

## Audio Transcription of Interview with Senator Grassley

Charles Ernest Grassley

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## **AUDIO TRANSCRIPTION OF INTERVIEW WITH SENATOR GRASSLEY**

MR. SANDY: Senator Grassley, the last time I heard you speak was while you were visiting my hometown of Spirit Lake, Iowa. During this visit you shared a personal story regarding your father's frugality. Specifically, that you remember your father, a farmer, taking nails out of wood. The nails would be bent, and your father, in order to reuse the nails, would bend them back straight and put them in a can. This struck me that your father was that kind of man, and that that period was that kind of time. Have those lessons of fiscal responsibility translated to the way you do business in D.C.?

More specifically, given the GDP in relation to the national debt, what are your thoughts on my generation's chance for prosperity given the enormous national deficit?

SENATOR GRASSLEY:—I still never found a new nail, and my dad's been dead since 1960. I've still got some of those old nails around. In answer to your question, we are on a path to tripling the national debt over the budget window that we have, and that's determined by CBO, not by me. And when you triple it from a 50-year average of 35 percent to 90 percent, you're getting close to where Greece is today, and we can't let that happen. Hopefully, the next election will give us an opportunity to get a fiscally conservative majority that will be able to intervene and not go that far down that road, and it's going to be a while 'til we can get back to 35 percent, but I think the principle that ought to be adopted to get there is—and it's a principle that if it had been in place, we wouldn't be on the trajectory that we are—is you ought to have a principle that you shouldn't increase annual appropriations more than the economic growth of the tax base supporting it. So over a long period of time of 50 years we've had about an 18 and 3/10th percent average of taxes coming into the federal treasury of the gross domestic product and, of course, you keep the 81 percent, we spend the 19 percent, let's say, and so this 18 and 3/10th percent has had growth over a period of 24 years. You shouldn't be spending more than the economic growth of the tax base supporting the government and the services have to be tailored to that.

MR. SANDY: With the new health-care policy being passed, is there

anything that a new Congress would retroactively do after this election on an upcoming call?

SENATOR GRASSLEY: You've studied the Constitutional principle better than I have, that one Congress can't bind the succeeding one.

MR. SANDY: Sure.

SENATOR GRASSLEY: So there's nothing, as long as it's law, as opposed to the Constitution, that can't be changed by the processes of the Senate and the House to change it anytime they want to change it.

SENATOR GRASSLEY: Will it be changed? I think it depends on the message that people get from this election.

MR. SANDY: Classmates of mine are having trouble finding jobs, both collegiate classmates and graduate school classmates. This is a serious concern for people under the age of 26, where the unemployment rate is currently at 54 percent. Is there something that you think can be done in this upcoming cycle to try and lower that?

SENATOR GRASSLEY: Yes. Tax incentives for small business to grow—tax incentives for small businesses because those tax incentives would improve cash flow because, generally, small business operates on cash flow. Then you would incentivize small business to do what small business does better than big business, and I justify that statement on the fact that 70 percent of the new jobs in America are created by small business.

MR. SANDY: I'd like to move away from the current economy and discuss the perception of President Obama's philosophy of private property and the citizenry's rights in their private property. A lot of times you hear people laying the charge that the new administration has a socialist streak, or something of this sort. Is this a fair characterization? If not, then at what point does someone's private property rights—which through a social compact they allow government to tax—at what point does this taxation move to socialism? Is the litmus test based upon an individual's will to work, an uprising? Or, do we as a country silently but slowly and unconsciously move towards the European economic model?

SENATOR GRASSLEY: I think it's easy to answer your question and I've got three or four different answers, but they don't conflict. Getting back to that 50-year average of 18.3 percent, it's a level of taxation that people haven't revolted against and it's a level of taxation that has kept our economy growing. Unlike Europe, where maybe 50 percent of the gross national product is run through the government, as opposed to around 20 percent in the United States, albeit 25 percent right now because of Obama. There (Europe) they have economic growth of about—during the 1990s of about two percent and during the first decade of this century 1 and 7/10ths percent, where normally our economy grows between three to four percent on average.

MR. SANDY: Sure.

SENATOR GRASSLEY: So I think at that level of taxation you are not dealing with socialism. It is quite obvious, if you want to look at it from an ideological standpoint, that government is confiscating 19 percent or 18.3 percent of your private property because your wages are your private property. But if you follow, you know, the consent of the governed in the Declaration of Independence, from time to time we give up certain labor needs and freedoms to the government for the government to exercise in our stead. We can take them back because they were given to us by our creator, not by government—because if government gives them to us, they can take them away from us. So it's something that we have consented to. Now, some people say, well, I didn't consent to it, but through the process of representative government you have. One way of expressing dissatisfaction is revolt; we've had some taxpayer revolt in this country going back to 1790, or going back to 1978 in California, that was Proposition 13 that carries over 'til now, to some extent, or the Tea Party movement of right now. But it hasn't been violent—but it's expressing some opposition. For the most part, people have accepted the 18.3 percent average.

