

STRICTLY PRIVATE AND CONFIDENTIAL

THE CITIZENS ASSEMBLY

TRANSCRIPT OF MEETING RE

THE EIGHTH AMENDMENT OF THE CONSTITUTION

HELD ON SATURDAY, 22ND APRIL 2017

AT

GRAND HOTEL, MALAHIDE

I hereby certify the following to be a true and accurate transcript of my shorthand notes of the evidence in the above-named matter.

APPEARANCES

**THE CITIZENS ASSEMBLY: MS. JUSTICE LAFFOY, CHAIRPERSON
MS. SHARON FINEGAN, SECRETARY**

**EXPERT ADVISORY GROUP DR. ORAN DOYLE
DR. RACHAEL WALSH
PROFESSOR MADDEN**

**CLINICAL ADVISORY
GROUP: DR. ELIZABETH DUNN**

COPYRIGHT: Transcripts are the work of Gwen Malone Stenography Services and they must not be photocopied or reproduced in any manner or supplied or loaned by an appellant to a respondent or to any other party without written permission of Gwen Malone Stenography Services

INDEX

	PAGE
WELCOME FROM THE CHAIRPERSON	4
PRESENTATION OF COMPLETE DRAFT BALLOT PAPER	12
EXPLANATION OF WORDING ON DRAFT BALLOT 1	23
FEEDBACK FROM MEMBERS AND Q&A	28
AGREEMENT ON WORDING OF BALLOT 1 AND EXPLANATION OF ANY AGREED AMENDMENTS	31
ANNOUNCEMENT OF RESULTS OF BALLOT 1	33
EXPLANATION OF WORDING ON DRAFT BALLOT 2	34
FEEDBACK AND Q&A FROM MEMBER DISCUSSION	40
ANNOUNCEMENT OF RESULTS OF BALLOT 2	50
EXPLANATION OF WORDING ON DRAFT BALLOT 3	51
FEEDBACK FROM MEMBERS AND Q&A	54
AGREEMENT ON WORDING OF BALLOT 3 INCLUDING EXPLANATION OF ANY AGREED AMENDMENTS	89
ANNOUNCEMENT OF RESULTS AND OUTLINE OF NEXT STEPS BY THE CHAIR	96

1 THE MEETING COMMENCED AS FOLLOWS ON SATURDAY, 22ND
2 APRIL 2017:

3
4 **CHAIRPERSON:** Good morning everybody. I haven't still
5 got the gong! In any event I really don't need the
6 gong, thank you very much. I want to welcome you all.
7 First of all I want to welcome the members and I want
8 to welcome the observers and the media who are here
9 today and I also want to welcome all those who are
10 joining us on line and on RTE News now on this, the
11 fifth and final weekend meeting in relation to the
12 Eighth Amendment.

13
14 Our work Programme this weekend will take a very
15 different structure to our previous meetings as we
16 gather to make our recommendations as we see fit on the
17 topic of the Eighth Amendment. Before the Secretariat
18 and I take you through today's work programme, I
19 believe it is appropriate that we take a moment to
20 pause and reflect on our work to date and the task
21 ahead of us this weekend.

22
23 When we all came together for the first meeting in
24 November, it was clear to me that within the room there
25 was a wide range of experiences, opinions and ideas on
26 the Eighth Amendment. A topic that has at times
27 convulsed the Nation and I doubt that there were many
28 among us who were not in some daunted by the task ahead
29 of us. I include myself in that, needless to say.

1 This is one of the most complex and contentious
2 subjects in Irish society and we could not but feel the
3 weight on our shoulders and I again include myself in
4 that and yet by participating in the Assembly, we have
5 been afforded a unique opportunity as this exercise in
6 deliberative democracy has allowed us to withdraw from
7 the polarising perspectives and begin first and
8 foremost with the facts.

9
10 The process we followed saw us begin with facts and
11 divest ourselves of opinion. Consequently we did not
12 follow the more familiar path on this topic, where
13 equal time is provided to each side of the argument,
14 although as you know we did on the last weekend when we
15 heard the Advocacy Groups. We maintained a balance on
16 that occasion. The process we followed, I believe, has
17 contributed greatly to the standard of information that
18 we have received on this topic. We also listened
19 carefully to your feedback and our work programme
20 evolved with your valuable inputs and I'm sure you
21 appreciated that. Indeed, since the first weekend I
22 have observed that you listen, engage and challenge
23 some of the most experienced medical, legal and ethical
24 experts and advocates on the subject. I have watched
25 as you have engaged with some of the most complex
26 pieces of legislation, immersed yourselves in medical
27 and ethical discourse and listened with respect to the
28 voices and opinions of others. Your overall commitment
29 to this process has continually provided the Secretariat

1 and me with much encouragement and I say that
2 genuinely. Given the level of commitment you have
3 shown to date, I have no doubt that you will show equal
4 commitment to the task ahead of us this weekend.

5
6 Now, what is the task? In absolute terms it is to make
7 recommendations and I want to emphasise that. It is to
8 make recommendations as we see fit to the Oireachtas on
9 the topic of the Eighth Amendment. There are very few
10 people who will have the breadth of knowledge you have
11 on this topic after our previous weekend sessions and
12 you have an opportunity to bring this knowledge and
13 your understanding of it to our elected
14 representatives.

