

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MARK ANDREWS,
Plaintiff,

v.

DINESH D’SOUZA, TRUE THE VOTE,
INC., CATHERINE ENGLEBRECHT,
GREGG PHILLIPS, D’SOUZA MEDIA
LLC, SALEM MEDIA GROUP, INC.,
REGNERY PUBLISHING, INC., and
JOHN DOES,
Defendants.

Case No. 1:22-CV-04259-SDG

**DEFENDANTS SALEM MEDIA GROUP, INC.’S AND REGNERY
PUBLISHING, INC.’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Salem Media Group, Inc. (“Salem”) and Regnery Publishing, Inc. (“Regnery”)¹ respectfully move this Court to dismiss Plaintiff’s First Amended Complaint (Doc.

¹ Plaintiff incorrectly named “Regnery Publishing, Inc.” as a defendant in his First Amended Complaint (“FAC”). Regnery Publishing, Inc. is not affiliated with Salem or the subject matter of the FAC. Assuming Plaintiff intended to assert claims against Salem Communications Holding Corporation d/b/a Regnery Publishing, which is the entity that published the book titled “2000 Mules,” but without waiving any defenses related thereto, this Motion seeks dismissal of all claims that Plaintiff asserted against “Regnery Publishing, Inc.” and that Plaintiff intended to assert against Salem Communications Holding Corporation d/b/a Regnery Publishing.

27) (the “FAC”) filed by Plaintiff Mark Andrews (“Plaintiff”) for failure to state a claim upon which relief can be granted.

Each of Plaintiff’s claims fails as a matter of law and should be dismissed with prejudice as to Salem and Regnery. *First*, Plaintiff fails to allege virtually every element of his claim for civil rights conspiracy in violation of 42 U.S.C. § 1985(3), including a qualifying class, a discriminatory motive, an agreement between the defendants to deprive Plaintiff of his civil rights, and an actual deprivation of his right to vote. *Second*, Plaintiff’s claim for violation of Section 11(b) of the Voting Rights Act similarly fails because there is no private right of action to enforce that provision and, even if there was, Plaintiff suffered no injury-in-fact and did not plead the required elements of the claim. *Third*, Plaintiff’s claims for defamation, invasion of privacy by false light, and invasion of privacy by appropriation of likeness fail because, among other things, Plaintiff is unidentifiable in the film and book at issue and, thus, cannot show that Salem or Regnery made any statements were “of and concerning” him, depicted him in a false light, or appropriated his likeness. *Fourth*, because all of his underlying tort claims fail, Plaintiff’s claims for civil conspiracy and punitive damages must also be dismissed.

For these reasons and those set forth more fully in the attached Brief in Support of this Motion, Salem and Regnery respectfully request that the Court grant this Motion and dismiss the FAC against them in its entirety.

Respectfully submitted this 13th day of January, 2023.

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and Regnery Publishing, Inc.

RULE 7.1(D) CERTIFICATE

The undersigned counsel certifies that this document has been prepared with Times New Roman 14-point font in accordance with Local Rule 5.1.C.

This 13th day of January, 2023.

/s/ S. Derek Bauer

S. DEREK BAUER

Georgia Bar No. 042537

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within and foregoing **DEFENDANTS SALEM MEDIA GROUP INC.'S AND REGNERY PUBLISHING, INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record:

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This 13th day of January, 2023.

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