MR. SANDY: Sure.

SENATOR GRASSLEY: So then the next issue, though, isn't just income, the next issue is real property, see, and the extent of which—under the *Kelo* case—real property can be taken for private use. My judgment is, it shouldn't be taken for private use. State legislatures now—since we won't amend the Fourth Amendment or the Fifth Amendment—are going to have to live with *Kelo* until it's overturned. In the meantime, the states have the ability to curb the use of eminent domain for public use, but that public use under *Kelo* goes to the extent of transferring it to private use.

MR. SANDY: Speaking of overturning Supreme Court decisions. . .

SENATOR GRASSLEY: Yes.

MR. SANDY:—I, along with most of America, have been carefully watching the confirmation process of Elena Kagan. Justice Clarence Thomas recently came to the University of St. Thomas School of Law. You were on the Senate Judiciary Committee when Justice Thomas was up for appointment, were you not?

SENATOR GRASSLEY: Yes, I was.

MR. SANDY: Do you remember that process with him? Specifically, how incredibly nasty that confirmation process was?

SENATOR GRASSLEY: Oh, yeah.

MR. SANDY: Both for Justice Thomas and Justice Robert Bork?

SENATOR GRASSLEY: Yeah.

MR. SANDY: However, in the early '90s you confirmed President

Clinton's appointments.

SENATOR GRASSLEY: Yeah.

MR. SANDY: Yet, you didn't approve Justice Sotomayor. Have the times changed or do you think that the candidates are and were different?

SENATOR GRASSLEY: The times have changed. The changes have been brought on by Senator Schumer, speaking for most of the liberals of the Senate, when he gave a speech in 2001. Senator Schumer's speech said that ideology is going to play a role, and then that was backed up by Obama, when he was speaking about Justice Roberts. He said that he wanted somebody that had empathy and so what happened to Bork shouldn't have happened, what happened to Thomas shouldn't have happened. Republicans let bygones be bygones in '93 and '94 when Ginsburg and Breyer came up. But then when Bush took over, Schumer comes out with his statement backed by Obama, three or four years later. Precedent is a big thing in the United States Senate, it's nothing in the rules, but when Schumer says, you know, in a sense it's going to be a war, we're going to look at the ideology of these people, then the precedent is set and Republicans are going to start looking at ideology as well. The best example of the Democrats carrying out their ideological approach to confirming judges is through Miguel Estrada. Estrada was nominated for the District Court of Appeals and he had seven cloture votes. The Democrats wouldn't let him come to a vote because he might be the first Hispanic appointed to the Supreme Court and they weren't going to let that happen. And the anomaly—or irony—of it is that he has sent a letter in support of Kagan. One of our Republicans asked Kagan, since Estrada thinks you're qualified to be on the Supreme Court, do you think he's qualified to be on the Supreme Court, and she said yes. But it doesn't matter because when he had seven votes and wasn't approved because of ideology, nobody questioned his credentials, like nobody really questions Kagan's credentials. It's a whole new ballgame. I won't announce 'til Monday how I'm voting on Kagan because I have the responsibility to look at the record entirely, but ideology is going to have a different role for her and for Sotomayor than it would have ever played in the case of Breyer and Ginsburg.

MR. SANDY: Sure.

SENATOR GRASSLEY: But we were willing to let bygones be bygones, but people like Schumer and Obama weren't willing to.

MR. SANDY: For me, this is frustrating. A judge is supposed to not let ideology come into her or his decision making on a case. However, some justices want to define what a holding is, they want to nuance it, parse words with what is or is not precedent. They narrow and vary the scope to such an extent it just kind of evolves into something entirely new or different. I cannot help but think that some justices come to a conclusion

and work backwards to reason to a predetermined result. Isn't this somewhat disingenuous? For example, Ms. Kagan was trying to distinguish precedent in the *Baker v. Nelson* decision. As I recall, when you asked her if this was settled law subject to *stare decisis*, she never really gave a straight forward answer.

SENATOR GRASSLEY: I think it maybe depends upon whether you're a judicial activist or a strict constructionist. I think for a judicial activist the end is what they seek, and if a precedent gets them to their end, then precedent is important. But if precedent stands in the way of what they want to rule, then I think it's not important to them. That's the way I see it from where I sit, you know, as a farmer-legislator.