15
16 These recommendations will be made primarily through a
17 balloted vote. It is important that when you vote you
18 do so with your own conscience and with competence and
19 conviction. We must all be satisfied that the
20 recommendations once made are a fair representation of
21 the work of the Assembly. Now, I want to say something
22 about the weekend work programme and I'm going to
23 describe it in very broad terms at this stage. At the
24 end of the March meeting of the Assembly you were
25 invited to make comments and preliminary suggestions on
26 the types of issues we thought should be voted upon or
27 included on a ballot paper for the final weekend.
28 Comments and suggestions could refer to legal avenues
29 and/or aspects of the substantive issue.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

The Secretariat collated these suggestions and this informed the preparation of the draft ballot paper, which we circulated to you before Easter. This work was led by me, with the assistance of the Secretariat and members of the Steering Group, with whom we met twice for input and most importantly with the assistance of the Expert Advisory Group with whom we conferred weekly actually and we spent a long number of hours. I was tempted, in fact I asked Sharon, how many hours did we spend on the ballot paper and it was a lot of time. A lot of time, maybe 15 hours perhaps, yes.

As Assembly Members you know well the complexities of the Eighth Amendment as a piece of law and this is reflected in the draft ballot received before Easter. It is complex. Significant time and effort was given to preparing and structuring a ballot that is legally robust, affords you all the opportunity for real input and importantly provides us with enough information to make real and substantial recommendations to the Houses of the Oireachtas. The ballot paper has by necessity more than one question and it is sequential in nature, meaning that later ballots are dependent on the outcome of earlier ballots. Likewise, depending on the votes on earlier questions, not all later questions in the ballot paper may be reached.

1 Now, what you have before you at the moment is a draft
2 and I emphasise that, a draft ballot paper and it
3 remains a draft ballot paper. As our agenda for the
4 weekend reflects, we have allocated plenty of time for
5 your questions, for discussion and for agreeing on the
6 wording of each individual ballot before we vote. To
7 assist in this regard and indeed to provide you with
8 legal and medical or legal information or legal
9 clarification, we will benefit from the expertise of
10 the Expert Advisory Group who you all know well and
11 whom I'll introduce again later.

12
13 Their role, and I want to emphasise this, will be to
14 answer questions on specific issues related to the
15 ballot paper. Now I emphasise that, related to the
16 ballot paper, rather than on a wider range of questions
17 about the content the citizens have heard over the
18 previous four weekends. So bear that in mind. The
19 questions relate to specific issues in relation to the
20 ballot paper. Further to this, if you, the members,
21 wish to raise issues or suggest changes it may be
22 necessary for me to adjourn briefly to reflect on the
23 suggested amendments. Any suggested amendments may be
24 incorporated by agreement following this consideration,
25 though we must remain mindful of the inconsistencies
26 which may be given rise to in other parts of the ballot
27 paper and that is very important. The Secretariat, the
28 Expert Advisory Group and myself, as I say, we have put
29 an awful lot of work into this and we are fully

1 conscious of the risk of inconsistencies and you have
2 to bear that in mind.

3
4 Before your discussions on each ballot paper, I will
5 provide you with a detailed explanation of the format
6 and wording of each. This explanation will also
7 provide detail on how the results of each draft ballot
8 will be presented and what constitutes a majority vote
9 in each case.

10
11 Now, voting, I had a private session with the members
12 and they are fully aware and have noted this but as you
13 can see, as everybody can see, we have voting booths in
14 the room this weekend. The voting booth and the secret
15 ballot are fundamental symbols and tenets of democracy
16 and about this I have enlisted the expertise of the
17 retired Returning Officer for County Dublin, John
18 Fitzpatrick and his team who are with us and they are
19 sitting over there, who will provide independent
20 oversight for the process.

21
22 I must at this point take the opportunity to thank John
23 and his team for all their assistance to date, which
24 has been invaluable and I mean that. It has been
25 invaluable. Voting will be done in secret. Members
26 will register for and collect the final agreed ballot
27 and will move to cast their vote in the booth. The
28 completed ballot papers will then be placed in ballot
29 boxes. Mr. Fitzpatrick and his team will also be

1 responsible for the counting of the ballot papers and
2 the accurate presentation of the results. So, our
3 whole objective is to produce an accurate result.
4

5 Now, in relation to the announcements of the results.
6 It is intended that the results of each ballot will be
7 announced as soon as the votes have been counted and
8 verified. I will announce the result in public session
9 and depending on the outcome there may be a multiple of
10 votes over the weekend. I will, in the interests of
11 absolute openness and transparency, be providing the
12 votes in absolute terms. In other words in numbers as
13 well as in percentage terms.
14

15 Now, I just want to speak about something which I have
16 variously been calling miscellaneous recommendations
17 and ancillary recommendations. The votes will form the
18 recommendation that goes to the Houses of the
19 Oireachtas. However, in your feedback at our last
20 meeting, many of you indicated that you would like to
21 see wider policy issues as distinct from just legal
22 challenges, reflected in the recommendations of the
23 Assembly. I am strongly of the view that you have
24 almost uniquely comprehensive understanding of this
25 topic and it is important that we capture these
26 ancillary recommendations. Therefore, we will
27 circulate a response form for you to fill in and any
28 emerging consensus, themes or issues which emerge from
29 your response to that form will be included as

1 recommendations in the final report.

