



April 14, 2025

**Via U.S. Mail & Electronic Mail**

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***Re: Facebook's Censorship of the Romanian Tribune Newspaper***

Dear Ms. Newstead:

On October 22, 2024, Facebook suspended the account of the Romanian Tribune Newspaper, the leading Christian voice of the Romanian diaspora. The Tribune's founders fled Romania for the United States in the 1980s to escape religious and political persecution by the communist dictator Nicolae Ceaușescu. Since its inception in 2002, the Tribune has thrived under America's protections for speech and the press. But Facebook's censorship now threatens the newspaper's existence in violation of its own policies and principles of free expression.

Facebook says that the Tribune's Facebook page "goes against" its Community Standards. But far from spreading the hate and misinformation that Facebook prohibits, the Tribune has only ever shared news and opinion pieces from a mainstream conservative, Christian perspective. Earlier this year, Facebook admitted to "making too many mistakes" and announced sweeping changes to its content moderation policies in a renewed commitment to free speech.<sup>1</sup> These changes are laudable, but as the Tribune's suspension demonstrates, much work remains for Facebook to truly safeguard free speech.

If Facebook is truly committed to the free-speech principles it recently announced, it will act swiftly to reinstate the Tribune's account. Alliance Defending Freedom ("ADF") writes on behalf of the Tribune to ask that Facebook do so immediately.<sup>2</sup>

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<sup>1</sup> Joel Kaplan, *More Speech and Fewer Mistakes*, META (Jan. 7, 2025), <https://bit.ly/4gDZYce>.

<sup>2</sup> ADF is a non-profit legal organization that advances every person's right to live and speak the truth. ADF's Center for Free Speech is dedicated to ensuring that

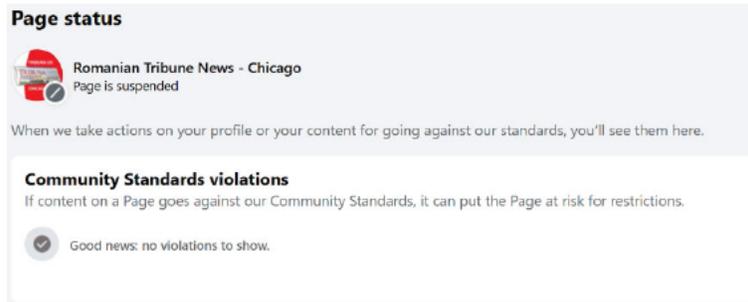
## Facts

The Romanian Tribune is the leading Christian conservative voice of the Romanian diaspora. It publishes a biweekly print newspaper, which it has circulated since 2002, and daily stories on its website. It covers a wide range of topics of interest to the Romanian diaspora, including American and Romanian politics, religion, immigration, and law. It writes from an explicitly Christian and conservative perspective and publishes most of its stories in Romanian. Its regular readership extends not only to the Romanian community abroad but to Romanian residents as well. As more readers have shifted to its online version, the Tribune has relied heavily on its Facebook account to share news, which it opened in 2011. The Tribune shares a link on its Facebook page to nearly every story it publishes on its website.

On October 22, 2024, Facebook notified the Tribune that it suspended its Facebook account. Facebook simply said that the page “goes against our Community Standards” and provided the Tribune the opportunity to click an “appeal” button. It stated that if the appeal was not resolved within 180 days, Facebook would permanently disable the Tribune’s account. Romanian Tribune staff immediately clicked the “appeal” button, but after several days, nothing changed. Over the next few weeks, staff periodically clicked the “appeal” button for a total of seven times to no avail. In November, the “appeal” button was disabled, and the Tribune currently has no way to appeal the suspension decision. The Tribune does not understand how its page “goes against” Facebook’s Community Standards, as Facebook affirms on the Tribune’s account management page that none of the Tribune’s posts violate the Community Standards, as shown below:

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individuals are free to exercise their right to speak online without unwarranted censorship. Since 2011, ADF has represented parties in 15 victories at the Supreme Court. *E.g.*, *303 Creative, LLC v. Elenis*, 600 U.S. 570 (2023); *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 589 U.S. 1 (2019); *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 584 U.S. 617 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Zubik v. Burwell*, 578 U.S. 403 (2016); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Town of Greece v. Galloway*, 572 U.S. 565 (2014); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011).