MR. SANDY: *Stare Decisis* is important because it creates dependability, structure, and stability within the law. People know what to expect. Yet, there are those exceptional cases where the Supreme Court does not follow precedent because previous courts so egregiously got it wrong the first time. The Supreme Court has even created a kind of litmus test for those exceptional cases. However, their own litmus test is itself, contradictory. Thus, the difficulty with precedent is what should or should not be adhered to. Is *Roe v. Wade* something that should be unequivocally and facially overturned given the lack of textual foundation in the original decision?

SENATOR GRASSLEY: I discussed that with Ms. Kagan. Specifically, the right to privacy and the extent to which it's a basis for things that aren't explicitly in the constitution. I think the only way *Roe v. Wade* is going to be overturned is by the Court itself, but I think it will only be overturned—science is going to have more to overturning the decision than ideology. Over the last 30 years science has shown that the viability of a life is closer to conception than the viability considered in *Roe v. Wade*. If the courts say that when life is viable then life begins, then you're going to have the courts overturn *Roe* because the principle of life, liberty and due process changes given the change in science. Look, in the ten years after *Roe v. Wade*, would we have had a chance to get partial birth abortion restrictions passed?

MR. SANDY: Immediately following *Roe v. Wade*? No.

SENATOR GRASSLEY: But now after a period of time it comes out. You know?

MR. SANDY: Sure.

SENATOR GRASSLEY: And then you've got preemies, twenty six weeks old, living, you know, and—twenty six weeks is still two quarters, isn't it? You know, and so I think it's going to be easier to justify restrictions on abortion, based upon science. Now, for me that's not a problem, I can do it based upon just ideology or my convictions that life begins at conception.

MR. SANDY: Sure.

SENATOR GRASSLEY: But my view would not hold sway in the court today. See?

MR. SANDY: Do you think that the judicial confirmation process will ever get back to what it was originally meant to be: a bipartisan process?

SENATOR GRASSLEY: You mean like it was pre-Bork?

MR. SANDY: Yes.

SENATOR GRASSLEY: Precedent is pretty important in the United States Senate and I think it would take a process that would—no, I guess I better say I don't think it's going to get back to it because the precedent is very important in the Senate. You understand that in the first, 225—no, not 225 years—213 years there was hardly any of this filibustering of Judges.

MR. SANDY: Have you ever felt a time when your moral convictions or conscience didn't necessarily align itself with what you felt your constituents wanted you to do?

SENATOR GRASSLEY: It would only be if my constituents were overwhelmingly pro choice, but that'd be the only one that I can think of.

MR. SANDY: Well, and the basis for that question is immigration reform. Assuming the borders get secured and the influx of people illegal crossing the border is stopped.

SENATOR GRASSLEY: Yeah.

MR. SANDY: What do you do with the people here who are here illegally but follow the law, work hard, provide for their families, and have families while here. On the one hand, they didn't follow the law in as much as they decided to come here legally and follow the proper process like all other immigrants are expected to do. However, when faced with starvation, death, and all the other scenarios currently playing out in Mexico, can you really deport them all? Is there not a moral duty given the scenario just described to grant them a pathway to citizenship, even if it would not be popular with your Iowa constituents?

SENATOR GRASSLEY: Well, I wouldn't. . . I wouldn't take the Army and round them up. I'd continue to do what we're doing now, but I would set up a workable guest worker program so people can come to this country legally. And I believe you'd probably find people that would be willing to fill our needs, and then if you fill our needs and people that came here illegally can't get jobs, they'll probably go home.

MR. SANDY: Would you ever set up a process by which they could look into citizenship or gaining that type of thing, or would that just be off the table?

SENATOR GRASSLEY: It'd be off the table.

MR. SANDY: And that wouldn't depend on whether they have children that were born here or not? Whether they followed all other laws in the

U.S.? Personally, that does not sit well with me.

SENATOR GRASSLEY: A better way for me to answer your question would be that I've gone through this process twenty years ago of trying to give people a second chance, we had three million people here illegally, and I found out if you reward illegality and you get more of it, so I can't—people would think I never learned from a mistake. I can't reward illegality because if you didn't enforce the red-light laws here, everybody would be going through the red lights, and so you've got to have respect for all.

SENATOR GRASSLEY: I bought into the argument once to give them a chance and you just have a million people instead of three million.

MR. SANDY: And that was under the Reagan Administration, was it not?

SENATOR GRASSLEY: Yes.

MR. SANDY: I think one of the biggest criticisms about that was that he didn't have a plan to secure the borders first and that has been the same criticism of the Bush Administration too—that he didn't really make border security a top priority.

SENATOR GRASSLEY: That's right.

MR. SANDY: Which leads me to my next question regarding the recent Arizona immigration law.

SENATOR GRASSLEY: Let me interject.

MR. SANDY: Go ahead.

