

May 15, 2025

Attorney General Rob Bonta  
Office of the Attorney General  
California Department of Justice  
Attn: Public Inquiry Unit  
P.O. Box 944255  
Sacramento, CA 94244-2550

**RESPONSE TO PETITION FOR ATTORNEY GENERAL ACTION TO  
PROTECT THE CHARITABLE NATURE OF OPENAI'S ASSETS**

Dear Attorney General Bonta:

We write in response to the April 9, 2025 petition (the “Petition” or “Pet.”) submitted by a group of nonprofits, labor leaders, and foundations concerning OpenAI’s charitable mission and its planned structure changes and recapitalization. While we value the voice and critical work of civic leaders and organizations, the Petition advances serious misconceptions about OpenAI’s charitable focus, the organization’s ongoing commitment to its founding principles, and the legal framework in which it operates. We write to ensure an accurate record at this pivotal moment for OpenAI’s future and our shared future with artificial intelligence (“AI”).

As set forth in OpenAI’s May 5 blog post, which we provided to your office:

- OpenAI was founded as a nonprofit, and is today overseen and controlled by that nonprofit. Going forward, it will continue to be overseen and controlled by that nonprofit.
- Its for-profit LLC, which has been under the nonprofit since 2019, will transition to a Public Benefit Corporation (“PBC”)—a purpose-driven company structure—and will operate subject to the same mission as the nonprofit.
- The nonprofit will control and also be a large shareholder of the PBC, giving the nonprofit expanded resources to support many benefits.

These planned changes come after nearly a decade of OpenAI’s continuous evolution in furtherance of its mission. OpenAI was founded in 2015 on the recognition that artificial general intelligence (“AGI”)<sup>1</sup> has the potential to bring tremendous benefits, along with risks that must be quickly realized and safely addressed. Recognizing those stakes, OpenAI’s founders adopted the mission of ensuring that AGI benefits all of humanity. Believing that a public charity would be the most effective vehicle to further that mission, the founders structured the enterprise as a 501(c)(3) nonprofit, OpenAI, Inc. (the “Nonprofit”).

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<sup>1</sup> OpenAI defines AGI to mean “highly autonomous systems that outperform humans at most economically valuable work.” *Charter*, OpenAI, <https://openai.com/charter/>.

OpenAI's charitable mission has remained its North Star. To ensure that AI's technological breakthroughs benefit the most people possible, OpenAI has evolved its structure to pursue that mission in the face of intense competition from for-profit companies who are focused on private gain. As OpenAI has grown, it has continued to deliver on its mission through freely available intelligence ensuring broad distribution of AI's benefits. More than 500 million people around the world are already using ChatGPT to ideate, discover, and break through beyond what they are currently capable of doing on their own. Younger generations who recognize the importance of AI for their futures are driving its growth; most of OpenAI's users are under the age of 35.

Despite (and likely because) of OpenAI's achievements, its most powerful detractors—many of whom, including Elon Musk, stand to massively profit if OpenAI falters—have sponsored a false narrative about OpenAI to advance their own commercial interests. Musk in particular has leveraged his uniquely powerful megaphone, X, in a campaign of harassment and misinformation for more than a year. To further its mission more broadly, especially in the face of such detractors, OpenAI has recently increased its direct engagement with nonprofit organizations and created a commission of respected leaders to advise its leadership and learn from civic leaders who share its vision for AI that benefits all of humanity, not just a few.

In keeping with this vision, and after serious deliberation, consultation with civic leaders, and engagement with your office and that of the Attorney General of Delaware, the Nonprofit's Board of Directors decided this month that as part of the planned structure change it announced in December of last year, the Nonprofit will remain in control of the OpenAI enterprise. The existing for-profit subsidiary will be converted into a newly formed PBC. The Nonprofit will control the PBC and will become a significant shareholder in the PBC, giving the Nonprofit both technological and financial resources to support programs that scale the benefits of AI across many different communities, consistent with the Nonprofit's mission.

The goal is to enable the Nonprofit to become one of the best-resourced and effective nonprofits in history. The entire OpenAI enterprise will remain committed to its mission of developing safe AGI for the benefit of humanity so that OpenAI can continue its important work of ensuring all share in AI's promise. Keeping the PBC under the direction of the Nonprofit ensures that funding for charitable activities will be prioritized, sustained, and commensurate with the PBC's revenues and profits. This model will also enable the Nonprofit to safely and effectively deploy OpenAI's cutting-edge research to help confront structural inequities, scale solutions, and ensure the technology benefits everyone.