2
3 For those watching the Assembly on line or on RTE now,
4 thank you for your continued engagement with the
5 Assembly. You may be interested to note that a full
6 agenda for the weekend is available to view on line,
7 though it is subject to possible changes and times and
8 all of that, depending on how things pan out. All the
9 background papers, presentations and draft ballots
10 prepared for the Assembly will become available on our
11 website throughout the course of the weekend.
12 Likewise, all material that is given to members,
13 including a synopsis of each of the meetings to date is
14 also available to the public on our website and that's
15 www.citizensassembly.ie.

16
17 Now, in the interests of openness and transparency we
18 are conducting as much of this weekend's proceedings,
19 including the voting in public. Each member of course,
20 it is not necessary to say this, each member will of
21 course vote in secrecy and anonymously in the booths.

22
23 Now, the next heading I have on this paper is
24 conclusion and I must preface my remarks by advising
25 that you will be hearing an awful lot more from me
26 before the day is out and before the weekend is out.
27 So, that is the context in which I want to talk about
28 conclusion. Finally, and in conclusion, let me thank
29 you for your work to date. You have contributed to

1 raising the level of discourse on this subject and you
2 have shown the inherent value in respect of different
3 views or opinions. Let us continue in this spirit of
4 collegiality for the remainder of the weekend. I would
5 now like to call on Sharon Finnegan, the Secretary to
6 the Assembly, to present the proposed structure of the
7 ballot paper and this will be on screen and this is
8 very, very important. This will give you an
9 understanding of where we're going and I would ask you
10 to really concentrate on this. Thank you very much.

11
12 **END OF ADDRESS BY CHAIRPERSON**

13
14 **PRESENTATION OF COMPLETE DRAFT BALLOT PAPER BY MS.**

15 **SHARON FINEGAN, SECRETARY TO THE ASSEMBLY**

16
17 **MS. FINEGAN:** Many thanks Justice Laffoy. I just have
18 a couple of things to do here just to get this set up.
19 So, before I begin, just a couple of things to say.
20 The purpose of the presentation that I am about to give
21 is to walk you, the members, and those of you watching
22 at home, walk you through the complete ballot paper.
23 It is important that before casting any vote, members
24 understand the full potential implications of each. To
25 do this they must understand how the draft ballot paper
26 hangs together and how the sequencing will work. As
27 Justice Laffoy has said, the members received this
28 draft ballot paper before Easter. As such, you, the
29 members, are already familiar with it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

For those of you watching on line, the ballot paper that I am about to walk through is now available on the website and I would encourage you to read through it as I go through this presentation. I have to say that this is not, this presentation I am about to give is not designed to be a precise explanation of the wording used or the legal issues underpinning each ballot. Justice Laffoy, as she has said, you will be hearing from her throughout the weekend. She will be providing that detail later as required and if required.

Instead this presentation is aimed at aiding your understanding of the structure and how each draft ballot connects with the next. So, we'll begin. So ballot one asks the members, draft ballot one I should say, asks the members *"do you think Article 40.3.3 should be retained in full or not retained in full?"*

In this ballot you have two options. Option 1. Option 1 is "Article 40.3.3 should be retained in full." So that's the first option on this ballot paper that you are being presented with. In the event that this is where the majority of members cast their vote in, in other words if the majority of members, having collated the votes, decide that they wish to retain Article 40.3.3 in full, that there be no change, the voting process is complete and the work for the day completes. So when the Judge announces the results of that at

1 12.05, if the results are that Article 40.3.3 is to be
2 retained, that is where our work will essentially
3 conclude.

4
5 Option 2 is that Article 40.3.3 should not be retained
6 in full. In the event that the majority of the
7 citizens decide this option, we will then proceed to
8 Ballot 2. So, moving on Ballot 2. Ballot 2 asks the
9 citizens "*do you think Article 40.3.3 should be*
10 *repealed, i.e. deleted and not replaced or replaced or*
11 *amended?*" And once again, well the options that are
12 presented here, the citizens have three voting options.
13 There is Option 1 and Option 2 but also what appears
14 here is "*prefer not to state an opinion*" and in private
15 session this morning a citizen has already the question
16 why is "*prefer not to state an opinion*" provided on
17 this ballot paper as an option and I suppose it is
18 there for a very important reason and that reason is
19 that if in Ballot 1, we have gotten to Ballot 2 by
20 virtue of the fact that a majority of the citizens have
21 decided that they do not want to retain Article 40.3.3
22 in full.

