

January 29, 2024

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

Subject: Coalition Request for Attorney General Action to Protect the Charitable Nature of OpenAI's Charitable Assets

Dear Attorney General Bonta:

On behalf of a coalition of California-based foundations and nonprofit organizations, we write regarding OpenAI, Inc., a nonprofit corporation based and operating in California with a valuation estimated to be as much as \$157 billion.¹ OpenAI's recently announced plan to establish a new for-profit entity for its operations² will jeopardize the charitable nature of the organization's assets, which are subject to a charitable trust for the benefit of the public. Your office has a well-established legal authority and duty to safeguard the charitable nature of assets of nonprofit organizations operating in California such as OpenAI, and we appreciate your current investigation into this matter.

We write to express our deep concerns about OpenAI's current conversion plans and to urge your office to take prompt legal action to ensure that OpenAI's assets are not illegally diverted for private gain. Our coalition will soon be filing a formal administrative complaint with your office, requesting that you undertake a robust investigation and advance all available legal action to protect the public in this matter of critical public importance.

Our coalition is composed of philanthropic foundations and nonprofit advocacy and service organizations. We place tremendous value on respect for the laws governing our industry, the credibility of the nonprofit sector, and — most importantly — the public benefit for which charitable funds are reserved. In addition, the public is strongly interested in ensuring that technological innovations like artificial intelligence serve the well-being of California's communities, particularly those most vulnerable to systemic inequities.

¹ <https://www.nytimes.com/2024/10/02/technology/openai-valuation-150-billion.html>

² OpenAI's plans have been widely reported, and are also included in public statements from OpenAI itself. *See* OpenAI public statement, December 27, 2024 (<https://openai.com/index/why-our-structure-must-evolve-to-advance-our-mission/>); <https://www.nytimes.com/2024/12/27/technology/openai-public-benefit-corporation.html?searchResultPosition=20>; <https://www.nytimes.com/2024/12/17/technology/openai-nonprofit-control.html>

OpenAI's Past Disregard of Nonprofit Status

OpenAI was formed as a nonprofit corporation, with activities and assets limited to tax-exempt charitable purposes; it remains as such to this date.³ Federal and state law make clear that, for this type of corporation, “no part of the net earnings ... [may] inure to the benefit of any private shareholder or individual.”⁴

Detailed and widespread reporting on OpenAI's operations over the past few years calls into question whether OpenAI has been operating in compliance with this fundamental rule. In 2019, OpenAI established a for-profit subsidiary, nominally governed by the original nonprofit's board of directors.⁵ Private investors in this new for-profit entity may receive returns of up to 100 times an investment before the overarching nonprofit entity (and the public) sees any financial benefit. Billions of dollars of private funds have been invested in OpenAI through this suspect structure.⁶

In 2023, several board members who raised issues of public concern regarding artificial intelligence — including concerns about public safety — were pressured to resign in a “board restructuring.” As widely reported, the reconstituted board was deemed more friendly to controversial CEO Sam Altman (who had publicly questioned OpenAI's nonprofit structure) and more focused on protecting the interests of private investors. Microsoft Corporation, the leading private investor in OpenAI, pushed firmly for the board restructuring, offering to hire Mr. Altman and any OpenAI employees if the board didn't retain Mr. Altman and redirect its focus.⁷

The sheer scope of private investment into the 2019 for-profit vehicle and the friendly investment terms provided to investors make possible a substantial private benefit based on OpenAI's intellectual property and operations, which are legally restricted to charitable purposes. The 2023 board restructuring pushed corporate governance further towards a focus on the priorities of private investors. OpenAI's current plans include a more ambitious, profit-friendly corporate reorganization.

OpenAI's New Plan for Enhanced For-profit Control Runs Counter to California's Charitable Trust Laws

In a statement released on December 27, 2024, OpenAI indicated that it plans to consolidate operations into a new Delaware public benefit corporation:

³ OpenAI, Inc.'s current Certificate of Incorporation states: “This Corporation shall be a nonprofit corporation organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code...”

⁴ 26 U.S.C. 501(c)(3); *see also Holt v. College of Osteopathic Physicians & Surgeons* (CA Supreme Court 1964), 61 Cal. 2nd 750, 754 (“Although the public in general may benefit from any number of charitable purposes, charitable contributions must be used only for the purposes for which they were received in trust”).

