

**URGENT NEED FOR THE AMENDMENT OF SECTION 135 (1) OF THE ELECTORAL ACT 2022\***

**Abstract**

*There are some sections of the Electoral Act 2022 that ought to be amended to guarantee free and fair elections in Nigeria. Such section includes section 135(1) of the Election Act 2022 which provides that an election shall not be liable to be invalidated by reason of non – compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non – compliance did not affect substantially the result of the election. This provision forms the statutory basis for the doctrine of substantial compliance in Nigeria. This section has given the Election Tribunal or Court the power to decide whether the non – compliance has affected substantially the result of the election. Laws are meant to be obeyed. This particular section of the Electoral Act 2022 encourages our politicians to break some sections of the Electoral Act 2022 knowing full well that at the end of the day the Election Tribunal or Court would overlook the irregularities and/or the breaches taking into consideration the cost of organizing fresh election and its effect on the political landscape of the country. This section emphasizes that the Election Tribunal or Court must look at the overall effect of non-compliance before annulling an election. There is nowhere in the Electoral Act where the doctrine of substantial compliance was defined and as a result has presented several problems and challenges, particularly in the context of determining what constitutes ‘substantial’ non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. By this section, the judiciary has usurped the sovereign powers of the people of Nigeria. It has eroded the constitutional powers of the citizens of the Federal Republic of Nigeria as it relates to sovereignty belonging to the people of Nigeria. In this article, the writer is making a case for the amendment of section 135(1) of the Election Act 2022 as it infringes on the right of the people to freely decide on who should represent them.*

**Keywords:** Urgent need, amendment, section 135(1), Election Act 2022

**1. Introduction**

The integrity of elections in Nigeria is doubtful. Elections in Nigeria have degenerated from being a means for popular participation and peaceful change of government to an invitation to intense violence and political uncertainty in the country.<sup>1</sup> There has emerged a disturbing concern over the conduct of elections in the country.<sup>2</sup> The conduct of elections in Nigeria has at various intervals remained an invitation to political uncertainty for the country. This is not unconnected with the recurrent incidences of electoral malpractices especially electoral violence prevalent in the country. Elections in Nigeria have been described as a do-or-die affair even by esteemed official quarters.<sup>3</sup> As a result of this, series of violent clashes occur and sometimes results to loss of lives and properties. This do-or-die affair in our electoral process is not unconnected with the provisions of our laws most especially section 135(1) of the Election Act 2022 which gives the Election Tribunal or Court the power to overlook some malpractices and/or irregularities. As a result of this development, electoral competitions have become the preserve of violent individuals; the recurrence of electoral violence scares credible people from exercising their franchise and in engaging in partisan politics. This poses threat to democracy and development of the country. The judiciary that is saddled with the powers of judicial review is constrained with the doctrine of substantial compliance by usurping the powers of the people as enshrined in the constitution through this doctrine. In this article, the writer is making a case for the amendment of section 135(1) of the Election Act 2022 as it infringes on the right of the people to freely decide on who should represent them.

**2. Meaning and Purport of Section 135 (1) of the Electoral Act 2022**

Section 135 (1) of the Electoral Act 2022 forms the statutory basis for the doctrine of substantial compliance in Nigeria. Substantial compliance in the context of election petitions in Nigeria refers to a situation where, despite minor deviations from the procedural requirements set by law, the essence of the legal requirements is met in a way that does not undermine the integrity of the electoral process. The principle emphasizes that procedural irregularities or minor errors should not invalidate an election result if the essential elements of the process have been substantially followed. The pertinent question is: why should there be any error at all in our electoral process? Section 135(1) of the Electoral Act, 2022 provides that certain defects should not invalidate election. The concept of substantial compliance in election petitions in Nigeria is shaped by a combination of statutory provisions, judicial precedents, and principles of electoral law. This framework aims to ensure that minor procedural errors do not unduly disrupt the electoral process or invalidate an election result if the core requirements have been substantially met. The focus on substantial compliance emerges from judicial interpretations rather than a direct statutory provision.

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<sup>1</sup> [http://www. International peace and conflict.org/profiles/blogs/election](http://www.Internationalpeaceandconflict.org/profiles/blogs/election) (Accessed on 18 June 2012).

