October 18, 2019

Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator:

The undersigned organizations, dedicated to the education of our nation’s students, urge you to VOTE NO on Steven Menashi’s nomination to the U.S. Court of Appeals for the Second Circuit. We are united by the fundamental belief that all students, regardless of background, are entitled to equal access to a quality education.

Menashi’s record shows consistent hostility to educational equity and civil rights. While serving as acting general counsel of the U.S. Department of Education under Secretary of Education Betsy Devos, he helped construct and enforce policies that limited educational opportunities for our nation’s students. Menashi, in his own words, was “responsible for providing legal advice on ALL aspects of the Department’s operations, including litigation, rulemaking, regulation, and enforcement.” His record includes:

- **Repealing protections for student borrowers.** Menashi unlawfully fought to repeal the Borrower Defense to Repayment program, which allows students to receive debt relief when they are defrauded by colleges. He also unlawfully fought to delay implementation of the State Authorization for Distance Education rule, which requires transparency to protect vulnerable Americans seeking education from potentially predatory online colleges. The Department was sued for both these efforts and federal courts held that its actions were unlawful in both cases.

- **Defending predatory loan companies.** Under Menashi’s leadership, the Department attempted to block states from suing large loan companies for cheating and misleading student borrowers. The Department issued guidance that argues “states lack the authority to go after companies that collect federal student loans,” and even instructed companies to refuse demands for information from state attorneys general.

- **Failing public service workers.** During Menashi’s tenure, the Department was derelict in its duty to administer the Public Service Loan Forgiveness (PSLF) program, which is designed to forgive the federal loans of students who choose to work in public service for 10 years. Currently, the Department has approved only one percent of applicants for the program, and is facing several lawsuits for its dereliction. The General Accountability Office and the Consumer Financial Protection Bureau have also repeatedly admonished the Department for how it administers the PSLF program.
• **Rolling back LGBTQ civil rights.** In February 2017, before Menashi’s tenure, the Department revoked guidance that interpreted Title IX as protecting all students on the basis of their gender identity; the guidance advised schools to allow students to use bathrooms matching their gender identities. Under Menashi’s leadership, the Department went further, adopting the policy that it would no longer even investigate complaints of discrimination against transgender students who are denied equal access to educational facilities and programs.

• **Weakening protections for victims of sexual assault and harassment.** Menashi was the architect of the 2017 Title IX Question and Answer guidance that rescinded Title IX guidance on schools’ responsibilities for protecting students from sexual harassment and violence. His office subsequently proposed a rule that narrowed the definition of sexual harassment, limited schools’ responsibility for addressing such conduct, and exalted accused students’ rights over those of victims.

• **Eliminating policies that benefited students of color.** In February 2018, the Department delayed implementation of the Equity in IDEA rule, which sought to prevent children of color from being disproportionately placed in special education settings. Similarly, the Department withdrew guidance on the Nondiscriminatory Administration of School Discipline, which advised schools on ways to help reduce the school-to-prison pipeline for students of color.

• **Attempting to arm teachers.** In April 2018, Secretary DeVos announced that she would not prevent federal money from being used to arm teachers. In August 2018, Menashi’s former office finalized legal approval of Secretary DeVos’s plan to allow federal funds to be used to purchase firearms and deploy them in schools even though Congress had specified school districts should use that money to achieve three different goals. The goals endorsed by Congress were providing a well-rounded education, improving school conditions for learning, and improving the use of technology for digital literacy.

Menashi’s record, along with his nearly two decades of personal writings, make it clear that long-held hostility toward educational equity and civil rights motivated these stances. In his writings, Menashi:

• Lamented that the American education system “persist[s]” in promoting “egalitarianism”

• Opposed need-based financial aid because it operates as a punishment on wealthy families, whom Mr. Menashi describes as “having the foresight and prudence to save for their children’s educations”

• Called women who oppose sexual assault “campus gynocentrists [who] throw around accusations [of sexual misconduct] when there’s no similar leeway for men,” while
arguing schools should not be able to take disciplinary action for sexually abusive or harassing verbal behavior because the concept of “verbal behavior” is “nonsensical”

- Compared college admissions policies that seek to promote racial diversity to the “Nuremberg laws” while defending as “harmless” college “ghetto part[ies]” where “white partygoers donned Afros and toy guns”

We expect Menashi to carry these biases with him to the bench. Accordingly, he cannot be trusted to be fair-minded and to dispense equal justice to all who come before him. We therefore strongly urge you to VOTE NO on Menashi’s nomination to the U.S. Court of Appeals for the Second Circuit.

Sincerely,

**National Organizations**
- National Education Association
- American Federation of Teachers
- Council of Administrators of Special Education
- Federal Education Association
- National LGBTQ Task Force Action Fund
- National Women's Law Center

**State Organizations**
- Arizona Education Association
- California Teachers Association
- Education Minnesota
- Florida Education Association
- Georgia Association of Educators
- Iowa State Education Association
- Kansas National Education Association
- Maine Education Association
- Maryland State Education Association
- Massachusetts Education Association
- Michigan Education Association
- NEA Rhode Island
- Nebraska State Education Association
- New York State United Teachers
- North Carolina Association of Educators
- Ohio Education Association
- Oregon Education Association
- Pennsylvania State Education Association
- South Dakota Education Association
- Texas State Teachers Association
- Washington Education Association
- Vermont-NEA
- Wyoming Education Association

**Local Organizations**
- Burrillville (RI) Teachers' Association
- Washington District Education Association/Air Arizona Education Association
- Litchfield (AZ) District Education Association
- Chandler(AZ) Education Association