⁵ *See* OpenAI public statement, March 11, 2019 (<https://openai.com/index/openai-lp/>)

⁶ <https://www.nytimes.com/2024/10/02/technology/openai-valuation-150-billion.html>

⁷ *See* <https://www.nytimes.com/2023/11/22/technology/openai-sam-altman-returns.html>

Our plan is to transform our existing for-profit into a Delaware public benefit corporation (PBC) with ordinary shares of stock and the OpenAI mission as its public benefit interest. The PBC is a structure used by many others that requires the company to balance shareholder interests, stakeholder interests, and a public benefit interest in its decision-making.

This plan is, on its face, a violation of California's charitable trust principles, under which *all assets and operations* of a nonprofit corporation must be aimed *solely* at advancing its charitable purposes.

OpenAI instead plans to maintain the nonprofit corporate structure as a charitable entity that is merely a shareholder in the PBC.⁸ The new corporation will have abandoned its restriction to charitable purposes. Under the new plan, the nonprofit board of directors would lose control over all of OpenAI operations and management, which would be allocated in its entirety to the new for-profit corporation: *"The PBC will run and control OpenAI's operations and business."*⁹ Crucial decisions regarding returns for private investors, compensation of management, and balancing public interest versus private benefit — all would be made by the management of the for-profit entity.

The rules governing public benefit corporations in Delaware clearly and directly conflict with the principles governing charitable trusts in California and tax-exempt organizations under federal law. Delaware law requires the management of a public benefit corporation to balance three different interests: shareholder interests, the interests of those affected by the corporation's conduct, and the public benefit mission of the corporation.¹⁰ This balancing requirement is difficult, bordering on impossible, to enforce.¹¹ Regardless, a for-profit structure under which OpenAI operations are to be managed with *equal consideration* of the public interest and shareholder value cannot be squared with the current status of OpenAI's assets and intellectual property as charitable assets for the benefit of the public.

Several other prominent organizations have raised this concern. Other technology companies have filed litigation challenging OpenAI's conversion to for-profit operations.

⁸ OpenAI public statement, December 27, 2024: "The non-profit's significant interest in the existing for-profit would take the form of shares in the PBC..."

⁹ OpenAI public statement, December 27, 2024.

¹⁰ Delaware General Corporation Law, Title 8, § 362, subdivision (a), provides: "A 'public benefit corporation' is a for-profit corporation organized under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation."

¹¹ It can in fact only be enforced by shareholder action – not even the Delaware Attorney General can challenge a public benefit corporation's management decisions based on failure to comply with the balancing requirement. CITE

They argue persuasively that allowing companies to benefit from tax-exempt status and donations in early years and then to switch to a for-profit model as profitable years are impending provides an illegal and unfair advantage — “gaming the system” in a way that severely disadvantages new for-profit companies that comply with the law.¹² The Federal Trade Commission has weighed in on this litigation to support an injunction against OpenAI’s proposed restructuring.¹³ This case sets a dangerous precedent that could undermine the long-term credibility and sustainability of nonprofits and the fundamental principles governing charitable assets and activities in California. National nonprofit Public Citizen has released extensive information on the legal concerns and public policy implications of allowing OpenAI to convert to for-profit status without the proper charitable safeguards.¹⁴

California Attorney General's Role

In California, state law establishes the Attorney General’s oversight role as follows:

The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities.¹⁵

This authority governs actions of corporations that are incorporated in other states but do business in California, such as OpenAI.¹⁶ The Attorney General has broad

¹² See *Musk et al. v. Altman et al.*, Case No. 4:24-cv-04722-YGR (U.S.D.C No. Cal.)

(https://storage.courtlistener.com/recap/gov.uscourts.cand.433688/gov.uscourts.cand.433688.32.0_1.pdf)

¹³ See <https://www.bizjournals.com/sanfrancisco/news/2025/01/10/openai-musk-lawsuit-ftc-doj-injunction.html>.

¹⁴ See Public Citizen letter to California Attorney General (<https://www.citizen.org/article/fourth-letter-to-california-attorney-general-rob-bonta-openai-is-no-longer-operating-as-a-nonprofit/>) and related materials.

¹⁵ See California Supervision of Trustees and Fundraisers for Charitable Purposes

Act, Cal. Gov. Code §§12580 *et seq.*, 12598(a). In general, state attorneys general have authority to protect charitable assets within the jurisdiction of the state, and to seek judicial relief to protect the public’s interest in those assets. (*Restatement of the Law, Charitable Nonprofit Organizations* §5.01 (2021); *Restatement (Second) of Trusts*, §391 (1959 and October 2024 Update); *Restatement (Third) of Trusts*, §94 (2012)). California courts have recognized this common law authority of the California Attorney General, stating that “the Attorney General has primary responsibility for the enforcement of charitable trusts...” and “the Attorney General has been empowered to oversee charities as the representative of the public...” (See *Holt v. College of Osteopathic Physicians & Surgeons*, 61 Cal. 2d 750 (1964), 754-5.)