<sup>2</sup> *Ibid.*

<sup>3</sup> [http://www. International peace and conflict.org/profiles/blogs/election](http://www.Internationalpeaceandconflict.org/profiles/blogs/election) (Accessed on 18 June 2012).

### 3. Nature of Free and Fair Election

#### Meaning of Free and Fair Election

Free election is an election in which the political system and processes guarantee that each voter will be allowed to vote according to conscience. The concept of 'free and fair' election is not a legal theory as such. Its significance is underscored by municipal and international legal instruments. The African Charter on Human and People's Right<sup>4</sup> provides that every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives. Article 21 (3)<sup>5</sup> provides that the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine election which shall be held by secret vote or by equivalent free voting procedures. From the above illustrations, it can be seen that free and fair elections are those elections held without physical or psychological intimidation and in accordance with the provisions of fair electoral law in force. They are those elections conducted so that the electorates have reasonable opportunity to vote, with each vote given same effect.<sup>6</sup>

#### Theories of Free and Fair Elections in Nigeria

Theories of free and fair elections in Nigeria are rooted in both constitutional and statutory provisions, bolstered by judicial interpretations. These theories include the following:

##### *Theory of Electoral Justice*

Electoral justice seeks to ensure that all electoral processes are conducted in accordance with the rule of law. It guarantees that disputes arising from elections are resolved impartially, based on legal principles. This theory finds its legal foundation in Section 285<sup>7</sup> which establishes election tribunals to hear election petitions. In *Buhari v INEC*,<sup>8</sup> Muhammadu Buhari challenged the 2007 presidential election, alleging irregularities and non-compliance with the Electoral Act. The Supreme Court, while emphasizing electoral justice, ruled that a petitioner must prove substantial non-compliance before an election can be voided. The principle of substantial compliance was reiterated, underlining the importance of following laid-down procedures for elections. This theory safeguards the integrity of elections by providing recourse for grievances.

##### *Theory of Universal Suffrage and Equal Participation*

This theory ensures that every eligible citizen has the right to vote and participate in elections without discrimination. Section 12 of the Electoral Act 2022 outlines the qualifications for voter registration, emphasizing the right to vote for all Nigerians who meet the legal requirements. In *Attorney General of the Federation v Alhaji Atiku Abubakar*,<sup>9</sup> the Nigerian government sought to prevent Atiku Abubakar from contesting the 2007 presidential election. The Supreme Court ruled that as long as a candidate meets constitutional requirements, the government cannot prevent his participation. This case reinforces the theory of equal participation in elections. Universal suffrage is crucial for inclusive and democratic elections.

##### *Theory of Electoral Transparency*

This theory stresses the need for openness and accountability in every step of the electoral process, including the transmission of results. Section 50(2) of the Electoral Act 2022 mandates the use of electronic transmission of results to enhance transparency. In *Hope Uzodinma v Emeka Ihedioha*,<sup>10</sup> the Supreme Court nullified Ihedioha's election as governor of Imo State, citing irregularities in the result collation process. The court emphasized the importance of transparency in the collation and declaration of election results, reflecting the need for an open and fair process. Transparency ensures public confidence in electoral outcomes.

##### *Theory of Electoral Equality*

This theory is grounded in the equal weight of every vote, ensuring that no voter or candidate is unfairly advantaged. Section 77(2)<sup>11</sup> guarantees equal suffrage by providing that every Nigerian citizen, who has attained the age of 18, is entitled to register and vote. In *INEC v Action Congress*,<sup>12</sup> the Action Congress challenged the registration process, alleging that INEC's actions discriminated against certain voters. The court ruled that electoral laws must be implemented in a way that ensures equal treatment for all voters. This ruling underscores the principle of electoral equality. Equality in elections is essential to prevent marginalization and uphold democracy.

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<sup>4</sup>Article 13(1) Cap A9 Laws of Federation of Nigeria 2004, which is part of our Law as was held in *Abacha v. Fawehinmi* (2006) 6 NWLR (Pt 660) 228.

<sup>5</sup> Universal Declaration of Human Rights.

