



Steven Menashi

President Trump nominated Steven Menashi to serve on the U.S. Court of Appeals for the Second Circuit on August 14, 2019. Menashi is anti-choice.

Career¹

- Bachelor of Arts, Dartmouth College, 2001
- Assistant Editor, Policy Review, Hoover Institution, 2001-2002
- Associate Editor, Policy Review, Hoover Institution, 2002-2004
- Public Affairs Fellow, Hoover Institution, 2002-2004
- Editorial Writer, The New York Sun, 2004-2005
- Juris Doctorate, Stanford Law School, 2008
- Clerk, Judge Douglas Ginsburg, U.S. Court of Appeals for the D.C. Circuit, 2008-2009
- Olin-Searle Fellow, Georgetown University Law Center, 2009-2010
- Clerk, Associate Justice Samuel Alito, U.S. Supreme Court, 2010-2011
- Associate, Kirkland & Ellis, 2011-2013
- Of Counsel, Kirkland & Ellis, 2013-2015, 2016-2017
- Partner, Kirkland & Ellis, 2015-2016
- Koch-Searle Research Fellow, New York University School of Law, 2013-2015
- Assistant Professor, George Mason University Antonin Scalia Law School, 2016-2019 (on leave 2017-2019)
- Acting General Counsel, U.S. Department of Education, 2017-2018
- Principal Deputy General Counsel, U.S. Department of Education, 2018
- Special Assistant to the President/Associate Counsel, Office of White House Counsel, The White House, 2018-present

Record on Reproductive Freedom

- Menashi submitted an amicus brief on behalf of former U.S. Department of Justice officials in *Zubik v. Burwell* arguing that the Affordable Care Act's contraceptive-coverage policy forced certain religious groups into "moral complicity" with the use of contraception, despite an accommodation put in place for such groups by the Obama administration.² Menashi compared such groups' "moral complicity" in the use of contraception to providing weapons to help someone commit a crime.³
- As editor-in-chief of the Dartmouth Review, Menashi wrote several anti-choice articles and editorials. Menashi vocally opposed Dartmouth College's decision to

make emergency contraception, Plan B, available to students through campus health services.⁴ Menashi falsely stated that Plan B is an abortifacient and accused the university of misleading students and “pushing them toward a choice they might abhor.”⁵ In response to written questions from Senate Judiciary Committee members, Menashi doubled down on his assertion that Plan B is an abortifacient: “The Supreme Court has also recognized this difference of opinion in noting that ‘according to [some] religious beliefs,’ certain ‘contraceptive methods... are abortifacients,’ *Burwell v. Hobby Lobby Stores*... even though ‘federal regulations... do not so classify them.’”⁶ Menashi characterized *Roe v. Wade* and subsequent U.S. Supreme Court decisions as “radical abortion rights advocated for by campus feminists” and contended that the legalization of abortion “has led to clearly undesired moral consequences.”⁷

- As a writer for The New York Sun, Menashi alleged that Senate Democrats “slandered” Chief Justice John Roberts during his confirmation process by asking about his position on abortion.⁸ Menashi further wrote that Democrats’ opposition to Judge William Pryor because of his anti-choice positions constituted an unconstitutional religious test and a “debasement of the Constitution” that “tarred” the judicial nomination process “by religious bigotry.”⁹
- Menashi has donated to anti-choice candidates Mitt Romney and Jeb Bush, as well as served as a volunteer “Lawyer for Romney” during the 2012 presidential election.¹⁰
- Menashi has been a member of the conservative, anti-choice Federalist Society.¹¹ The Federalist Society funded Menashi’s Olin-Searle Fellowship at Georgetown University Law Center.¹² The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump’s Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion “an act of force” and “a threat to human life,”¹³ and serves as co-chairman of Students for Life,¹⁴ a group whose mission is to “abolish abortion.”¹⁵