¹⁶ See Gov. Code §12582.1. OpenAI Inc. registered to do business in California on January 7, 2016, according to records of the California Secretary of State. Statements of Information filed with the California Secretary of State list its principal address as in California, and its Form 990 tax returns filed with the IRS list its address in California. Press reports also confirm that the organization has its headquarters in California.

investigative authority regarding the management and operations of such corporations to protect the public's interest in charitable assets.¹⁷

Over the decades, the California Attorney General has repeatedly needed to step in to protect the public interest regarding a corporate attempt to convert a valuable nonprofit into a for-profit entity. In the 1980s and 1990s, nonprofit health care and health insurance providers converted to for-profit entities. With proactive oversight and enforcement efforts from the California Attorney General and other states, these companies were required to establish and fund large new philanthropic entities to capture the value of charitable assets prior to conversions moving forward. More than 60 new charitable foundations were established, with initial asset funding of approximately \$10 billion.¹⁸

The public is still benefiting from strong action taken by the state of California during this period. In January 1993, Blue Cross of California transferred most of its managed care business to its for-profit subsidiary, WellPoint. Under pressure from your office and the Department of Corporations (the regulatory agency overseeing the HMOs), Blue Cross agreed to fund two new independent foundations — The California Endowment and The California Healthcare Foundation — with stock and cash valued at over \$3 billion. Similarly, when Health Net, one of California's largest health care and insurance providers, converted from nonprofit to for-profit status, it was forced to establish the California Wellness Foundation with cash and significant stock to ensure continued public benefit based on its charitable assets. The California legislature recognized nonprofit conversions in the healthcare sector as a matter of ongoing public concern and saw fit to adopt a new law requiring public input, independent assessment of the fair market value of nonprofit assets, and written consent of the Attorney General before a conversion can proceed.¹⁹

These precedents highlight the importance of regulatory oversight in ensuring that assets initially held in trust for public benefit remain dedicated to serving the public, even as organizational structures change. Leadership from the California Attorney General and other regulatory agencies, as well as that of the philanthropic and advocacy communities, was essential in establishing these foundations that have served the public over subsequent decades.

Request for Action

¹⁷ California Government Code Section 12588, which provides: “The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. The Attorney General may require any [corporate representative] to appear ... to give information under oath...”

¹⁸ Adjusted for inflation; estimate as of 1997. See *Some Guidelines for Managing Charitable Assets from Conversions*, Nancy M. Kane, Health Affairs, Vol. 16, No. 2 (1997).

¹⁹ AB 3101 (1996), Corp. Code, §§ 5913 *et seq.*

In light of the pressing public concerns presented by OpenAI's conversion plans, our coalition is filing a formal administrative complaint with your office, requesting legal action to protect the public's interest in the charitable trust applicable to OpenAI's assets.²⁰ Through that administrative complaint and this letter:

- We urge your office to **promptly initiate an immediate and robust investigation** of OpenAI's compliance with laws governing nonprofit assets regarding both OpenAI's past operations and planned corporate restructuring; and
- We urge your office to **initiate legal action to enjoin OpenAI from its planned corporate restructuring**; the restructuring should be permitted to move forward only if and when charitable assets can be protected, with appropriate independent valuation and governance independent from profit-seeking imperatives or incentives.

We are confident that, with appropriate oversight action from the Office of the Attorney General, these issues can be resolved to protect the public's interest, ensure compliance with all applicable laws, and ensure the long-term protection of the charitable assets currently held by OpenAI. We are equally confident that *only* the Office of the Attorney General has the power and authority to achieve these outcomes.

Your engagement and initiative on this matter is therefore essential. Our coalition requests a meeting with you to discuss the crucial concerns raised in this letter and our forthcoming administrative complaint. We are prepared to provide additional insights and collaborate to safeguard the interests of California's residents.

We appreciate your leadership in upholding the public trust and ensuring California's charitable organizations remain accountable to their missions and the public.

Sincerely,



Fred Blackwell
President and CEO
San Francisco Foundation



Orson Aguilar
President and CEO
LatinoProsperity

²⁰ Your office's public materials confirm the role of the Attorney General in oversight of nonprofit conversions, and describe the complaint system for members of the public to request investigation and action to protect the public's interest in charitable assets. (See <https://oag.ca.gov/charities/complaints>.)

Additional Signatories

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