As we've discussed in detail with your office, we are confident that a full and accurate understanding of the facts demonstrates that OpenAI is and will remain fully compliant with its legal obligations. Because many of the legal arguments the Petition presses—some of which are being actively litigated in pending proceedings brought by Musk—collapse under a fair account of the facts, we do not address all of them in detail here.<sup>2</sup> We do, however, identify in

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<sup>2</sup> Others—including arguments concerning the scope of your office's authority, the purported inapplicability of the internal affairs doctrine, and the choice of law between California and Delaware, *see, e.g.*, Pet. 13-14—are not

Section C of the Discussion below the core legal infirmities of three positions the Petition advances: that OpenAI breached a purported charitable trust; that the Nonprofit is in violation of its federal tax-exempt status; and that sweeping relief is appropriate to remedy any supposed violations. As explained below, these positions—which echo those of OpenAI’s competitors who stand to gain from its downfall—lack both factual and legal grounding.

We hope that this submission is helpful as your office continues its review of OpenAI. We look forward to continuing to engage with you, and with the civic and nonprofit leaders who filed this Petition, as OpenAI continues its work of ensuring that AGI benefits everyone.

### **Background**

OpenAI’s history reflects a deep commitment to its social mission, and its plan for the future advances the organization’s core principles.

#### **A. OpenAI’s founding**

OpenAI grew out of a conversation around a kitchen table about how to develop AGI in the interests of humanity as a whole—not private profit. At the time, OpenAI’s founders landed on a 501(c)(3) nonprofit structure to marshal private resources bound by strong commitments to the public good. OpenAI’s mission, as stated in the Nonprofit’s Charter, has been to “ensure that artificial general intelligence . . . benefits all of humanity.”<sup>3</sup> The Charter further recognizes that “to be effective at addressing AGI’s impact on society, OpenAI must be on the cutting edge of AI capabilities.”<sup>4</sup> OpenAI was, and has remained, committed to its mission.

#### **B. The 2019 transaction**

When OpenAI launched in 2015, its founders understood that developing safe and beneficial AGI would require significant funding, which they then thought could be raised through donations. Early research advances by OpenAI and others, however, soon revealed that OpenAI would need much more funding than could ever be raised through charitable contributions alone. Trial and error had identified computing power—“compute”—as the key factor enabling progress toward AGI. OpenAI’s compute demands increased exponentially in the years after its founding, and the cost of acquiring that compute rose in lockstep. By way of illustration, OpenAI’s GPT-3 technology, released in 2020, required over *17,000 times* the computing power required to develop GPT-1, released two years prior. The costs of developing GPT-3 likewise dwarfed those of GPT-1, running into the billions of dollars.

By 2018, OpenAI’s Board recognized that the dramatically increasing cost of compute needed to develop advanced AI threatened the organization’s ability to pursue its mission

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profitably addressed in the current posture of productive cooperation with both your office and the office of the Delaware Attorney General.

<sup>3</sup> *Charter*, OpenAI, <https://openai.com/charter/>.

<sup>4</sup> *Id.*

to build AGI that benefits all of humanity, especially as for-profit companies without any charitable mission poured billions into AGI research and development. To survive and fulfill its mission, OpenAI needed the ability to competitively compensate world-class engineers and other personnel. Without more capital for compute and talent, the organization would be overtaken by far better funded for-profit enterprises with no commitment to developing safe and socially beneficial AI.

Accordingly, in 2019, the Board created a “capped” for-profit entity, OpenAI, L.P. (together with its successors and affiliates, the “Capped-Profit Enterprise”). The Capped-Profit Enterprise embraced important safeguards to uphold OpenAI’s charitable focus, including by adopting the Nonprofit’s mission as its own and remaining controlled by the Nonprofit’s Board. As a group of former OpenAI employees noted in a recent court filing supporting Musk’s pending litigation against OpenAI, the corporate structure that resulted from the 2019 transaction—“a 501(c)(3) public charity” that “controls several for-profit subsidiaries”—was “a crucial part” of OpenAI’s “overall strategy,” “critical to OpenAI’s ability to attract and retain talent,” and a “fundamental safeguard ensuring OpenAI would never stray” from its charitable mission.<sup>5</sup> This structure change—which was announced publicly and reported to your office<sup>6</sup>—enabled OpenAI to attract investment necessary to purchase compute and to attract and retain leading engineering talent. Investors’ and employees’ returns were capped, with any residual profits accruing to the Nonprofit.<sup>7</sup>