<sup>6</sup> BA Garner (ed), *Black's Law Dictionary*, 8<sup>th</sup> ed, USA, Thompson Group 2004, p.688.

<sup>7</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>8</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>9</sup> (2007) 8 NWLR (Pt. 1035) 117.

<sup>10</sup> (2020) 5 NWLR (Pt 1706) 401.

<sup>11</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>12</sup> (2007) 12 NWLR (Pt 1048) 222.

### ***Theory of Electoral Integrity***

This theory encompasses the prevention of electoral fraud, violence, and malpractice to maintain the integrity of the electoral process. Section 88 (1-7)<sup>13</sup> provides guidelines for campaign financing to avoid undue influence and electoral corruption. In *Nwobodo v Onoh*,<sup>14</sup> Jim Nwobodo challenged the declaration of C.C. Onoh as the winner of the 1983 Anambra State gubernatorial election. The court found that the election was marred by widespread irregularities, including violence and fraud, and ordered a rerun. This case highlights the importance of electoral integrity in ensuring credible elections. Integrity is vital to prevent corruption and manipulation in elections.

### ***Theory of Substantial Compliance***

This theory holds that an election will not be invalidated merely because of procedural infractions unless those infractions substantially affect the outcome of the election. Section 135 (1)<sup>15</sup> provides the legal framework for challenging election results based on substantial non-compliance with the Act. In *Ojukwu v Obasanjo*,<sup>16</sup> Odumegwu Ojukwu challenged the election of Olusegun Obasanjo, citing irregularities. However, the court held that the petitioner failed to prove substantial non-compliance with the Electoral Act that could have materially affected the outcome. This case reinforces the theory that not all irregularities warrant the annulment of elections. Substantial compliance protects elections from being annulled on frivolous grounds.

### ***Theory of Political Accountability***

This theory emphasizes that elected officials must be held accountable to the electorates through credible elections. Section 1(2) of the 1999 Constitution of Nigeria (as amended) provides that sovereignty belongs to the people, and government derives its legitimacy from the people's will expressed through elections. In *Awolowo v Shagari*,<sup>17</sup> Obafemi Awolowo contested the declaration of Shehu Shagari as the winner of the 1979 presidential election. The Supreme Court ruled that Shagari met the constitutional requirements, emphasizing the importance of following constitutional and legal guidelines to uphold political accountability. Accountability is critical for ensuring that elected leaders genuinely represent the people's will.

### ***Theory of Electoral Freedom***

This theory guarantees the right of every individual to vote and be voted for without coercion or undue influence. Section 128 of the Electoral Act 2022 criminalizes the use of violence or intimidation to influence voters. In *Omoworare v Aregbesola*,<sup>18</sup> Senator Iyiola Omoworare challenged the election of Rauf Aregbesola, citing widespread voter intimidation. The court emphasized that electoral freedom is vital to a free and fair election and nullified results in areas affected by intimidation. This case underlines the need for electoral freedom devoid of coercion. Freedom in elections ensures that the democratic process is not compromised by undue influence.

## **4. The Meaning and Concept of Democracy**

Democracy, derived from the Greek words 'demos' (people) and 'kratos' (power or rule), literally means 'rule by the people.' It is a form of government that allows for the participation of the citizenry in the political process, either directly or through their elected representatives. Democracy is a system of government in which power is vested in the people, who exercise that power directly or through elected representatives. It is characterized by the principles of political equality, majority rule, the protection of minority rights, and the rule of law. In a democracy, citizens have the right to participate in decision-making processes, typically through free and fair elections, where they elect representatives to govern on their behalf. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed.<sup>19</sup> The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.<sup>20</sup> A free and fair election gives the assurance that those who emerge as rulers are the elected representatives of the people. Except in case where an aspirant is returned unopposed; there will usually be at least two contestants to elective posts. Rules and regulations are normally put in place for the conduct of free and fair elections.

Democracy is based on the principles of (a) political equality where all citizens have equal rights and opportunities to participate in the political process; (b) majority rule where decisions are made based on the preference of the majority, while respecting the rights of the minority; (c) protection of rights where fundamental human rights, including freedom of speech, assembly, and the press; and (d) rule of law where the law applies equally to all individuals, ensuring fairness

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<sup>13</sup> Electoral Act 2022.