23
24 However, it is possible and likely that in that
25 scenario, some citizens would have opted for Option 1,
26 in that they did not want to see Article 40.3.3 changed
27 and therefore it is important that they have an
28 opportunity on the Ballot Paper to continue to express
29 a view and that they are not forced into selecting

1 Option 1 or 2. So it is important that they have a
2 place on the Ballot Paper in which to record their view
3 point. That is of course not to say that somebody who
4 had voted that way on Ballot 1 would not want to
5 express an opinion and that is not to say that they
6 couldn't express an opinion in Option 1 or Option 2 but
7 it is there precisely so that they are not forced into
8 that position.

9
10 So, the two options then presented on Ballot 2 are
11 Option 1, that Article 40.3.3 should be repealed, i.e
12 deleted and not replaced. So, if the majority of
13 citizens select Option 1 here, we then proceed to
14 Ballot 4 (a). So, in other words, the majority of the
15 citizens have decided that Article 40.3.3 should be
16 repealed and in her introductory remarks to Ballot 2,
17 Justice Laffoy will provide full context as to what
18 that decision would mean and so on but if they decide a
19 majority, to vote for appeal, a further ballot is
20 provided to ask some additional information of them
21 about the recommendations that they would like to make
22 to the Oireachtas, about the termination of pregnancy
23 in Ireland and the right to life of the unborn.

24
25 So, just to run through the structure of this ballot
26 paper, there are, as you'll see, eight reasons listed
27 in columns on the left hand side, sorry, rows on the
28 left hand side and then there are five separate columns
29 then provided. So I'll talk you through each of those

1 in turn now.

2
3 So, in relation to the reasons, the first two, one and
4 two, one is the "*real and substantial physical risk to*
5 *the life of the woman*" and number two is "*the real and*
6 *substantial risk to the life of the woman by suicide.*"
7 So, in other words, these are reasons that the citizens
8 may decide to see termination of pregnancy permitted in
9 Ireland.

10
11 The reason why I highlight these two in particular,
12 firstly is that these are the two provisions currently
13 provided for in the 2013 Act. On the remainder of the
14 reasons listed in the Ballot Paper, reasons 3 to 8, you
15 will see that they are provided for individually.

16
17 - The serious risk to the physical health of the
18 woman;

19
20 - The serious risk to the mental health of the woman;

21
22 - Pregnancy as a result of rape;

23
24 - The unborn child has a foetal abnormality that is
25 likely to result in death before or shortly after
26 birth.

27
28 - The unborn child has a significant foetal
29 abnormality that is not likely to result in death

1 before or shortly after birth or

2
3 - Available on request, i.e. no restriction as to
4 reasons.

5
6 So there are eight options or reasons provided and in
7 each case the citizens are able to select, express
8 their opinion in a number of different ways. So, in
9 each case they can say never for this reason. So in
10 other words, it gives the citizens an opportunity to
11 say that in no circumstances do they want to see that
12 particular reason provided for in legislation or
13 through the law.

14
15 In respect of B1, B2 and B3, we have three options
16 there which relate to gestational limits or no
17 gestational limits. So, B1 is up to 12 weeks,
18 gestation only. B2 is up to 22 weeks, gestation only
19 and B3 is with no restriction as to gestational age and
20 you'll note that the letters across the top. So A is a
21 category on its own. So never for this reason. So
22 just to go back to that. B's then are collectively
23 provided there on the ballot paper. So that gives you
24 an indication that they are going to be grouped and
25 again the Chair will go through this in some detail in
26 the event that we arrive at this ballot but I suppose
27 the important thing to note here is that Option A and
28 you'll see across the top, Option A, B1, B2 and B3 are
29 collectively referred to as recommendations. So, these

1 four columns will be added up to present the opinions
2 expressed by the citizens as to recommendations. So,
3 for the purposes of determining a majority, all of B1,
4 B2 and B3 will be added together to provide the
5 totality of citizens who have voted in favour of
6 abortion or the termination of pregnancy in some
7 circumstances with gestational limits or none.

8
9 Then moving on to C, again it is prefer not to state an
10 opinion and again for the same reasons I outlined
11 previously, that's important to include there and I
12 suppose not lease to reflect the fact that there may be
13 somebody who has voted in Ballot 1 that they didn't
14 want change but also somebody who did vote for change
15 may actually just not want to state an opinion. So
16 that's provided for there.

17
18 So, going back to Ballot 2, so I've just talked you
19 through what happens if the citizens select Option 1 in
20 Ballot 2. I am now going to talk you through what
21 happens if the citizens select Option 2 in Ballot 2 and
22 just to recall Option 2 in Ballot 2 is that Article
23 40.3.3 should be replaced or amended. So if the
24 majority of citizens select this option we then proceed
25 to Ballot 3. So Ballot 3 is, asks the following
26 question, how do you think Article 40.3.3 should be
27 changed and Option 1 here, again just to be clear,
28 there are three voting options provided for the
29 citizens. Option 1 which I'll describe in a moment.

1 Option 2, which I'll also describe and again the prefer
2 not to state an opinion reason is provided there for
3 the same reasons that I've outlined earlier.

