

# Controversial Trump judicial pick once linked abortion to infanticide and decried college distribution of morning-after pills

By [Em Steck](#) with Caroline Kelly and Lauren Fox, September 25, 2019



FROM GEORGE MASON UNIVERSITY

Steven Menashi

**(CNN)** A federal appeals court nominee once claimed some rare late-term abortion procedures lead to infanticide and decried college medical staff for distributing morning-after pills without informing students that some patients may consider them to cause abortions.

Steven Menashi, a Trump judicial nominee to the 2nd US Circuit Court of Appeals, made the comments in two separate editorials for *The Dartmouth Review*, the conservative student newspaper for Dartmouth College, while he was a student there in 2001.

In the columns, Menashi focused on extremely rare procedures and even rarer outcomes associated with abortions later in pregnancy.

Menashi, however, wrote, without citing specific sources that the procedure often involved infanticide. "The baby sometimes dies in birth, but is often delivered alive. Denied medical care, the baby typically lives one or two hours before expiring," Menashi wrote.

Abortion has re-emerged as a key judicial litmus test in light of Republican efforts to challenge the landmark 1973 *Roe v. Wade* decision legalizing abortion and President Donald Trump's moves to limit federal funding for health care providers. Menashi's comments on abortion offer a clearer picture of the 40-year-old who will hold a lifetime seat on the powerful Second Circuit if confirmed.

CNN's KFile reported in August that Menashi had a history of denouncing feminists, diversity efforts and gay rights groups in his college columns and other writings, positions that drew questions during his confirmation hearings.

In his Senate confirmation hearing, Menashi, who has served as an aide to Education Secretary Betsy DeVos and a lawyer in the Trump White House, faced fierce criticism from both Republican and Democratic lawmakers over his past comments and his time working in the Trump administration on the issue of sexual assault on college campuses and immigration reform. Senators from both parties say Menashi stonewalled them.

Louisiana Republican Sen. John Kennedy told CNN that he "wasn't happy" with Menashi's nomination.

"I don't know how I am going to vote yet, but I wasn't happy," Kennedy told CNN. "I spend a lot of time preparing for these hearings I am trying to understand how the nominees think. When nominees filibuster me and disrespect the United States Senate and the Judiciary, that causes me to wonder if they will do that to a US senator, how they are going to treat a litigant? And, I am not happy with the nominee."

Menashi submitted the abortion and contraception-focused editorials among 900 pages of professional material to the Senate Judiciary Committee for review in his confirmation process. Menashi was not asked about abortion or reproductive rights at his hearing.

The Judiciary panel could vote on his nomination as soon as Thursday.

Asked about the writings and if Menashi still holds these views on abortion and the morning after pill, a Justice Department spokesman defended him as "exceptionally qualified" and that Menashi's article was "about making sure students have the medical information they need to make informed decisions." The spokesman added that "attempts to blatantly mischaracterize decades-old articles he wrote before he was even in law school do not change that."

The spokesperson said Menashi had a "thorough vetting" and that "we look forward to the Senate approving his nomination."

## Menashi's comments on abortion

In an editorial titled "The Yuck Factor," Menashi turned his focus to abortion. The American opinion on abortion, argued Menashi, is an opposition to "the radical abortion rights advocated by campus feminists and codified in *Roe v. Wade* and subsequent decisions-abortion on demand, for any reason, at any stage of pregnancy."

Menashi cited the "Born-Alive Infants Protection Act" that had been recently passed in the House of Representatives and eventually was signed into law by President George W. Bush. The act underscored the illegality of infanticide and stated that if an infant survives an abortion procedure, that infant is entitled to medical care and the protection of the law.

Menashi argued that the new law was necessary because of a form of abortion referred to as "induced labor abortion," or what abortion opponents refer to as "live birth abortion."

"Live birth abortion" is not a medical term, and has been used by anti-abortion activists to refer to an extremely rare type of abortion known as dilation and extraction that has since been heavily restricted. While induced labor is a form of late-term abortion, abortions after 21 weeks -- including those before the 24-week standard of viability -- account for 1.3% of all abortions in recent CDC data.

A CDC study from 2016 shows that between 2003 and 2014, there were 143 recorded fetal and infant deaths associated with induced terminations -- but the study does not indicate how many of the fetuses were viable, which *Roe v. Wade* set at 24-28 weeks. Additionally, 97 of the instances included records of maternal complications or at least one congenital anomaly. Allowing the parents of fetuses with life-limiting anomalies the options of medical abortion is within the spectrum of palliative care, according to the American College of Obstetricians and Gynecologists.

Menashi cited South Africa, which he wrote had issued guidelines in 1997 advising against resuscitation for some infants.

"Many healthcare providers refused to comply," Menashi wrote. "One doctor said the regulations were 'inhuman and against all my principles.' Most people, in fact, react this way. Bioethicists smugly label this reaction 'the yuck factor.' But what it indicates is that, while abortion remains a vexing question for most Americans, the principle conceded with legal abortion has led to clearly undesired moral consequences. And it seems, for most Americans, that the issue is not as simple as a 'right to choose,'" Menashi wrote.

## Menashi called the morning after pill an "abortifacient"

Menashi also negatively weighed in on the accessibility of morning-after pills on his college campus. In an editorial called "The College on the Pill," also from 2001, Menashi expressed skepticism that the morning after pill is a contraceptive and not an abortion pill.

"The morning-after pill may, in fact, act as a contraceptive by inhibiting or delaying ovulation before fertilization has occurred. But there is a third case," Menashi wrote, "in which the emergency contraceptive prevents an already fertilized egg from implanting in the uterus." He goes on to explain that had led some, including the conservative Family Research Council, to categorize morning-after pills as "abortifacients."

Emergency contraceptives such as the morning after pill delay ovulation before fertilization and prevent a fertilized egg from implanting such so that a pregnancy can occur. Health experts and multiple scientific studies assert that emergency contraceptives are not abortifacients because they do not terminate existing pregnancies.

The pill, RU486, terminates the developing fertilized egg attached to the uterine wall, according to the Mayo Clinic.

Menashi raised concerns about university's opinion of when life begins. "The dispute isn't the result of deliberate misinformation, of course, but a conflict over definition. While many believe that pregnancy occurs with fertilization, the position of Dartmouth Health Services is that pregnancy begins only at implantation. Still, the College's health providers inform students, emphatically, that Plan B is not an abortion -- even if the student's own convictions might lead to an alternate conclusion."

Menashi continued to criticize the university, accusing them of misleading "students who believe that life begins at conception -- pushing them toward a choice they might abhor if they had complete information."

**Source:** <https://www.cnn.com/2019/09/25/politics/kfile-menashi-abortion-morning-after-pills/index.html>