



[A nice editorial from the Los Angeles](#)

[Times](#) about the proposed carbon tax being offered by *some* Republicans under the front group [Americans for Carbon Dividends](#), most notably former Secretaries of State James Baker and George Shultz. Exxon-Mobil is even throwing \$1 million into the effort — chump change for such a corporate behemoth. The Times says that a carbon tax is needed, but

[t]he Baker-Schultz plan also includes a waiver that would let oil companies and other emitters off the hook for past acts contributing to global warming, preempting the many [lawsuits](#) filed against them. And it would undo the Clean Power Plan and other federal regulations covering carbon dioxide emissions. That makes this sound less like a smart plan to reduce carbon than a toxic quid pro quo — “OK, we’ll go for a carbon tax if these lawsuits go away and we get sharper deregulation.” [Another plan](#), pushed by the Citizens Climate Lobby and other groups, would similarly escalate the per-ton tax over time and return the proceeds in a per-capita dividend, without the corporate giveaways. That’s a better option.

Clearly true, but Congress — particularly *this* Congress — will pass neither the CCL nor the ACD plan. To the extent that any of these proposals have legs, they are setting forth positions for eventual negotiations. (The cynic in me thinks that Exxon-Mobil and Republicans are just trying to avoid blame for eventual disaster, but let’s assume *arguendo* that it is sincere).

And that leads to the question: what should environmentalists — or more accurately, the

public concerned about the future of the planet — insist on and what should they be prepared to give on?

Now, it's easy for *me* to write about this since I have no responsibility, but it seems to me that red lines need to be 1) the size of the tax (as the LAT editorial makes clear); and 2) EPA authority (although there is reason to believe that [Brett Kavanaugh et al will feel free to rewrite the Clean Air Act to reject that authority](#)). And that means that liability might be a place to give.

I am somewhat skeptical of tort suits as a guide to good or coherent climate policy. You can do it, and in fact [I wrote a whole article about doing it](#), but tort suits will take a long time, and unless there is a some sort of nationwide injunction or ongoing permanent damages a la [Boomer v. Atlantic Cement](#), it is unlikely to form a key part of coherent climate policy. This isn't necessarily true: in one sense, the template is the national tobacco [Master Settlement Agreement](#), which has funded large portions of several states' Medicaid programs. But even there, the payments that last the longest only go through 2025. Climate policy needs to last more or less indefinitely, in order to make the long-term transition into a clean energy future. I cannot imagine permanent damages on the entire American economy to be imposed by courts, just as a practical matter.

All such agreements are risky, particularly when dealing with fossil fuel companies and the Republican Party, both of which have made Epic Bad Faith one of their most important standard operating procedures. If federal climate policy centers on a tax, that includes other risks because tax policy can be changed without a filibuster under budget reconciliation procedures. But getting a real carbon tax on the books is important enough that trading it



for liability relief is worth it, in my view.