Consistent with the Nonprofit’s charitable mission, investors in the Capped-Profit Enterprise were clearly notified that OpenAI’s “duty to [the] mission . . . take[s] precedence over any obligation to generate a profit” and that OpenAI is “under no obligation” to generate a profit, may never do so, and could choose to “re-invest any or all of [OpenAI’s] cash flow into research and development activities and/or related expenses” without any obligation to investors.<sup>8</sup> The Nonprofit transferred certain assets to the Capped-Profit Enterprise in 2019, but did so in exchange for a capped equity stake in the Capped-Profit Enterprise (on top of the Nonprofit’s residual stake) representing fair market value of the assets, based on an independent valuation solicited by the Nonprofit Board. The Nonprofit’s charitable assets—principally, its capped and residual equity stakes in the Capped-Profit Enterprise—have always been dedicated to charitable purposes.

The Capped-Profit Enterprise remains in place today, under the control of the Nonprofit’s Board. This structure—and the funding and access to crucial inputs it facilitated—has permitted dramatic advancements to date toward the development of safe and beneficial AGI, all under the control of the Nonprofit’s Board, and all in service of the Nonprofit’s mission of ensuring that AGI benefits all of humanity. For example, OpenAI has made ChatGPT available for free to users across the world, including students, researchers, and nonprofits, dramatically increasing access to advanced AI and democratizing its use. OpenAI has also forged mission-driven partnerships in health and education such as its partnership with Khan Academy (a nonprofit) to

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<sup>5</sup> See Proposed Amicus Brief, *Musk v. Altman*, No. 4:24-cv-04722-YGR (N.D. Cal.), Dkt. 154-1 at 1, 2, 5, 11.

<sup>6</sup> See OpenAI, Annual Registration Renewal Fee Report to Attorney General of California (Nov. 30, 2020).

<sup>7</sup> See *OpenAI LP*, OpenAI (Mar. 11, 2019), <https://openai.com/index/openai-lp/>.

<sup>8</sup> *Id.*; *Our structure*, OpenAI, <https://openai.com/our-structure/>.

power an AI tutor for personalized education, and its support for the startup Be My Eyes in integrating GPT-4's vision capabilities to assist blind and low-vision individuals—a breakthrough in AI-enabled accessibility. These partnerships are early examples of how aligned AI can expand opportunity and support human potential at scale, and the PBC will continue that tradition.

### **C. OpenAI's partnership with Microsoft**

In service of its charitable mission, OpenAI has also sought strategic partnerships to enable it to remain in the vanguard of AI capabilities. One such partnership is with Microsoft. That partnership—through which Microsoft has provided highly customized supercomputers to train OpenAI's models, and has injected billions in funding—has contributed to the significant strides OpenAI has made toward attaining safe and beneficial AGI.

Important as this strategic partnership has been, Microsoft has never “control[led]” OpenAI—either as a matter of corporate governance or as a matter of antitrust law. *See* Pet. at 11-12. OpenAI is controlled by its majority independent Nonprofit Board, and will continue to be so after the planned recapitalization. Microsoft holds no seats on the Nonprofit Board,<sup>9</sup> nor has it funded the Nonprofit directly. Rather, all arrangements with Microsoft have been negotiated at arm's length, and Microsoft, like other investors, has invested in the Capped-Profit Enterprise, subject to the Nonprofit's control—with profit always subordinated to the social mission.

### **D. Expanding and strengthening the Board**

In recent years, OpenAI has also strengthened its governance in furtherance of its mission. In November 2023, the existing Board of the Nonprofit removed Sam Altman as a director and CEO of OpenAI and removed Greg Brockman as a director. Altman was reinstated as CEO and a director and Brockman was appointed President following a wave of support, including from virtually all of OpenAI's employees.<sup>10</sup>

The Nonprofit emerged stronger than ever from the events of November 2023 by expanding its Board and improving its governance. In the months immediately following these events, OpenAI added five new independent directors to its Board (and has continued to expand the Board since then) and adopted important governance enhancements, including new corporate

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<sup>9</sup> Microsoft held a nonvoting observer seat on the Board for less than a year and relinquished that position in July 2024. The nonvoting Microsoft Board observer did not participate in any portions of meetings that could create a conflict.

