold while tempering it with procedural access and a "clear and convincing evidence" standard. The central comparative insight is that courts can only safeguard electoral integrity to the extent permitted by law; meaningful reform in

⁵⁹(2006) 5 S.C.C 239.

⁶⁰ (1958) 15 Ele LR 219 at 235236 (MP). The Supreme dismissed the appeal.

⁶¹[1975] AIR 2299

⁶² (n58)

⁶³Rule 301 of the Federal Rules of Evidence

⁶⁴See *Anderson v United States*, 417 U.S. 211 (1974)

⁶⁵531 US 98 (2000)

⁶⁶See *Reynolds v Sims*, 377 U.S. 533 (1964); and *Marks v Stinson*, 19 F.3d 873 (3d Cir. 1994)

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Nigeria therefore lies in recalibrating statutory rules on the burden and standard of proof, rather than in expecting greater judicial activism

7. RECALIBRATING THE EVIDENTIAL BURDEN IN NIGERIA'S ELECTORAL DISPUTE RESOLUTION FRAMEWORK

Advancing electoral integrity in Nigeria requires a recalibration of the evidential burden of proof in election petitions, rather than continued reliance on judicial activism or restraint. The existing framework places an onerous burden on petitioners to disprove the presumption of regularity accorded to electoral outcomes, despite their limited access to critical electoral materials. This structural imbalance undermines substantive justice and calls for targeted statutory reform.

A key reform imperative is the imposition of an initial evidentiary obligation on the Independent National Electoral Commission (INEC). As the constitutionally mandated body responsible for organising and supervising elections, INEC retains exclusive custody of foundational electoral records, including voter registers, accreditation data, result sheets, and technological audit trails. Requiring INEC to place *prima facie* evidence of compliance with electoral laws before the tribunal at the commencement of proceedings would reflect its institutional role as a neutral custodian of the electoral process. This obligation would not imply liability but would establish a baseline of transparency against which allegations of non-compliance can be meaningfully assessed. Comparative experience, particularly from Kenya, demonstrates that once credible doubts are raised, electoral management bodies are expected to demonstrate substantial compliance. Codifying a similar requirement in Nigeria would reduce evidentiary asymmetry and mitigate the procedural disadvantages faced by petitioners.

Closely related is the introduction of rebuttable presumptions in election disputes. The prevailing presumption of regularity imposes excessive evidentiary demands on petitioners, often requiring voluminous proof across numerous polling units. A more balanced approach would permit burden-shifting where petitioners establish *prima facie* irregularities, such as discrepancies in result sheets, accreditation anomalies, or unexplained deviations in transmitted results. In such circumstances, the evidential burden should shift to INEC to justify the integrity of the disputed process. This approach acknowledges the informational imbalance inherent in electoral litigation and incentivises transparency and accurate record-keeping. Limited judicial application of this principle is evident in India, where courts have, in exceptional cases, shifted the evidential burden once foundational irregularities have been established.

Recalibrating the burden of proof must also be supported by strengthened procedural safeguards. Legislative reform should impose clear timelines for INEC's production of electoral materials and provide meaningful sanctions for non-compliance with judicial orders, including adverse evidentiary inferences where obstruction is established. The absence of enforceable timelines currently enables delays that undermine petitioners' ability to meet constitutionally prescribed adjudicatory deadlines. Statutory requirements for detailed procedural logs and audit trails, particularly in technology-driven electoral processes, would further enhance evidentiary transparency.

The broader implications of these reforms are significant. A restructured evidentiary framework would enhance transparency, promote fairness by addressing structural disadvantages faced by petitioners, and strengthen the credibility of electoral outcomes by ensuring disputes are resolved on substantive merits rather than technical hurdles. Comparative experience confirms that electoral integrity is best advanced not by altering judicial disposition, but by reforming the statutory architecture governing the burden and standard of proof. By recalibrating evidentiary obligations in election petitions, Nigeria can strengthen democratic accountability, restore public confidence, and align its electoral dispute resolution framework with emerging international best practices.

8. CONCLUSION

This paper has examined the burden of proof in Nigerian election petitions through the lens of electoral integrity, democratic theory, and comparative constitutional practice. It has shown that the persistent public dissatisfaction with electoral adjudication in Nigeria is less a reflection of judicial failure than a consequence of a legal framework that structurally constrains the capacity of courts to interrogate electoral wrongdoing. The judiciary, far from being the architect of electoral injustice, operates within a statutory regime that privileges presumptions of regularity, rigid evidentiary thresholds, and numerical certainty over substantive accountability and participatory fairness.

By situating Nigeria's evidentiary regime within broader theories of electoral integrity, the paper demonstrates that the current allocation of the burden of proof reflects a procedural and legitimisation-oriented conception of elections, one that prioritises stability and finality at the expense of transparency and democratic responsiveness. The insistence that petitioners must prove both substantial non-compliance and its precise effect on electoral outcomes—often on a polling-unit-by-polling-unit basis—reveals a legal order ill-suited to the realities of contemporary elections characterised by institutional control of evidence, technological mediation, and systemic vulnerabilities. Courts have applied these rules with doctrinal consistency, not because they are indifferent to electoral justice, but because the law affords them little latitude to do otherwise.

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The comparative experiences of Kenya, India, and the United States reinforce this conclusion. They illustrate that the effectiveness of judicial intervention in electoral disputes is shaped primarily by legislative design rather than judicial disposition. Where legal frameworks recognise informational asymmetry, permit evidentiary burden-shifting upon the establishment of *prima facie* irregularities, and impose transparency obligations on electoral management bodies, courts are better equipped to protect electoral integrity without undermining legal certainty or political stability. Conversely, where statutory regimes impose elevated and inflexible evidentiary demands, even well-intentioned judiciaries are rendered largely reactive and constrained.

Against this backdrop, the paper argues that advancing electoral integrity in Nigeria requires a recalibration of the evidential architecture governing election petitions. Such recalibration must acknowledge the institutional role of INEC as the custodian of electoral data, the public-interest character of elections, and the practical limitations faced by petitioners operating within compressed constitutional timelines. A framework that requires electoral authorities to demonstrate procedural compliance once credible doubts are raised, permits the shifting of evidential burdens in response to *prima facie* irregularities, and allows courts to engage with process-based and systemic failures would not amount to judicial overreach. Rather, it would restore balance to electoral adjudication and align evidentiary rules with democratic realities.

Equally important is the modernisation of evidentiary standards to reflect the increasing reliance on electoral technology. As elections become more data-driven, rigid dependence on eyewitness testimony and granular oral evidence becomes both impractical and conceptually outdated. Greater recognition of authenticated electronic records, audit trails, and institutional documentation would enhance accuracy and fairness while reducing unnecessary procedural barriers. Complemented by enforceable access to electoral materials and clearer procedural obligations on electoral authorities, such reforms would strengthen confidence in both electoral outcomes and the judicial process.

Ultimately, the crisis of electoral integrity in Nigeria cannot be resolved by exhortations directed solely at the judiciary. It is a systemic challenge rooted in legislative choices, institutional practices, and political culture. Reframing the burden of proof in election petitions is therefore not merely a technical adjustment, but a democratic necessity. By equipping courts with a legal framework that balances finality with accountability and stability with truth, Nigeria can move closer to an electoral system in which elections genuinely reflect the sovereign will of the people and judicial intervention serves as a safeguard of democracy rather than a site of public disillusionment.

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