4
5 So looking at Option 1. Option 1 is that Article
6 40.3.3 should be replaced with a Constitutional
7 provision that explicitly authorises the Oireachtas to
8 legislate to address both termination of pregnancy and
9 any rights of the unborn. So, essentially what this
10 means is that the citizens will vote that a new -- that
11 Article 40.3.3 would be deleted. That a new
12 Constitutional provision would be put in which
13 explicitly places the power, if I can use that term,
14 fully in the hands of the Oireachtas.

15
16 In the event that the majority selects that option we
17 will move to Ballot 4B in that circumstance and the
18 table that I'm going to put here, Draft Ballot 4B,
19 looks exactly the same as Ballot 4A but it is described
20 differently because it is doing a slightly different
21 thing, because in Ballot 3, if you have selected Option
22 2, Option 1, you have, apologies, if you have selected
23 Option 1 you have explicitly said that you want the
24 Oireachtas to have control and so therefore, and that
25 the Constitution will provide for that and therefore
26 Ballot 4B is then providing additional information to
27 the Oireachtas about how you think they should exercise
28 that control. So, it does a slightly different thing
29 to Ballot 4A. It looks the same but it does a slightly

1 different thing. So I don't propose to go through it
2 in detail in the way that I did previously except to
3 say that it is the same text. The eight reasons that
4 are listed in the rows on the left hand side are the
5 same. The columns across the top are again also the
6 same and the manner in which they'll be reported and
7 Justice Laffoy will explain this in the event that we
8 come to this Ballot, she'll explain how the reporting
9 and so on, will take place but just to say that it does
10 look the same.

11
12 To go back then to Ballot 3. So what we've just talked
13 through is in Ballot 3, if you pick option 1, you move
14 on Ballot 4C. If in Ballot 3 you select Option 2. Let
15 us look at what Option 2 says. It says that "*Article*
16 *40.3.3 should be replaced or amended with a new*
17 *Constitutional provision that directly addresses both*
18 *termination of pregnancy and any rights of the unborn.*"

19
20 So, in other words you are taking, you've decided that
21 you want to delete or amend Article 40.3.3 and to
22 continue to have some level of constitutional -- that
23 the Constitution continue to say something about the
24 termination of pregnancy and any rights of the unborn.
25 So in the event that you select Option 2 here on Ballot
26 3, we then move to Ballot 4C.

27
28 Now, Ballot 4C has two parts and again, part one looks
29 the same as Ballot 4A and 4B. It's the same thing. It

1 is doing essentially the same thing that it did in
2 Ballot 4A, Ballot 4B, in that you are -- again it is
3 giving the recommendations of the Assembly as to the
4 reasons, if any, which the citizens or the members of
5 the Citizens Assembly consider that the termination of
6 pregnancy should be lawful in Ireland.

7
8 So, again I won't go through that in detail. I will,
9 however, go through Part 2. So Part 2 is included here
10 because just thinking back to how we got here. So,
11 Ballot 3, we've opted for Option 2 and in Option 2 if
12 you select this, the majority have decided that they
13 still want the Constitution to have some level of say
14 in relation to these matters. So what this ballot
15 attempts to do is to capture which aspects you want to
16 see regulated by the Constitution and which elements
17 you're satisfied should just be in legislation. So,
18 again the format and the structure of this part of the
19 ballot looks a lot like 4A, 4B and 4C in that, and the
20 first part of 4C, in that it has the same reasons
21 listed on the left hand side. The same eight reasons.
22 However, it has three different columns here.

23
24 Firstly, I'll refer to (iii) which is prefer not to
25 state an opinion and once again that's provided here
26 for the reasons that I outlined previously and (i) is
27 that the citizens would be deciding that each of these
28 reasons would be implemented primarily by a provision
29 in the Constitution with the Oireachtas passing

1 legislation to fill in the details. In other words
2 that the Constitution would specifically deal with the
3 reasons as listed on the left hand side.

4
5 (ii) is that the reasons would be dealt with by
6 legislation only. So, in other words this ballot
7 allows you to express. You've said in the event that
8 the citizens arrive at this ballot, you've said that
9 you want the Constitution to have some control and this
10 is essentially allowing you to express where you want
11 the Constitution to have that control. That's sort of
12 a very layman's own view of how that hangs together in
13 that particular part of the ballot.

14
15 So, as I say, Justice Laffoy will bring us through each
16 of the ballots, beginning with Ballot 1, providing a
17 detailed explanation as to the wording, what each means
18 and so on but it was just very important for you to be
19 able to see sequentially how each of those ballots hang
20 together. That is, of course, visible from the markers
21 on the ballot paper. We have instructions, you know if
22 the majority votes this way where you go. So, I think
23 it should be fairly clear but it is just useful I think
24 to see it all hang together there. So you can begin to
25 see how your vote might take shape depending on what
26 the outcome of ballot one is.

27
28 So, I hope you found that useful. It is available on
29 line. This presentation is available on line for

1 anybody at home who is interested in reading through it
2 again. Just to say thank you for your attention.