<sup>14</sup>(1984) 1 SCNLR 1.

<sup>15</sup> Electoral Act 2022.

<sup>16</sup> (2004) 12 NWLR (Pt. 886) 169.

<sup>17</sup> (1979) 6-9 SC 51.

<sup>18</sup> (2010) 42 NSCQR 710.

<sup>19</sup> Section 14(2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that 'sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.'

<sup>20</sup> [www.buzzle.com/articles/electoral-reform-in-Nigeria.html-28k](http://www.buzzle.com/articles/electoral-reform-in-Nigeria.html-28k) (accessed on 18 December 2008).

and justice in governance. In *A-G, Ondo State v A-G, Federation*,<sup>21</sup> the Supreme Court of Nigeria emphasized the importance of democracy in ensuring that the will of the people is reflected in government actions. The case involved the constitutionality of certain provisions of the Electoral Act, where the court upheld the principles of democratic governance by ensuring that laws affecting elections must be consistent with democratic ideals. Democracy is more than just a system of government; it is a way of life that upholds the principles of freedom, equality, and justice. Through free and fair elections, adherence to the rule of law, the separation of powers, and the protection of human rights, democracy ensures that power resides with the people.

### **5. Theories behind Section 135(1) of the Electoral Act 2022**

Section 135(1) of the Electoral Act 2022 makes provision for the doctrine of substantial compliance in the Nigerian electoral process. That doctrine refers that electoral irregularity must be substantial enough to affect the outcome of an election for the courts to nullify it. The doctrine aims to balance between technical breaches of electoral laws and upholding the will of the electorate where the irregularities are insignificant to the overall result. The theories of doctrine of substantial compliance in Nigerian electoral process are as follows:

#### ***Theory of Substantial Compliance***

The doctrine of substantial compliance is rooted in the idea that elections are primarily about the expression of the will of the people. As long as the core objective of an election, that is, the reflection of the voters' will, is met, the courts may overlook minor procedural irregularities. This theory promotes electoral stability by ensuring that not every procedural flaw results in the invalidation of the election. In *Buhari v INEC*<sup>22</sup> General Muhammadu Buhari, the presidential candidate, challenged the 2007 election results, alleging massive irregularities. The Supreme Court upheld the election, stating that there was substantial compliance with the Electoral Act 2006 despite some irregularities. The court held that the petitioner must prove not just that irregularities occurred, but that they were substantial enough to have affected the result of the election. The mere existence of irregularities was insufficient to overturn an election. In this case, the doctrine of substantial compliance was affirmed by the court as essential for the stability of elections, ensuring that only significant breaches lead to nullification.

#### ***Theory of Electoral Integrity***

This theory posits that substantial compliance is necessary to uphold the integrity of elections. It emphasizes that procedural adherence guarantees fairness but allows flexibility for minor deviations that do not undermine the overall election result. In *Atiku Abubakar v INEC*,<sup>23</sup> the petitioner, Atiku Abubakar, challenged the 2019 presidential election, alleging widespread non-compliance with the Electoral Act, particularly concerning the transmission of results electronically. The court ruled that despite some irregularities, the election was conducted in substantial compliance with the law, and the irregularities did not substantially affect the outcome. The court reaffirmed the need to establish that the non-compliance was of such magnitude that it affected the result. The mere presence of irregularities or procedural flaws was not enough. The judgment in this case demonstrates the importance of balancing electoral integrity with practical flexibility, ensuring that technicalities do not nullify the genuine expression of voters' will.

#### ***Theory of Materiality***

This theory emphasizes the materiality of the non-compliance. It asks whether the irregularity materially affected the result of the election. Courts focus on the outcome, and where the irregularities are proven to be minor or immaterial to the result, the election stands. In *Wike v Peterside*,<sup>24</sup> Nyesom Wike, the governor of Rivers State, was challenged by Dakuku Peterside over alleged widespread violence, ballot snatching, and voter intimidation in the 2015 gubernatorial election. The tribunal annulled the election, but the Supreme Court reversed this decision, holding that the petitioner failed to prove that the irregularities affected the result. The Supreme Court held that an election should not be invalidated for every irregularity. The petitioner must show that the irregularities were so widespread that they materially affected the outcome. The decision stresses the materiality of irregularities, reinforcing that only significant breaches impacting the results can justify nullification.