Ironically, one of the last articles the Tribune shared on Facebook the day of its suspension was titled, “The Left Declares Open War on Freedom of Expression,” shown below.<sup>3</sup> The article specifically called out John Kerry for suggesting the government should limit citizens’ access to certain information on social media. Considering the article’s topic, its closeness to the then-upcoming presidential election, and Facebook’s admission that the Tribune’s page had no Community Standards violations, it appears that Facebook suspended the Tribune’s account in retaliation for the expression of its political beliefs about social media censorship.



<sup>3</sup> *The Left Declares Open War on Freedom of Expression*, ROMANIAN TRIBUNE (English Translation) (Oct. 22, 2024), <https://bit.ly/4jouBDq>.

Since the suspension, the Romanian Tribune’s readership has declined dramatically. Before the suspension, several thousand individuals visited its webpage daily, but traffic has since declined to around 500. This drastic decline in traffic has devastated the Tribune’s ability to raise funds. Because the Tribune generates revenue primarily through advertisements on its website, a decline in website traffic directly affects its ability to raise funds.

### Analysis

#### ***Facebook failed to uphold its free-speech standards.***

Facebook claims to support free expression on its platforms. Years ago, Mark Zuckerberg acknowledged Facebook’s responsibility “to remove content when it could cause real danger as effectively as [it] can, and to fight to uphold as wide a definition of freedom of expression as possible—and not allow the definition of what is considered dangerous to expand beyond what is absolutely necessary. That’s what I’m committed to.”<sup>4</sup> Earlier this year, Facebook recommitted itself to these free-speech principles, announcing that it would end its third-party fact-checking program, lift content restrictions, and better personalize political content to user preferences.<sup>5</sup>

These are admirable steps, but they don’t resolve the past “mistakes” that Facebook admits to making.<sup>6</sup> Mr. Zuckerberg confessed to the House Committee on the Judiciary that, in response to pressure from the government to censor content, Facebook “made some choices that, with the benefit of hindsight and new information, [it] wouldn’t make today.”<sup>7</sup> Nick Clegg, Meta’s president of global affairs, has also admitted that “[w]e know that when enforcing our policies, our error rates are too high, which gets in the way of the free expression we set out to enable. Too often harmless content gets taken down or restricted and too many people get penalized unfairly.”<sup>8</sup>

Facebook’s decision to suspend the Romanian Tribune’s account exemplifies the company’s failure to protect free speech. Mr. Zuckerberg has stated that “in

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<sup>4</sup> *Mark Zuckerberg Stands for Voice and Free Expression*, META (Oct. 17, 2019), <https://bit.ly/4fp0lpJ>.

<sup>5</sup> Kaplan, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> House Judiciary GOP (@JudiciaryGOP), X (Aug. 26, 2024, 3:44 PM), <https://bit.ly/49M4YsF>.

<sup>8</sup> Nick Clegg, *What We Saw on Our Platforms During 2024’s Global Elections*, META (Dec. 3, 2024), <https://bit.ly/4flaUdq>.

general, I don't think it's right for a private company to censor politicians or the news in a democracy."<sup>9</sup> Nevertheless, Facebook censored the leading conservative voice of the Romanian diaspora just weeks before the 2024 Presidential election and immediately after the newspaper posted an article critical of left-wing censorship. This decision reveals a disturbing pattern of censoring Christian and conservative speech under the false pretext of preventing Community Standards violations. Indeed, Facebook told the Tribune that it suspended the Tribune's account for violating its Community Standards, yet it simultaneously states that the Tribune's page is free of such violations.