Record on Other Key Issues

- Menashi has written extensively in favor of religious schools’ ability to discriminate on the basis of religion and use government funds to conduct religious education.¹⁶ In written responses to questions about these writings from Senate Judiciary Committee members, Menashi stated that he would “faithfully apply” Supreme Court precedent regarding exemptions from nondiscrimination laws for religious institutions.¹⁷ However, because Menashi believes that the scope of this exemption is “subject to pending or impending litigation,” he refused to say whether institutions should be able to fire a woman because she is unmarried and pregnant.¹⁸ In addition, while Menashi acknowledged that at least two circuits have held that Title VII, as amended by the Pregnancy Discrimination Act, protects women from being fired for

having an abortion, Menashi refused to answer whether institutions should be able to fire a woman because she used birth control or had an abortion because it is his understanding “that litigation with respect to this issue is pending or impending in other federal courts.”¹⁹

- As editor of the Dartmouth Review, Menashi authored multiple editorials defending racist and sexist incidents at campus fraternities and referred to complaints about these incidents as “ridiculous” and “a bit hysterical.”²⁰ Menashi also criticized Dartmouth’s “Take Back the Night” event and dismissed accusations of sexual harassment as “offhand remarks or jokes.”²¹
- In a law review article, Menashi argued that “ethnonationalism” is a “common and accepted” feature of democracies.²² Menashi stated that it is a “political reality that the aspirations of liberal democracy can be achieved only through particularistic nation-states.”²³ Menashi argued that countries should use their immigration laws “to establish a desired demographic balance” and that this is “most crucial for nation-states in which the dominant ethnic group is in danger of losing its majority status.”²⁴

September 24, 2019

¹ *Questionnaire for Judicial Nominees: Steven James Menashi*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

² Brief of Amici Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S.Ct. 1557 (2016) (Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, 15-191), 2016 WL 155631.

³ *Id.*

⁴ Steven Menashi, *The College on the Pill*, Dartmouth Rev. (Jan. 15, 2001).

⁵ *Id.*

⁶ *Questions for the Record: Nomination of Steven Menashi to the U.S. Court of Appeals for the Second Circuit* UNITED STATES SENATE COMMITTEE ON THE JUDICIARY (submitted Sept. 18, 2019), <https://www.judiciary.senate.gov/imo/media/doc/Menashi%20Responses%20to%20QFRs.pdf>.

⁷ Editorial, *The Yuck Factor*, Dartmouth Rev. (Jan. 15, 2001).

⁸ Steven Menashi, *The Religious Test*, The New York Sun (July 27, 2005).

⁹ *Id.*

¹⁰ *OpenSecrets Donor Lookup: Steven Menashi*, <https://www.opensecrets.org/donor-lookup/results?name=Steven+Menashi&cycle=&state=&zip=&employ=&cand=>.

¹¹ *Questionnaire for Judicial Nominees: Steven James Menashi*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

¹² See Olin-Searle-Smith-Darling Fellows in Law (Full-Time), The Federalist Society, <https://fedsoc.org/opportunities/olin-searle-smith-darling-fellows-in-law-full-time>.

¹³ Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>

¹⁴ *Board of Directors*, STUDENTS FOR LIFE, <http://studentsforlife.org/supporters/board-of-directors-1> (last visited July 5, 2018)

¹⁵ *Mission Statement*, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 5, 2018)

¹⁶ See, e.g., Steven Menashi, *Toward a “More Enlightened and Tolerant View”: Educational Choice and the Regulation of Religious Institutions*, 66 N.Y.U. Ann. Surv. Am. L. 31 (2010); Steven Menashi, *The Church-State Tangle*, Policy Review (2002), <https://www.hoover.org/research/church-state-tangle>.

¹⁷ *Questions for the Record: Nomination of Steven Menashi to the U.S. Court of Appeals for the Second Circuit* UNITED STATES SENATE COMMITTEE ON THE JUDICIARY (submitted Sept. 18, 2019), <https://www.judiciary.senate.gov/imo/media/doc/Menashi%20Responses%20to%20QFRs.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Editorial, *Tolerance at Dartmouth*, *Dartmouth Rev.* (Feb. 12, 2001); Editorial, *Heteropatriarchal Gynophobes!*, *Dartmouth Rev.* (Oct. 2, 2000).

²¹ Editorial, *Heteropatriarchal Gynophobes!*, *Dartmouth Rev.* (Oct. 2, 2000).

²² *Ethnonationalism & Democracy*, 32 *U. Pa. J. Int'l L.* 57 (2010).

²³ *Id.* at 59.

²⁴ *Id.* at 78.