#### ***Theory of Non-Punitive Approach***

This theory suggests that the substantial compliance doctrine prevents the court from adopting a punitive approach to election petitions. Rather than focusing on penalizing every breach of procedure, the court should focus on whether justice is done, that is, whether the election outcome truly reflects the will of the electorates. In *Oshiomhole v INEC*,<sup>25</sup> Adams Oshiomhole challenged the result of the 2007 Edo State gubernatorial election, citing widespread rigging and irregularities. The tribunal found in his favor, and the Court of Appeal affirmed this, holding that the non-compliance with the electoral law was substantial enough to have affected the outcome. The Court held that the purpose of electoral

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<sup>21</sup> (2002) 9 NWLR (Pt 772) 222.

<sup>22</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>23</sup> (2019) 5 NWLR (Pt 1670) 1.

<sup>24</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>25</sup> (2009) 4 NWLR (Pt 1132) 607.

law is not punitive but corrective. Thus, only when non-compliance substantially affects the result should it lead to the annulment of the election. This judgment illustrates the non-punitive perspective, affirming that courts should not annul elections based on procedural irregularities unless the breach distorts the electoral outcome.

### ***Theory of Voter Representation***

This theory is based on the understanding that elections are a means to represent the will of the people, and the substantial compliance doctrine ensures that minor irregularities do not obstruct this representation. It focuses on the fairness and transparency of the overall process. In *INEC v Oguebego*,<sup>26</sup> there was a dispute regarding the authenticity of the list of candidates submitted by political parties. The Supreme Court held that where the process allowed the electorates to express their will, even if there were disputes over party nominations, the election result should stand unless there was proof of significant non-compliance that affected the outcome. The Supreme Court reinforced that the primary concern of electoral laws is to reflect the will of the electorate and that minor irregularities in the process of candidate nomination did not affect the expression of voters' will. This case highlights the significance of voter representation, underscoring that procedural flaws that do not distort the electorate's intent should not invalidate elections.

## **6. History of Section 135(1) of the Electoral Act 2022 in Electoral Process in Nigeria**

The historical development of Section 135(1) of the Electoral Act 2022 that has to do with the doctrine of substantial compliance in Nigeria's electoral process is a response to the complexities of electoral disputes, evolving through judicial interpretations and legislative reforms. The doctrine seeks to balance the need for fairness and integrity in elections with the stability and continuity of governance. Below is an outline of its historical evolution.

### ***Early Development and the Pre-Independence Era***

Before Nigeria gained independence in 1960, the country operated under a colonial system, with elections largely conducted under British electoral laws. The idea of strict compliance with electoral procedures was predominant during this time. However, there was no formal doctrine of substantial compliance, and any significant breach of procedure could lead to the annulment of elections. In *Adegbenro v Akintola*,<sup>27</sup> though not primarily an election matter arose during the political crisis in the Western Region and highlighted the tension between legal technicalities and political realities. The Privy Council ruled that the Governor of the Western Region acted within his powers in dismissing the Premier, based on technical compliance with the Constitution. The case exemplified the strict adherence to legal formalities, which was later modified with the introduction of substantial compliance in electoral law. Before independence, Nigeria followed strict legal formalism, with little room for flexible interpretations such as substantial compliance in electoral disputes.

### ***Post-Independence Era and the Emergence of Substantial Compliance***

After independence, Nigeria adopted its own Constitution and electoral laws, which gradually moved away from rigid adherence to technical compliance. The focus shifted towards ensuring that elections reflected the will of the people, even if minor irregularities occurred. This era saw the first signs of the substantial compliance doctrine taking shape. In *Awolowo v Shagari*,<sup>28</sup> Chief Obafemi Awolowo challenged the election of Shehu Shagari as President of Nigeria in 1979, arguing that Shagari did not meet the constitutional requirement of securing one-quarter of the votes in two-thirds of Nigeria's then 19 States. The Supreme Court ruled that while there were irregularities, they did not substantially affect the outcome of the election, thus affirming Shagari's victory. This landmark case marked the beginning of the substantial compliance doctrine, as the court moved away from strict legal formalism and began emphasizing the overall integrity of the electoral process over technical breaches.