<sup>10</sup> Petitioners denigrate the outpouring of support for Altman from OpenAI's hundreds of dedicated and mission-driven employees as a cash grab motivated solely by the employees' “financial stakes in maximizing [OpenAI's] profits.” Pet. at 17-18. There is zero support for that outrageous claim, and no reason to question the integrity or genuineness of these employees' support for Altman and Brockman, who had dedicated themselves for years to advancing OpenAI's mission.

governance guidelines, a strengthened conflict of interest policy, a whistleblower hotline, and a new Mission & Strategy Committee.<sup>11</sup>

### **E. The planned recapitalization**

The challenges that led to the creation of the Capped-Profit Enterprise in 2019 have only intensified, as for-profit AI companies with no charitable commitment to developing AGI that benefits all of humanity continue to grow. Musk, for example, has raised more than \$12 billion for his competing AI venture, xAI, a Nevada-incorporated PBC headquartered in Texas that does not have a charitable mission<sup>12</sup> and that is reportedly attracting new investment at a \$120 billion valuation.<sup>13</sup> Meta plans to spend as much as \$65 billion this year on capital to power its AI model,<sup>14</sup> and Google is committed to spend \$75 billion developing its AI technology.<sup>15</sup> As these AI ventures have proliferated, competition for talent has likewise increased—these firms have dangled lucrative packages to attract the world’s best computer scientists and researchers—as has the cost of accessing the still-increasing amounts of compute and data needed to develop AGI.

These threats to OpenAI’s mission are not theoretical. They raise the serious, practical risk that AGI will be consolidated in the hands of a few powerful individuals and entities that are not expressly focused on the broader public interest, and run through and for the benefit of for-profit companies that lack a charitable mission. OpenAI’s recent attempts at securing funding have demonstrated the challenges posed by the organization’s existing structure, which does not offer employees or investors traditional and easy-to-understand equity interests in the enterprise. Many potential investors in OpenAI’s recent funding rounds declined to invest as a result, and the investments that OpenAI was able to secure are conditioned on near-term structure changes. As in 2019, if OpenAI cannot find a way to compete with far better funded conventional for-profit businesses, its ability to ensure beneficial AGI will be compromised.

It is against this backdrop that the Nonprofit Board has, for the past year, been considering whether and how to reorganize the company to best advance OpenAI’s charitable mission.

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<sup>11</sup> See *Sam Altman returns as CEO, OpenAI has a new initial board*, OpenAI (Nov. 29, 2023), <https://openai.com/index/sam-altman-returns-as-ceo-openai-has-a-new-initial-board/>; *Review completed & Altman, Brockman to continue to lead OpenAI*, OpenAI (Mar. 8, 2024), <https://openai.com/index/review-completed-altman-brockman-to-continue-to-lead-openai/>.

<sup>12</sup> *xAI Company Profile*, Tracxn (Apr. 25, 2025), [https://tracxn.com/d/companies/xai/\\_saKrxbHN3TRWW-I4IYH6zKx6N5P\\_kMTqILcKTzWs2ug#about-the-company](https://tracxn.com/d/companies/xai/_saKrxbHN3TRWW-I4IYH6zKx6N5P_kMTqILcKTzWs2ug#about-the-company).

<sup>13</sup> Cade Metz, *New Funding Talks Could Value Elon Musk’s xAI at \$120 Billion*, The New York Times (May 8, 2025), <https://www.nytimes.com/2025/05/08/technology/xai-elon-musk-funding-value.html>.

<sup>14</sup> Jaspreet Singh, *Meta to spend up to \$65 billion this year to power AI goals, Zuckerberg says*, Reuters (Jan. 24, 2025).

<sup>15</sup> Katherine Li & Rosalie Chan, *Google remains committed to investing \$75 billion in AI despite macroeconomic uncertainties*, Business Insider (Apr. 24, 2025), <https://www.businessinsider.com/google-remains-committed-investing-75-billion-ai-uncertainties-tariffs-2025-4>.