3
4 **END OF PRESENTATION**

5
6 **EXPLANATION OF WORDING ON DRAFT BALLOT 1 BY THE**
7 **CHAIRPERSON**

8
9 **CHAIRPERSON:** Now, as you probably noticed from the
10 Agenda, we're not going to have round table discussion
11 in relation to Ballot 1, which I'm about to explain to
12 you and we formed the view that it is relatively
13 straightforward and it doesn't need a round table
14 discussion. So, when I'm finished with the explanation
15 we'll go straight into a Q&A session and the text of
16 Ballot 1 is on the screen. I'm not doing this
17 business, Sharon is doing it. First of all the ballot
18 paper provides a brief explanatory text which
19 contextualises our work. It explains that the role as
20 laid down for us by the Oireachtas is to consider the
21 Eighth Amendment.

22
23 Now, the Eighth Amendment was inserted into the
24 Constitution, Article 40, subsection 3, sorry, Article
25 40, section 3, subsection 3, which like Sharon, I will
26 call Article 40.3.3 from now on and the 13th and the
27 14th amendments added additional clauses to that
28 Article and we've come to the conclusion that it is
29 more accurate to discuss Article 40.3.3 rather than the

1 Eighth Amendment and that is the terminology we have
2 used throughout the Ballot Papers. So, as I say, when
3 discussing your task, we will be talking about Article
4 40.3.3.

5
6 Now, Ballot 1 is our basic starting point. Does the
7 Assembly want to retain Article 40.3.3 in full or not.
8 Here the word 'retain' is used to demonstrate that we
9 are starting from the status quo, what the law is. The
10 purpose of this ballot is to establish whether you, the
11 members of the Citizens Assembly, wish to change the
12 status quo in some shape or form and you have two
13 options. In this ballot there are only two options.
14 Unlike the other options.

15
16 option 1 is to retain Article 40.3.3. If the members
17 decide they wish to do that, if they wish that Article
18 40.3.3 is retained in full, there will be no further
19 ballots of voting. It will be the end of the process
20 effectively except for a reflective -- what I called
21 the ancillary reflections I referred to earlier. So
22 that would be the end of the process.

23
24 Option 2 is that Article 40.3.3 should not be retained
25 in full and if you the members vote for Option 2, by
26 majority, you will have indicated that you wish to
27 change the current Constitutional position in some way.
28 Therefore, if you decide that you do not wish that
29 Article 40.3.3 is retained in full, we will proceed at

1 that stage to the second draft ballot paper and I want
2 you to be clear that if the Oireachtas was to act on
3 this option, a Constitutional Referendum would be
4 required. Once the members have voted on this ballot,
5 the results will be reported on. The agenda provides,
6 as you will have seen, that this would take place
7 around five minutes past 12.

8
9 Now, I want to say something about the presentation of
10 results. The members have been provided with a note on
11 the voting procedures to be used over the course of the
12 weekend and this has been put up on the website for the
13 wider public. There are two specific aspects of this
14 document, which I would now like to draw to your
15 attention.

16
17 The first is in relation to how the results will be
18 presented. A sample results sheet for this ballot is
19 provided on the screen behind me. You see that
20 Reporting of Results, Ballot 1. You will see that the
21 count and the result, the voting, will provide some key
22 information. First, it will specify the number of
23 citizens eligible to vote. That's in the first line.
24 Then, it will specify the number of citizens who
25 actually voted. In theory, this figure should be the
26 same as the first but there may be reasons why a
27 discrepancy might arise. For example, if a citizen
28 decides not to cast his or her figure. Those two
29 figures aren't necessarily going to be the same.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Thirdly, you will see the results of the ballot presented in both absolute terms in numbers and in percentage terms. Both figures are provided for transparency and clarity. Where there is more than one option on the ballot this will obviously be represented here too.

Now, I want to say something. Make some general observations about spoiled votes. The note you have also specifies how we will deal with spoiled votes. In formulating our rules in relation to voting, we've had regard to the principles applied in National elections. There a vote which does not express a clear preference or which expresses multiple preferences, where only one is sought, is a spoiled vote. For the purposes of voting at the Citizens Assembly, for the purpose of voting here today these rules apply and a spoiled vote arises in the following circumstances and I'm going to mention two circumstances.

The first is where the vote does not mark any option for -- sorry, where the voter does not mark any option for one or more questions. For the avoidance of doubt, a voter who has specifically marked "(b) prefer not to state an opinion" box will not fall into this category because in such a case the intention of the voter is clear. The voter has decided not to express an opinion. However, if a voter does not mark any option

1 for one or more questions, it is not clear whether the
2 voter did not wish to express a preference or whether
3 they simply overlooked that particular question.
4 Therefore, a ballot or part of a ballot which does not
5 contain one mark should be counted as a spoiled vote
6 for that particular question. That would not effect
7 the validity of other questions on the same ballot
8 paper. So, you want to be careful when you are
9 exercising your right to vote.

10
11 Now, the second circumstance is this. A ballot will
12 also be considered as spoiled if the voter marks more
13 than one option in a single question. So, that's the
14 second circumstance. In this case, that I've just
15 outlined, again it is not possible to determine the
16 intention of the voter so the vote should be treated as
17 invalid.