SENATOR GRASSLEY: I'll leave just a little bit of an opening that IF the border was really secured and people were respecting our laws and they weren't coming in playing the lottery game that they wouldn't get caught, and that number of millions won't get larger, maybe I'd be willing to look at a path to citizenship. But, see, the mistake that we made in '86 is we just assumed that you legalize them once and for all and you'll never have that problem again. Now the problem's four times bigger.

MR. SANDY: Thank you for the nuanced position. I think that that is the first time I have read or heard you articulate that position in that way.

MR. SANDY: The Arizona immigration law, the DOJ, as you know, is gearing up to challenge the law on the grounds that immigration enforcement is explicitly and expressly a federal matter. Arizona is making the argument that the Federal government is not doing its job in protecting and enforcing the border. What are your thoughts?

SENATOR GRASSLEY: Well, if the federal government was doing its job of securing the border, and "securing the border" is a definition of sovereignty, then we're a little less sovereign nation when you don't protect your borders. There's no doubt about it, that's a federal responsibility, but if the federal government is not doing its job, the state has a responsibility under the police powers under the U.S. Constitution to protect its citizens. I



would expect the people of Iowa—through the state and city police—to protect me from illegal aliens. I can understand why it’s even worse of a problem in Arizona, so I think under the police powers the State of Arizona has the authority to do what it was going to do. Rhode Island has passed a similar law and it’s been upheld in the Second Circuit.

MR. SANDY: Is there ever an example where the police power of the state would override the exclusivity of an exclusively federal matter? Because of the Supremacy Clause, the federal law governs, even if it’s a legitimate state police endeavor. If it’s a uniquely federal issue, the federal issue will necessarily win out because of the Supremacy Clause. States can aid enforcement of immigration with grant of the Federal Government. Shouldn’t the Federal Government determine the mode and manner in the enforcement of immigration?

SENATOR GRASSLEY: Yeah.

MR. SANDY: My concern is that order and protocol will diminish when you have various states determining when the Federal Government is or is not doing a sufficient job. Who determines such a thing? What are the ramifications of having this type of philosophy?

SENATOR GRASSLEY: Police powers are inherent with the state.

SENATOR GRASSLEY: On the other hand, there’s a vacuum there. If there weren’t that vacuum, the state wouldn’t be acting anyway. But I don’t know whether it’s really an issue. Most of the Arizona laws mirror the federal law, you know, you’ve got dual enforcement. The police here could enforce a federal law in any area. Or they might be enforcing a federal law the same way that the state laws are enforced, you know.

MR. SANDY: Back in the ‘50s when you were working in the fabrication industry, you were a sheet-metal worker, and then you ran for the Iowa House. What perked your interest in doing that to begin with, going into that type of work? Not that the two are incompatible, but it’s unique. What perked your interested to go that route?

SENATOR GRASSLEY: It actually was turned around a little bit the other way. When I was growing up as a kid, even in elementary school, I had a tremendous love for politics and history because my mom and dad were always talking about it and I knew I was going to major in political science, which I did. Probably would have been a teacher of it if I hadn’t been elected to office, but I was elected to office in 1958 and we—in those days we got—we only met every other year and we only got paid \$3,000 every other year, and so—and my dad died at the same time and so I had an 80- acre farm that I ran for my mother, but I was just renting it so you might say I was only farming 40 acres for my own benefit, so then I needed to supplement my income, so then I went to work as a factory worker.

MR. SANDY: Okay. So you did that while you were in the Iowa House?

SENATOR GRASSLEY: Yeah. And then what I did was I took a leave of absence from the job from January through April every other year.

MR. SANDY: To go to work in the morning.

SENATOR GRASSLEY: Yeah. Yeah. And then I would work from 7:00am 'til 3:30pm when the factory was open and then I would farm in the afternoon and evening.

MR. SANDY: Was there a particular statesman that you read about or a founding father that you found particularly interesting or motivational?

SENATOR GRASSLEY: Before I was in politics, I was more interested in the processes of government than I was interested in particular individuals. But after I got into politics I would say Congressman H.R. Gross, who I succeeded to the U.S. House, and then probably Barry Goldwater. Those two individuals influenced me a lot. And since I've been in politics and I've been reading more, I personally associate with John Adams and his son John Quincy—neither one of them were outstanding presidents—but they're people that, because of their Christian beliefs, would be a pattern I'd want to follow.

MR. SANDY: Senator Grassley, on behalf of the University of St. Thomas Journal of Law and Public Policy, and on behalf of myself as a proud Iowan, I want to thank you for time not only today, but for your many years and dedication to the great State of Iowa and to your service to the United States.

SENATOR GRASSLEY: It was my pleasure John. Thank you for honoring me as an elder statesman. Well, maybe not the elder part, but certainly the statesman.