### ***The Doctrine of Substantial Compliance Gains Prominence***

In the 1999 democratic transition, following years of military rule, Nigeria's electoral system underwent significant reforms. The 1999 Constitution<sup>29</sup> and the Electoral Act 2002 were introduced to guide elections. The doctrine of substantial compliance began to feature more prominently in judicial decisions as courts were tasked with interpreting these new laws in the context of electoral disputes. In *Buhari v Obasanjo*,<sup>30</sup> Muhammadu Buhari, the presidential candidate of the All Nigeria Peoples Party (ANPP), challenged the election of President Olusegun Obasanjo in the 2003 election, alleging widespread irregularities. The Supreme Court upheld Obasanjo's election, holding that while there were irregularities, they did not substantially affect the overall outcome. This case solidified the substantial compliance doctrine, as the court held that only irregularities that significantly impacted the election results could warrant nullification, emphasizing the will of the electorate over procedural defects.

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<sup>26</sup> (2015) 18 NWLR (Pt 1491) 273.

<sup>27</sup> (1963) AC 614.

<sup>28</sup> (1979) 6-9 SC 51.

<sup>29</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>30</sup> (2005) 2 NWLR (Pt 910) 241.

### ***Refinement of the Doctrine in the Electoral Act 2010***

With the introduction of the Electoral Act 2010, the substantial compliance doctrine was given a clearer statutory basis. The Act specified that an election would only be invalidated if non-compliance with the law substantially affected the result. This marked a significant turning point in the legal treatment of electoral disputes. Section 139(1)<sup>31</sup> provides that no election shall be invalidated by reason of non-compliance with the Electoral Act unless it is proven that such non-compliance substantially affected the result of the election. The inclusion of this provision codified the substantial compliance doctrine, shifting the burden of proof to the petitioner to demonstrate that irregularities materially impacted the election.

### ***Post-2010 Period: Greater Reliance on Substantial Compliance***

Following the 2010 Electoral Act amendment, courts increasingly relied on the substantial compliance doctrine to adjudicate electoral disputes. The doctrine became a safeguard against annulling elections over minor procedural errors, ensuring the stability of the political process. In *Oshiomhole v INEC*,<sup>32</sup> Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, alleging widespread rigging. The Court of Appeal annulled the election, finding that the irregularities were substantial enough to affect the outcome. Oshiomhole was declared the winner after a re-run election. This case exemplifies the application of substantial compliance, as the court acknowledged that not all irregularities warrant annulment but determined that the irregularities in this case were substantial.

### ***Modern Application: Substantial Compliance and the 2019 General Elections***

The 2019 general elections saw further reliance on the doctrine of substantial compliance, particularly in the presidential election petitions. Courts used the doctrine to uphold the results of elections despite allegations of procedural breaches, focusing on whether such breaches affected the outcome. In *Atiku Abubakar v INEC*,<sup>33</sup> Atiku Abubakar challenged the victory of President Muhammadu Buhari in the 2019 election, alleging irregularities such as failure to electronically transmit results and voter suppression. The court held that while there were irregularities, they did not substantially affect the overall result. This case reaffirms the court's reliance on substantial compliance, as it dismissed the petition on the grounds that the irregularities cited were not significant enough to alter the election outcome.

### ***Recent Legislative Reforms: Electoral Act 2022***

The enactment of the Electoral Act 2022 introduced several reforms aimed at addressing issues in the electoral process, including electronic transmission of results and improved safeguards against irregularities. The doctrine of substantial compliance continues to be a key aspect of resolving electoral disputes, though recent legal reforms aim to reduce the occurrence of irregularities in the first place. Section 134<sup>34</sup> emphasizes that an election will only be invalidated if the petitioner proves non-compliance with the law and demonstrates that such non-compliance substantially affected the result of the election. It also introduces new guidelines for the conduct of elections and transmission of results, aiming to minimize the likelihood of procedural errors. The 2022 Electoral Act continues to uphold the doctrine of substantial compliance, but with a stronger emphasis on technological transparency and procedural integrity, reflecting the evolving nature of electoral processes in Nigeria.