18
19 Now, that completes my description of this ballot
20 which, as I said at the outset, we consider to be
21 fairly simple and the arrangements for voting. You
22 will have learned something from the explanation in
23 relation to presentation of the results, which I hope
24 has been helpful to you and also to the issue of
25 spoiled votes. So, as I have said at the outset, we're
26 not having a round table discussion on this. So, we're
27 going to move straight into the questions and answers
28 session and I am going to be joined by the lawyers on
29 the Expert Advisory Group. Dr. Oran Doyle from Trinity

1 College; Professor Deirdre Madden from University
2 College Cork and Dr. Rachael Walsh from Trinity College
3 Dublin and they will assist in responding to your
4 questions and comments concerning the wording of the
5 draft Ballot 1 and just to remind you what I said in
6 the private session earlier, what they are going to
7 address are specific issues in relation to the ballot
8 paper. They are not going to address issues in
9 relation to the wider context. For example, the
10 content of presentations we had over the earlier weeks.
11 So, also bear in mind that there are mics available and
12 also bear in mind what I said earlier about speaking
13 slowly and clearly so that the Stenographer can capture
14 everything that is said. Thank you very much.

15
16 **END OF EXPLANATION OF WORDING ON DRAFT BALLOT 1**

17
18 **FEEDBACK FROM MEMBERS AND Q&A**

19
20 1 Q. **TABLE 6 - DAVE:** In the event of a spoiled count, what
21 is the procedure if there was spoiled votes that
22 brought the numbers down to an equal number of both
23 options, what is the procedure there?

24 **CHAIRPERSON:** I can answer that question and I will be
25 dealing with that later. Apparently it might have been
26 wise to deal with it on this explanation. You have been
27 given the resolution of the Oireachtas in the material
28 you were given this morning, isn't that right, and you
29 will see that it provides that if there is equality of

1 votes the Chairperson has the casting vote. So that
2 really answers that. I will explain that more fully
3 later but that's the position. So if on the first
4 ballot there was 40 and 40 the Chairperson would have a
5 casting vote and incidentally, I mean I've done my
6 homework on this particular issue, and it sort of
7 reflects the position of the Ceann Comhairle in the
8 Dáil. If there isn't a majority in the sense that
9 there's equality of votes, the Ceann Comhairle has the
10 casting vote and the wording used in the resolution is
11 very similar to the wording in Article 15, section 11
12 of the Constitution. So that answers that question.
13

14 2 Q. **TABLE 12 - CITIZEN:** Good morning, I'm a citizen on
15 Table 12. My question relates to Ballot 2 and 3. It
16 says if a majority votes for Option 1, you do one thing
17 but if a majority votes for Option 2 (CHECK 10.46.01)
18 we do something else. What happens if the majority
19 just for stating their opinion in either of those
20 votes?

21 **CHAIRPERSON:** We're only dealing with Ballot 1 at the
22 moment. Obviously we will have to cross that bridge if
23 we come to it. I haven't given it a lot of
24 consideration.

25 **MS. FINEGAN:** I'll just, to be clear, because in
26 fairness it was the Judge who twigged this more than
27 anybody. So in the event that the majority votes for
28 -- so for the purposes of determining a majority and
29 this is provided for in the note that the Judge

1 referred to about the voting procedures. So for the
2 purposes of determining a majority, you'll see on your
3 note, that note, on page two of that note it says "in
4 Ballot 1 a majority be determined by a reference to the
5 total votes cast in favour of Option 1 and Option 2"
6 but in relation to Ballot 2 and 3 that you've just
7 asked about, the majority in those cases will be
8 determined by a reference to the total votes cast in
9 favour of both Option 1 and Option 2. So in other
10 words the results will count the fact -- you know in
11 absolute it will say. So for arguments sake it is 33,
12 33, 33, across the three options but for the purposes
13 of majority only the votes cast in respect of Option 1
14 and Option 2 will be counted and then used to determine
15 the majority.

16 **CHAIRPERSON:** In fact I would be reiterating that in
17 relation to every ballot paper for the avoidance of
18 doubt. So, do you follow that?

19 **TABLE 12 - CITIZEN:** Yes.

20 **CHAIRPERSON:** Sorry, for causing the confusion at the
21 start. Any other questions?

22
23 3 Q. **Table 5 - SPEAKER:** Sorry, my question is in relation
24 to the Ballot Paper 4C, part 1 and 2. I don't know how
25 to ask this question, so I'll give you an example
26 because I'm not too sure of the implications for the
27 second part.

28 **MS. FINEGAN:** Sorry, could I just interrupt you. We
29 are focusing only on Ballot 1 for the purpose of this

1 Question and Answer session.

2 4 Q. **TABLE 5 - SPEAKER:** So is there an opportunity to ask
3 questions later on?

4 **MS. FINEGAN:** Absolutely. In every case, in the event
5 that we arrive at those ballots, it will be exactly the
6 same format as this for questions.

7
8 **AGREEMENT ON WORDING OF BALLOT 1 AND EXPLANATION OF ANY**
9 **AGREED AMENDMENTS**

10
11 **CHAIRPERSON:** In fact having followed a round table
12 discussion, as I've said, this is the only ballot in
13 relation to which we're not having a round table
14 discussion because it was just the two options and they
15 were phrased in plain language, we thought it wasn't
16 necessary. So the members seem to be happy that they
17 understand what is asked of them in Ballot 1. Well
18 then we will move on to Ballot 1 and the voting.