### **Discussion**

#### **A. The Nonprofit will retain control over a newly formed public benefit corporation.**

While details remain to be determined, the Board has settled on several fundamental aspects of the structure change. Most notably, the planned recapitalization is inherently a mission-oriented endeavor. As Altman stated in his letter to employees accompanying the May 5, 2025 announcement that the Nonprofit will retain control in the planned recapitalization:

OpenAI was founded as a nonprofit, is today a nonprofit that oversees and controls the for-profit, and going forward will remain a nonprofit that oversees and controls the for-profit. That will not change. The for-profit LLC under the nonprofit will transition to a Public Benefit Corporation (PBC) with the same mission.<sup>16</sup>

To be crystal clear: *The Nonprofit will retain control over the PBC*, with sole power to appoint PBC directors, the power to remove PBC directors at any time, for any reason, and consent rights over significant PBC decisions, including changes to the mission and any sale or other change-of-control transactions.

The PBC, meanwhile, will focus on developing safe and beneficial AGI technology, consistent with the Nonprofit's mission and subject to the Nonprofit's control, just as the Capped-Profit Enterprise does today. Under Delaware law, the PBC directors must balance three interests: (a) public benefit (in this case, OpenAI's mission), (b) best interests of those materially affected by the PBC's conduct, and (c) shareholders' interests. 8 Del. C. § 362(a). Accordingly, this structure will provide accountability to investors and other stakeholders and a recognizable capital structure, while ensuring fidelity to OpenAI's mission, all under the controlling eye of the Nonprofit Board. The mission of both the Nonprofit and the newly formed PBC will remain the same as it is today—to develop AGI that benefits all of humanity.

This plan for the future is the product of careful consideration by the Board of the Nonprofit. The Board's independent directors have an extraordinary breadth of experience and perspectives on matters fundamental to the Nonprofit's charitable mission:

- Adam D'Angelo: CEO and co-founder of Quora and former Chief Technology Officer of Facebook;
- Larry Summers: former U.S. Treasury Secretary, director of the National Economic Council, and President of Harvard;
- Bret Taylor: former co-CEO of Salesforce, chairman of Twitter's board, and Chief Technology Officer of Facebook;

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<sup>16</sup> *Evolving OpenAI's structure*, OpenAI (May 5, 2025), <https://openai.com/index/evolving-our-structure/> (emphasis omitted).

- Nicole Seligman: former Executive Vice President and Global General Counsel of Sony and President of Sony Entertainment;
- Sue Desmond-Hellman: former CEO of the Bill and Melinda Gates Foundation and former Chancellor of the University of California, San Francisco;
- Retired U.S. Army General Paul Nakasone: former leader of the National Security Agency with expertise in cybersecurity, technology advancement, and global cyber defense;
- Zico Kolter: Director of the Machine Learning Department at Carnegie Mellon University, whose research focuses on AI safety and alignment; and
- Adebayo Ogunles: Founding Partner, Chairman, and CEO of Global Infrastructure Partners and Senior Managing Director at BlackRock.<sup>17</sup>

**B. The recapitalization will advance the Nonprofit's charitable mission.**

OpenAI's plan, as announced on May 5, 2025, will advance the organization's mission by permitting OpenAI's for-profit enterprise, under the control of the Nonprofit, to more effectively attract the resources and talent necessary to advance the mission of developing AGI for the benefit of all humanity. OpenAI will continue to train models that empower all of humankind to deploy AI's capabilities—solving serious healthcare challenges, making scientific breakthroughs, and leveraging technology for broad societal benefit. OpenAI will also continue to mitigate the potential negative effects of AI by developing and operating its models in accordance with human values and with humans in control, with safety as a top priority, providing transparency into how OpenAI's models behave.

Key to that work will be the Nonprofit's continued commitment to ensuring that OpenAI leads the industry in AI safety. Since its founding, OpenAI has led the design and implementation of cutting-edge safety practices, integrated at every stage in the development and deployment of OpenAI models. OpenAI's robust safety track record has been developed through substantial alignment research, red-teaming exercises, and transparency into model behavior. As AI accelerates, OpenAI's commitment to safety grows stronger.