## **7. Problems associated with the application of Section 135(1) of the Electoral Act 2022 in Electoral Process in Nigeria**

The doctrine of substantial compliance in Nigeria's electoral process as contained in Section 135(1) of the Electoral Act 2022 presents several problems and challenges, particularly in the context of determining what constitutes 'substantial' non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. Below are the main problems:

### ***Problem of Judicial Discretion***

One major issue with substantial compliance is the wide judicial discretion involved in determining whether non-compliance is substantial enough to affect the result of an election. Different judges may apply the doctrine differently, leading to inconsistent rulings on similar electoral disputes. In *Atiku Abubakar v INEC*,<sup>35</sup> Atiku Abubakar challenged the 2019 presidential election, alleging non-compliance with the Electoral Act, particularly in the use of electronic transmission of results. The court held that there was substantial compliance, even though there were irregularities in some polling units. The wide discretion given to judges created a situation where the same irregularities could lead to different judgments in other courts. This discretionary power may erode confidence in the objectivity of judicial decisions on election matters. The outcome of this case shows that judges may interpret the concept of substantial compliance differently, potentially leading to unpredictable rulings.

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<sup>31</sup> Electoral Act 2010 (as amended).

<sup>32</sup> (2009) 4 NWLR (Pt 1132) 607.

<sup>33</sup> (2019) 5 NWLR (Pt. 1670) 1.

<sup>34</sup> Electoral Act 2022.

<sup>35</sup> (2019) 5 NWLR (Pt 1670) 1.

### ***Ambiguity in Defining 'Substantial'***

There is no clear statutory definition of what constitutes 'substantial' non-compliance, leaving it to the court to decide on a case-by-case basis. This ambiguity can result in conflicting judgments and legal uncertainty. In *Wike v Peterside*,<sup>36</sup> Dakuku Peterside challenged the election of Nyesom Wike in Rivers State, citing widespread violence and voter intimidation. While the election tribunal initially annulled the election, the Supreme Court later reversed the decision, holding that the irregularities were not substantial enough to affect the election outcome. The ambiguous definition of 'substantial' led to differing judgments at different levels of the judiciary. This lack of clarity raises the issue of predictability in electoral disputes. This case exemplifies the ambiguity in determining what level of non-compliance justifies nullifying an election.

### ***Undermining Electoral Integrity***

The substantial compliance doctrine can be perceived as undermining the integrity of the electoral process by allowing elections to stand despite irregularities. This could give room for electoral malpractice if parties know that only significant irregularities will lead to the annulment of elections.<sup>37</sup>

### ***Erosion of Public Trust***

The public's confidence in the electoral process may be eroded if courts repeatedly uphold elections despite irregularities, even if they are deemed 'non-substantial.' This could lead to a situation where the electorate feels disenfranchised or that their votes do not matter. In *Buhari v INEC*,<sup>38</sup> Muhammadu Buhari challenged the 2007 presidential election, alleging widespread rigging and irregularities. The Supreme Court upheld the election, stating that there was substantial compliance, even though irregularities were acknowledged. The court's decision to uphold elections despite proven irregularities led to criticism and accusations of judicial bias, eroding public trust in both the judiciary and the electoral system. This case highlights how the doctrine of substantial compliance, if applied too liberally, may undermine the public's confidence in the electoral system, as it can appear that legal technicalities are prioritized over fairness.

### ***Difficulty in Proving Non-Compliance***

For an election to be annulled based on non-compliance, the petitioner must prove that the irregularities were substantial enough to affect the outcome. This burden of proof is often challenging to meet, especially in the absence of clear evidence, making it difficult for petitioners to succeed in their claims. In *INEC v Oguebego*,<sup>39</sup> a dispute arose concerning the authenticity of a list of candidates submitted by a political party. The Supreme Court held that, despite issues with candidate nomination, the overall election process substantially complied with the law. The petitioner's burden of proving that irregularities affected the outcome is extremely high, making it difficult to challenge elections even where there are clear violations of the Electoral Act. This case illustrates the difficulty for petitioners in proving substantial non-compliance, as they must not only demonstrate the occurrence of irregularities but also show that those irregularities directly impacted the election result.

