

Austen Morgan: Nigel Farage's big gamble with 'the people versus parliament' could work

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💬 3 ↓

Dr Austen Morgan is a barrister at 33 Bedford Row Chambers. He is the author of forthcoming book: "Bringing Boris Down: the politicisation of the civil service."

When Nigel Farage effectively called the Clacton by-election for 13 August by resigning his seat, he – wittingly

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(and disregarding his angry threat to give up politics over the media doorstepping his daughter) – re-engaged a historic struggle between the people and parliament which continued over Brexit between 2016 and 2020.

'I have decided that the people of Clacton will be the judges of my actions', he said in his recorded announcement: 'This will be a people versus the establishment by-election.'

This was Trump like. But it was also a UK populist challenge to the established parliamentary parties, particularly Labour and the Conservatives – who dominate the house of commons.

John Wilkes (1725-97) was a radical London journalist, editor of the anti-government *North Britain* newspaper. In the 1760s, he was elected to parliament a number of times, only to be expelled serially by the house of commons, until permitted to sit for Middlesex in 1774-90. (Charles Bradlaugh, who wanted to affirm loyalty, was refused admission to the house of commons on a number of occasions, in 1880-86.)

Wilkes is identified historically with parliamentary reform, especially the freedom of the press to report its proceedings. Is Nigel Farage a twenty-first century John Wilkes? Wilkes had his character flaws (like Farage!), and was not always sound on parliamentary democracy.

When Nigel Farage won Clacton in the 2024 general election as leader of Reform UK (on his eighth attempt to become a MP), he had a background in the City, the European parliament (1999-2020) and as having made rich political friends since Brexit.

Two of those friends are in the public domain: George Cottrell (born 1993), who provided benefits before 2024; and Christopher Harborne, who gifted £5 million in early 2024. This list does not include Elon Musk (not a UK voter), and the rumoured \$100 million donation to Reform, because of disagreement about Tommy Robinson. Other names may no doubt appear.

We all await precise developments but the killing of Ann Widdecombe, would as it stands seem to add weight to Farage's excuse of needing to provide his own security.

Parliament, under our unwritten constitution, is sovereign, meaning it cannot be judicially reviewed in the courts.

Just as MPs and peers have to save the palace of Westminster from sinking into the Thames (or not), so the two houses are self-regulating. The house of commons approved a code of conduct in 1995, in the days of John Major. It provides for a register of members' financial interests. (Farage's case as a MP is different from donations to Reform UK, governed by the Political Parties, Elections and Referendums Act 2000).

Here is the provision – Farage says upon legal advice – on which he relies: *'The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.'*

But para 5 of the code reads: *'New members must register all their current financial interests, and any registrable benefits (other than earnings) received in the 12 months before their election within one month of their election.'* Does that exclude purely private and personal finances?

Farage has registered specific trips funded by Cottrell and Harborne, and considerable earnings from GB News and social media (which will come under pressure from a Burnham government if it proceeds to ban most second jobs for MPs). This could be a lurking grievance for Farage.

Under standing orders, the house created a parliamentary commissioner for standards (Daniel Greenberg). There is also a committee on standards, chaired by a conservative, Alberto Costa MP, with one other conservative, four labour, and one liberal democrat (plus seven lay members); Farage has no friends there. In 2020, the house created an independent expert panel for appeals (now chaired by Sir Adrian Fulford, a retired judge), showing it could not regulate itself.

Daniel Greenberg was believed to be investigating  3 ↓ ing no shortage of MPs prepared to draw his attention to allegations in the media. While he could offer Farage words of advice on the Member's reported attitude, behaviour or conduct', the commissioner will more likely send a memorandum to the standards committee which reports eventually to the house.

Under the Recall of MPs Act 2015 (part of the reaction to the MPs' expenses scandal under Gordon Brown), if the house orders Farage's suspension for at least ten sitting days, a minimum of ten per cent of the voters in Clacton may petition for a second by-election (in which he is permitted to stand).

By resigning his seat, some observers think that Farage is trying to create a tactical advantage. His return, with a decent turnout and a good share of the vote, might signify that there will not be ten per cent of the voters of Clacton (7,825 from the 2024 general election) willing to petition subsequently for his recall as a member of parliament.

This is largely untested territory: Daniel Greenberg cannot investigate until Farage is back in the house of commons; the standards committee may take months; Sir Adrian Fulford will be well able to consider a code of conduct appeal. But any standards committee suspension could be a busted flush.

In June 2023, the privileges committee was considering one Boris Johnson: one labour and one Scottish nationalist member voted to expel him from the house of commons (Harriet Harman only had a casting vote as the chair); the four conservatives – yes – voted for a 90-days' suspension – at which point Boris called them a '*kangaroo court*', and resigned as a member of parliament.

The recall act has been used six times in the 2017 and 2019 parliaments.

It succeeded on four occasions, and one MP resigned. But the first – Ian Paisley in North Antrim – was unsuccessful: only 7,099 of the required 7,543 voters petitioned for his recall.

Is this the precedent on which Nigel Farage may be relying?

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"This list does not include Elon Musk (not a UK voter), and the rumored \$100 million donation to Reform, because of disagreement about Tommy Robinson."

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Just to be clear, this was where Farage turned down Musk's offer because Musk tried to make a donation with, effectively, strings attached, which Farage could not in good conscience accept.

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Musk is, of course, free to give his money only to political parties whose policies he sufficiently agrees with (and he has plenty of UK based companies which could be the vehicle for such a donation) but Farage was equally, completely right to turn it down. I happen to think he is also right to refuse Tommy Robinson membership of Reform too, though that is a matter on which good people can disagree, but he is CERTAINLY right not to take a conditional donation of that kind.

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Keith Guevara

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>> *Is this the precedent on which Nigel Farage may be relying?*

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Probably not. While Farage has a massive lead in Clacton, it would only take a third of the left-wing voters to force a recall election. If MPs force a petition, getting the signatures seems likely.

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I'd say Farage's tactic is aimed at the next by-election. Having taken the huff and refused to make their case this time, I expect the left-wing parties will be surprised in a few months to lose to a "Tell Them Again" campaign.

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Catherine the First

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Clacton is a very safe Reform seat, that's presumably why Farage picked it for himself in 2024 having previously lost in 7 others. In 2014 UKIP won in Clacton in a by-election and it was the only seat UKIP ever won in a general election (2015). Entertaining though it may be to see Farage on his "I'm the people" pedestal against Count Binface supposedly representing "the establishment", Farage is bound to win.

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But winning a by-election does not mean that no rules or parliamentary standards apply to that person. This is the fallacy of Farage's idea that he can somehow by-pass scrutiny that applies to every other MP or politician. Yes, he will win in a safe seat. That doesn't make him an exception to parliamentary rules that apply to MPs or any other rules that apply to normal people

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