The recapitalization will also advance the mission by providing the Nonprofit with more immediate access to capital and other resources for deployment in service of the mission. The Nonprofit will exchange its current economic interests in the Capped-Profit Enterprise for a substantial equity stake in the new PBC and will enjoy access to the PBC's intellectual property and technology, personnel, and liquidity, making it potentially the best-resourced charitable organization in history.

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<sup>17</sup> Fidji Simo also served on the Board from March 8, 2024 until stepping down to take a new role as OpenAI's CEO of Applications. See *OpenAI Expands Leadership with Fidji Simo*, OpenAI (May 7, 2024), <https://openai.com/index/leadership-expansion-with-fidji-simo/>.



Those resources will help OpenAI expand its nonprofit work in California and elsewhere to support a future of democratized AI with real impact in areas like health, education, public services, and scientific discovery. OpenAI has already launched initiatives with U.S. laboratories across the country—including Berkeley and Livermore—to bring together over 1,000 scientists to use AI to accelerate scientific discovery.<sup>18</sup> And in a first-of-its-kind consortium with 15 leading research institutions, including Caltech and the California State University system, OpenAI has committed \$50 million in research grants, compute funding, and API access to support students, educators, and researchers to accelerate research breakthroughs and transform education.<sup>19</sup> OpenAI has also partnered with leading innovative California nonprofits, with national and global reach, to focus on the mission of making AGI available to all, including through its work with the Hidden Genius Project (to empower young people of color through technology, leadership, and entrepreneurship training); the California Journalism Project (to create new AI tools to help journalists access and analyze public information); Mobile Pathways (leveraging AI to empower immigration advocates with real-time updates and streamlined access to legal and employment details for asylum seekers); and Common Sense Media (to develop a free online AI literacy course and provide expertise on ensuring the safest technology for children). The recapitalization will enable efforts like these in California and elsewhere to grow and multiply.

To help ensure that OpenAI becomes a force multiplier for communities and mission-driven organizations tackling urgent global challenges—from health and education to public service and scientific discovery—OpenAI recently created a nonprofit commission led by individuals with decades of experience developing and leading charitable initiatives in California and throughout the country to guide the Nonprofit’s charitable activities.<sup>20</sup> The members of the commission include:

- Dolores Huerta: co-founder of the United Farm Workers union with Cesar Chavez and founder of the Dolores Huerta Foundation, which trains community organizers and supports civic engagement in underrepresented communities across California;
- Monica Lozano: former CEO of ImpreMedia and editor of *La Opinión*, the largest Spanish-language newspaper in the United States; President of College Futures Foundation, which champions equitable access to college education for California’s low-income students and students of color; and former chair of the California State Board of Education, the Board of Regents of the University of California, and the Weingart Foundation, and current service on the board of a Fortune 50 technology company;

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<sup>18</sup> *Strengthening America’s AI leadership with the U.S. National Laboratories*, OpenAI (Jan. 30, 2025), <https://openai.com/index/strengthening-americas-ai-leadership-with-the-us-national-laboratories/>.

<sup>19</sup> *Introducing NextGenAI: A consortium to advance research and education with AI*, OpenAI (Mar. 4, 2025), <https://openai.com/index/introducing-nextgenai/>.

<sup>20</sup> *OpenAI announces nonprofit commission advisors*, OpenAI (Apr. 15, 2025), <https://openai.com/index/nonprofit-commission-advisors/>.

- Dr. Robert K. Ross: former CEO of The California Endowment, a statewide foundation working to expand access to health and wellness in underserved communities; and
- Jack Oliver: former Co-Chairman of Bono’s ONE Campaign, a Gates Foundation-supported global advocacy organization dedicated to combating poverty and disease.
- Daniel Zingale, former Senior Vice President of Healthy California at The California Endowment, who led California’s Department of Managed Health Care and served on the Agricultural Labor Relations Board, serves as the commission’s convener.<sup>21</sup>

The commission will advise OpenAI on ensuring the Nonprofit’s activities continue to deploy AI technology to broadly benefit the citizens of California and beyond. As one of its first steps, the commission issued a request for input to a broad list of mission-based organizations to share thoughts and feedback on how the Nonprofit can advance real impact in areas like health, education, public services, and scientific discovery. Each of the Petitioners was contacted as part of this outreach.