### ***Encouragement of Election Malpractices***

The doctrine can unintentionally encourage minimal levels of election malpractice. Political actors may engage in minor irregularities, knowing that courts may overlook them as long as they are not 'substantial.' In *Agagu v Mimiko*,<sup>40</sup> Olusegun Agagu's election as Governor of Ondo State was challenged by Olusegun Mimiko, who alleged massive rigging. The Court of Appeal annulled the election, stating that the irregularities were substantial enough to affect the result. In cases where irregularities do not meet the threshold of substantial non-compliance, parties may be incentivized to commit smaller, less detectable infractions, confident that they will not lead to annulment. This case highlights the potential danger of fostering a culture of minimal but widespread electoral malpractice that falls below the 'substantial' threshold, weakening the overall integrity of the process.

## **8. Challenges and Criticisms of the application of Section 135 (1) of the Electoral Act 2022**

In recent years, the doctrine has been criticized for creating inconsistencies in judicial decisions. The lack of a clear definition of what constitutes 'substantial' has led to varying interpretations, which sometimes result in conflicting judgments at different levels of the judiciary.<sup>41</sup> Election-related violence and intimidation are significant issues in Nigeria, often aimed at influencing voter behavior, suppressing opposition, or securing victory through fear and coercion. All these misdemeanors have their primary cause due to the provision of Section 135 (1) of the Electoral Act 2022. Politicians know very well that the standard of proof required in establishing that substantial non-compliance affected the result of the election is very high. As a result, politicians<sup>42</sup> do everything humanly possible to ensure that they are declared the winners of the elections. As a result, they employ all sorts of malpractices to win the election. Below are some instances

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<sup>36</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>37</sup> See *Oshiomhole v INEC* (2009) 4 NWLR (Pt. 1132) 607.

<sup>38</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>39</sup>(2015) 18 NWLR (Pt 1491) 273.

<sup>40</sup> (2009) 7 NWLR (Pt. 1140) 342.

<sup>41</sup> See *Wike v Peterside*, *supra*.

<sup>42</sup> Including the petitioners and the respondents.

of violence and intimidation in Nigerian elections. See *Oshiomhole v INEC*.<sup>43</sup> *Ugwu v Ararume*.<sup>44</sup> In *Wabara v INEC*,<sup>45</sup> Adolphus Wabara, a former Senate President of Nigeria, contested the 2007 senatorial election in Abia State. During the election, there were widespread reports of violence and intimidation, including the deployment of armed thugs to polling stations, physical assaults on voters, and the destruction of ballot boxes. These actions were allegedly carried out to suppress votes for opposition candidates and ensure Wabara's victory. The Court of Appeal nullified Wabara's election, citing extensive evidence of violence and intimidation that compromised the integrity of the electoral process. The court emphasized that elections must be free, fair, and devoid of coercion, and any election marred by violence cannot stand. This case underscores the judiciary's role in safeguarding electoral integrity by nullifying elections tainted by violence and intimidation. It highlights the importance of free and fair elections as a cornerstone of democracy.

## **9. Conclusion**

Section 135 (1) of the Electoral Act 2022 is supported by numerous case laws and statutory provisions that guide Nigerian courts in election dispute resolution. The problem with this section of the Act is that there is no yardstick to measure substantial non-compliance and the stakeholders in the electoral process in Nigeria have utilized the loophole in Section 135 (1) of the Electoral Act 2022 to perpetuate all forms of electoral malpractices including violence during elections. The section unintentionally encourages electoral malpractices, undermining the overall integrity of elections and democracy in general. This doctrine is seriously undermining the tenets of democracy where every vote must count. The writer is making a case for the amendment of the Electoral Act for the complete removal of Section 135 (1) of the Electoral Act 2022 in the Electoral Act as presently constituted to give way to the nullification of any election that is tainted with any form of irregularity. This will definitely ensure free and fair elections devoid of malpractices, including electoral violence in Nigeria.

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<sup>43</sup> *Supra*.

<sup>44</sup> (2007) 12 NWLR (Pt 1048) 367.

<sup>45</sup> (2010) 11 NWLR (Pt 1206) 606.