Facebook has, to the best of the Tribune's knowledge, notified the Tribune about 12 times that it removed a post for Community Standards violations—a remarkably low number considering the newspaper has posted over 10,000 articles since it opened its page in 2011. However, Facebook never told the Tribune which Community Standards were violated, and in recent years, it stopped telling the Tribune which posts it had removed, preventing the Tribune from understanding how it could change course. Furthermore, the Tribune recently learned that some articles have disappeared from its page at a time when Facebook sent it no notifications at all, suggesting Facebook has removed articles without ever notifying the Tribune.

Even worse, the posts that the Tribune believes Facebook censored don't even come close to violating Facebook's Community Standards. The few posts that the Tribune believes Facebook has removed—i.e., those that are unexplainably no longer on the Tribune's page—were about COVID-19 and LGBT issues. Facebook has Community Standards that prevent Covid misinformation and anti-LGBT hate, but these posts in no way implicate those standards. Far from harassing members of the LGBT community, Facebook appears to have removed articles that supported a referendum in Romania to define marriage as between one man and one woman<sup>10</sup>—a political question that garnered significant international attention.

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<sup>9</sup> Meta, *supra* note 4.

<sup>10</sup> *E.g.*, Alliance of Families in Romania, *ROMANIA'S INQUIRY: "CNCD" National Council for Combating Discrimination*, ROMANIAN TRIBUNE (English Translation) (Jan. 16, 2018), <https://bit.ly/4jkJzua>.

And, to the Tribune's knowledge, Facebook removed articles that actually *warned* of the dangers of Covid misinformation,<sup>11</sup> along with obvious satire.<sup>12</sup>

Articles like these do not violate Facebook's Community Standards, and they certainly do not provide a basis for suspending or permanently disabling an account, especially that of a distinguished newspaper. That Facebook's purported basis for suspending the Tribune's account is Community Standards violations thus suggests a pretext. In light of Facebook's track record<sup>13</sup> and the Tribune's bold conservative voice, Facebook's decision hints strongly of retaliation for expressing a conservative viewpoint. But whether retaliation is the reason or not, Facebook's unjustified suspension of the Tribune's account flatly contradicts its purported commitment to free speech.

***Facebook breached its Terms of Service and the covenant of good faith and fair dealing.***

Facebook's suspension of the Tribune's account violates its Terms of Service. To use its platform, Facebook requires every user to agree to its Terms of Service, which constitute an enforceable contract.<sup>14</sup> Under § 4.2 of the Terms, Facebook provides the bases upon which it may suspend a user's account. These include the following scenarios: (1) a user "clearly, seriously, or repeatedly" breaches Facebook's Terms of Service or Community Standards, (2) a user repeatedly infringes on others' intellectual property rights, (3) Facebook is required to do so for legal

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<sup>11</sup> *E.g.*, Sezer Kisa & Adnan Kisa, *JMIR: A Comprehensive Analysis of COVID-19 Disinformation, Public Health Impact, and Communication Strategies: Major Review*, ROMANIAN TRIBUNE (English Translation) (Sep. 5, 2024), <http://bit.ly/4joeber>.

<sup>12</sup> *E.g.*, *SATIRE | Djokovic declared official champion after all other players died of heart attacks*, ROMANIAN TRIBUNE (English Translation) (Feb. 3, 2023), <https://bit.ly/43M9qqC>.

<sup>13</sup> See Mairead Elordi, *EXCLUSIVE: Pro-Life Accounts Demand Meta Lift Suspensions After Free Speech Promises*, The Daily Wire (Jan. 9, 2025), <https://bit.ly/4lmZ4U9>.

<sup>14</sup> See *King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 788 (N.D. Cal. 2021) (plaintiff had "viable theory for breach of contract and/or the implied covenant based on Facebook's disabling of her account"); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 743 (9th Cir. 2024) (reversing dismissal of breach of contract claim based on Facebook's Terms of Service, finding §230 of Communications Decency Act did not bar claim).

reasons, (4) a user's account is not confirmed after registration, (5) a user's account is inactive, or (6) a user's account is hacked.<sup>15</sup>

Facebook suspended the Tribune's account for allegedly failing to comply with its Community Standards. But as explained above, the Tribune's posts don't even implicate these Standards, let alone "clearly, seriously, or repeatedly" violate them. And although Facebook has "discretion" to determine what content violates its Community Standards, "Facebook's discretion to disable an account is to be guided by the articulated factors and cannot be entirely arbitrary"—otherwise, Facebook's failure to abide by the articulated factors constitutes a breach of contract.<sup>16</sup> By suspending the Tribune's account when it has committed no real Community Standards violations, Facebook has breached its obligations under its own Terms.