**C. The Petition proceeds from factual misconceptions and misunderstands guiding legal principles.**

We hope that the foregoing sets the record straight on some of the key misconceptions reflected in the Petition. Most fundamentally, it is just not true that the Nonprofit is contemplating a “conversion” to a for-profit entity (Pet. at 26); that “OpenAI proposes to eliminate any and all control by [the Nonprofit] over OpenAI’s core work” (*id.* at 4); or that “[e]very OpenAI decision that matters . . . would all be made by a corporate board of directors with no accountability for the public interest” (*id.*). As discussed, OpenAI plans, in dialogue with your office and that of the Delaware Attorney General, to reorganize its existing Capped-Profit Enterprise into a PBC—not to convert to a for-profit entity.<sup>22</sup> The Nonprofit will retain control

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<sup>21</sup> *Id.*

<sup>22</sup> Because no “conversion” of the Nonprofit is being contemplated, Petitioners’ analogy to actions against “nonprofit health providers . . . [that] converted to for-profit companies” in the 1990s misses the mark. Pet. at 1. Moreover, the cited actions relied on affirmative statutory provisions that are inapplicable here. *See* Cal. Corp. Code § 5914 (governing the “[s]ale of transfer of assets” of “[a]ny nonprofit corporation that . . . operates or controls a health facility”).

over the newly formed PBC. The recapitalization is not a sale or a conversion, or anything of the kind, but rather a continuation and evolution of a mission-driven, socially responsible nonprofit.<sup>23</sup>

Resting as they do on factual misconceptions, many of the legal arguments Petitioner presents fail for that reason alone. Others are not profitably addressed here, as they concern questions of regulatory authority and choice of law not squarely presented in the current posture, where OpenAI is engaged in cooperative dialogue with both your office and the office of the Delaware Attorney General. There are, however, three key points that warrant attention, as they reveal the core infirmities of the positions advanced in the Petition and elsewhere:

*First*, OpenAI has not “failed to protect” any of its “nonprofit assets for a charitable purpose.” Pet. at 3. Even accepting as true the blanket premise for this assertion—that “all of OpenAI, Inc.’s assets were impressed with a charitable trust,” Pet. at 15<sup>24</sup>—OpenAI’s “charitable assets” consist principally of its equity interests in the Capped-Profit Enterprise. Petitioners do not (and could not) contend that those interests have been diverted to private or non-charitable purposes. And, because those assets, and the predecessor assets that the Nonprofit conveyed to the Capped-Profit Enterprise in 2019 for fair value, have never been “diverted,” there has been no “fail[ure] to protect nonprofit assets for a charitable purpose.” Pet. at 3.<sup>25</sup> Nor, relatedly, have OpenAI’s charitable assets been diverted for the private benefit of OpenAI’s employees. Pet. at 14-15. OpenAI employees have received financial interests in the Capped-Profit Enterprise, all in furtherance of OpenAI’s mission: Providing employees the opportunity to share in OpenAI’s success is necessary to attract and retain the top talent required to develop safe and beneficial AGI.

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<sup>23</sup> Because the recapitalization involves no change in control, Musk’s “bid” to purchase the Nonprofit for \$97.4 billion in February 2025 (*see* Pet. 27) would have no relevance even had that bid been genuine—instead of just a pretextual “gambit” to interfere with OpenAI’s business; a “spoiler” aimed at disrupting OpenAI’s fundraising and recapitalization efforts; and a “wrecking ball against an opponent” and rival. Scott Rosenberg, *Musk lawyers say he’ll drop bid for OpenAI if it gives up for-profit plan*, Axios (Feb. 13, 2025), <https://www.axios.com/2025/02/13/musk-altman-openai-nonprofit-filing>; *Elon Musk’s \$97bn offer is a headache for Sam Altman’s OpenAI*, The Economist (Feb. 11, 2025), <https://www.economist.com/business/2025/02/11/elon-musks-97bn-offer-is-a-headache-for-sam-altmans-openai>; Chris Stokel-Walker, *Elon Musk owning OpenAI would be a terrible idea. That doesn’t mean it won’t happen*, The Guardian (Feb. 12, 2025), <https://www.theguardian.com/commentisfree/2025/feb/12/elon-musk-owning-openai-trump-ai-sam-altman>; *see also* OpenAI Defs.’ Counterclaims, Answer, and Defenses at 18, *Musk v. Altman*, No. 4:24-cv-04722-YGR (N.D. Cal. Apr. 9, 2025), Dkt. 147.