Additionally, under the covenant of good faith and fair dealing implied in every contract, Facebook cannot employ its discretion arbitrarily or discriminatorily. Indeed, a party violates the covenant when it "has discretionary power in the performance or enforcement of the contract but abuses that discretion to deprive the other party of a contractual benefit the other reasonably expected."<sup>17</sup> Facebook has abused its discretion in two ways: first, by using an irrational interpretation of its Community Standards as a sword to suspend the Tribune's account, and second, by failing to notify the Tribune which articles violated which Community Standards, preventing the newspaper from knowing how to comply with Facebook's albeit unreasonable demands. These bad-faith practices violate the covenant of good faith and fair dealing, and they cannot be employed to punish the Tribune now.

As explained above, this breach has caused the Tribune substantial financial harm. The Tribune can no longer draw visitors to its website from Facebook, and as a result, traffic to the site has declined by about 80 percent. The Tribune may be unable to survive without the visitors it garnered through Facebook—a following it had built through 14 years of its substantial investment in, and regular and unproblematic activity on, the platform.

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<sup>15</sup> *Terms of Service*, Meta, <https://bit.ly/3ZFjMot> (last visited Dec. 18, 2024).

<sup>16</sup> *King*, 572 F. Supp. 3d at 789.

<sup>17</sup> *Schertzer v. Bank of Am., NA*, 109 F.4th 1200, 1213 (9th Cir. 2024).

***Facebook induces users to engage on its platform while acknowledging that it cannot uphold its end of the bargain.***

To use its platform, Facebook requires every user to agree to its Terms of Service. As explained above, Facebook’s Terms limit its ability to disable accounts to six enumerated situations, and users like the Romanian Tribune rely on this provision when deciding to use the platform. Indeed, large news providers would never invest the resources to garner massive followings if they believed Facebook could permanently disable their accounts for an arbitrary or discriminatory purpose.

But while Facebook induces potential users to invest in its platform by asserting that it follows articulated standards for account suspensions, it does so knowing that it commonly fails to abide by those standards.<sup>18</sup> Making a promise to induce a transaction with the knowledge that the promise cannot be fulfilled is unlawful. As one court has explained, “[a] promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud.”<sup>19</sup> By promising to suspend accounts under articulated standards, knowing that it will deviate from them, Facebook is acting unlawfully.

The Romanian Tribune reasonably expected that its account would be safe from suspension so long as it abided by Facebook’s Terms of Service and Community Standards. But unknown to it, Facebook’s promise was unreliable, and it has suffered financially as a result.

### **Conclusion**

Facebook has recently promised to change its ways and protect free speech on its platforms. This situation provides a litmus test for whether Facebook will live up to its public announcement or continue to censor and restrict the marketplace of ideas. Because Facebook violated its free-speech standards, breached its Terms of

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<sup>18</sup> See Clegg, *supra* note 8 (“Too often harmless content gets taken down or restricted and too many people get penalized unfairly.”); House Judiciary GOP, *supra* note 7 (Mr. Zuckerberg admitting that “I also think we made some choices that, with the benefit of hindsight and new information, we wouldn’t make today.”); Meta, *supra* note 4 (Mr. Zuckerberg admitting that “I’m committed to the values we’re discussing today, but we won’t always get it right.”).

<sup>19</sup> *Lazar v. Superior Ct.*, 12 Cal. 4th 631, 638 (1996).

Service, and failed to uphold its promises, the Romanian Tribune requests that Facebook promptly remedy the situation by reinstating its Facebook account.

We appreciate your careful attention to this matter. We ask that you respond to this request by no later than April 20, 2025, the date on which Facebook has threatened to permanently disable the Tribune's account.

Respectfully submitted,

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