<sup>24</sup> Whether an enforceable “charitable trust” was created when Musk, an early OpenAI member, made indirect donations to the organization years ago is a subject of active ongoing litigation.

<sup>25</sup> Indeed, the cases cited in the Petition bear no resemblance to the circumstances here. For example, *People v. Orange County Charitable Services*, 73 Cal. App. 4th 1054 (1999), involved a network of telemarketing “boiler rooms” that solicited donations from California residents on behalf of charitable organizations under fraudulent pretenses. *Id.* at 1063. In *Lynch v. Spilman*, 67 Cal. 2d 251 (1967), a nonprofit corporation was alleged to have transferred assets held in charitable trust to its members for no consideration for the members’ benefit, rather than for charitable purposes. *Id.* at 255. In *re Los Angeles County Pioneer Society*, 40 Cal. 2d 852 (1953), likewise involved the alleged improper transfer of assets from a charitable corporation to its members upon the corporation’s dissolution. *Id.* at 860-61. These cases have no bearing on OpenAI’s creation of the Capped-Profit Enterprise or its contemplated recapitalization, each of which is consistent with OpenAI’s mission.

*Second*, there is no legal grounding for Petitioners’ conclusion that the Nonprofit is “in violation of its federal tax-exempt status.” Pet. at 4.<sup>26</sup> The Nonprofit has always been organized and operated exclusively for its charitable purpose of ensuring that AGI benefits humanity. That the work the Nonprofit supports and oversees creates private benefits for employees and investors does not mean there is “inurement to private benefit,” or that the Nonprofit’s assets are “impermissibly devoted to a private use.” Pet. at 24. There is nothing unusual or improper about nonprofit/for-profit collaboration of this type, which permits a nonprofit to advance its mission through for-profit activities, while retaining control over the charitable mission and the activities of any for-profit affiliates. For example, Mozilla—the developer of the internet browser Firefox—employs such a model. The nonprofit, Mozilla Foundation, serves its mission of championing an open and accessible internet in part through its control of the Mozilla Corporation—a for-profit subsidiary that generates revenue and that has partnered with various for-profit companies, such as Google and Yahoo.<sup>27</sup>

*Finally*, the relief requested by Petitioners is not applicable. Petitioners ask your office to enjoin a restructuring that is not being contemplated; to conduct a “proper[] valu[ation]” of the Nonprofit’s charitable assets premised on a change of control that will not occur (based on a sham bid by a financially motivated competitor); and to distribute the Nonprofit’s charitable assets “to new or existing charitable organizations that are fully independent of OpenAI.” Pet. at 26-27. Because the legal claims on which these sweeping remedies are premised are unfounded, the remedies are likewise unjustified.

\* \* \*

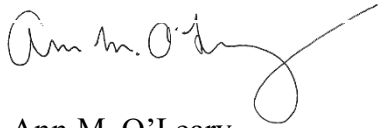
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<sup>26</sup> As your office recently confirmed in its denial of Musk’s application for relator status, these are matters to “be determined by the Internal Revenue Service.” See California Department of Justice Response to Request for Relator Status at 2, *Musk v. Altman*, No. 4:24-cv-04722-YGR (N.D. Cal. Apr. 15, 2025), Dkt. 157-1.

<sup>27</sup> *Mozilla Organizations*, Mozilla, <https://www.mozilla.org/en-US/about/governance/organizations/>; *Mozilla Foundation Reorganization*, Mozilla, <https://www-archive.mozilla.org/reorganization/>; *Mozilla strikes Firefox search deal with Yahoo, ending long partnership with Google*, ZDNet (Nov. 19, 2014), <https://www.zdnet.com/article/mozilla-strikes-firefox-search-deal-with-yahoo-ending-long-partnership-with-google/>.

We hope to continue working closely with your office, and we plan to stay closely engaged and in dialogue with the civic and nonprofit leaders who filed this petition, as the Board works toward implementing OpenAI's plans for the future. We are available to answer any questions your office may have about the Petition or this response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ann M. O'Leary", with a long, sweeping flourish extending to the right.

Ann M. O'Leary  
Jenner & Block

A handwritten signature in blue ink, appearing to read "William Savitt", with a short, horizontal flourish at the end.

William Savitt  
Wachtell, Lipton, Rosen & Katz