19 **MS. FINEGAN:** Okay, can I just have your attention
20 please in relation to the voting. The first thing to
21 say is just as previously discussed, the facilitators
22 and notetakers will leave the room during this portion
23 while the votes are being cast. The voting will
24 continue to happen in public. Just I'll call on my
25 colleagues from the Secretariat. Grainne, you might
26 begin to set up the desks there for the voting. So
27 what is going to happen, you'll see at each of the
28 voting Booths there are tables. So you will go up to
29 each of the tables and you'll see each of them have

1 been marked. There are three individual booths and
2 they indicate which table. So, according to which
3 table you're on, you go to each individual table to
4 collect your ballot paper. So a member of the
5 Secretariat will be there with a list of the names and
6 just for the purposes of counting the number of
7 citizens who have collected their ballot papers, we
8 will be marking who has collected them but that is in
9 no way to suggest that your ballot paper is
10 individualised or anything, it is entirely anonymous.
11 Then you will proceed to the Voting Booths to cast your
12 ballot and you will place them in the ballot boxes.
13 There is a ballot box for each individual ballot paper.
14 **CHAIRPERSON:** We want to convert the draft ballot paper
15 into the ballot paper and I presume that there is
16 agreement on that. So could I have a show on hands in
17 relation to whether there is agreement in relation to
18 the form of the ballot paper?
19 **MS. FINEGAN:** Can I just have everybody's attention for
20 that. Just the Chair is seeking a formal agreement on
21 the ballot paper. If you could raise your hands?
22 **CHAIRPERSON:** Very good, thank you.
23 **MS. FINEGAN:** So, if you want to proceed therefore up
24 to each of the desks to collect your ballot paper and
25 I'd just ask for your patience obviously because it
26 will take a couple of minutes to disperse the ballots.
27 Once you have finished your vote you can go ahead and
28 have your coffee. We will essentially have a break now
29 between voting and counting of the ballot.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

VOTING ON BALLOT 1

COFFEE BREAK

THE MEETING RESUMED AS FOLLOWS AT 12.05:

ANNOUNCEMENT OF RESULTS OF BALLOT 1

CHAIRPERSON: Good afternoon everybody. We have now passed mid-day, so I can wish you good afternoon and I'm going to announce the result of Ballot 1 but just before I do so, I just want to say that it was agreed this morning that two members of the Steering Group would observe the count and that has happened and everything is satisfactory from that point of view. The result will go up on the screen behind me and I will read it out. This is the result of Ballot 1, the number of eligible voters 91. Number of votes cast 91. Invalid votes nil, zero and total valid poll 91 and the voting for Option 1, Article 40.3.3 should be retained in full, that was 12 votes or 13% and Option 2, Article 40.3.3 should not be retained in full, 79 votes, equivalent to 87%.

So, just by way of explanation I'll explain the number of eligible votes as being 91. That is explained, currently there are 95 members of the Assembly and all of that information is on the website and four of those

1 were unable to attend this morning and that explains
2 the figure of 91. I just wanted to give an explanation
3 of that. Now, as you see the majority voted in favour
4 of Option 2. Namely that Article 40.3.3 should not be
5 retained in full and a consequence of that we are
6 moving on to Ballot 2 now and I'm going to explain
7 Ballot 2.

8
9 **EXPLANATION OF WORDING ON DRAFT BALLOT 2 BY THE**
10 **CHAIRPERSON:**

11
12 **CHAIRPERSON:** The voting on Ballot 2 which we've just
13 seen, sorry, the voting on Ballot 1 which we've just
14 seen, represents a clear decision that the members seek
15 to change the status quo and to be clear, if the
16 Oireachtas was to act on this initial recommendation a
17 Constitutional Referendum would be required. I want to
18 make that clear but the result is a mandate for the
19 Assembly to move forward with the formation of our
20 recommendations for the Houses of the Oireachtas.
21 Ballot 2, which I'm discussing now, will look at the
22 legal nature of the desired change.

23
24 The proposed text of Draft Ballot 2 as prepared by
25 myself and the Secretariat, again with the assistance
26 of the expert advisory group and the input of the
27 Steering Group is on the screen behind me. You'll see
28 it now. The proposed wording on the question on this
29 ballot reads:

1
2 "Do you think Article 40.3.3 should be repealed, i.e,
3 deleted and not replaced or replaced or amended?"
4

5 The members have three voting options before them and
6 these are now presented on the screen. Option 1 is
7 that Article 40.3.3 should be repealed.
8

9 **BRIEF ADJOURNMENT DUE TO POWER CUT**

10
11 **CHAIRPERSON:** we're back in business thankfully and
12 you'll recollect that when we stopped I was dealing
13 with Draft Ballot Paper 2 and I was going through the
14 options on the Ballot Paper and Option 1 is Article
15 40.3.3 should be repealed, i.e. delete it and not
16 replaced. Option 2 is Article 40.3.3 should be
17 replaced or amended and then the third option is
18 "prefer not to state an opinion" and I'm going to deal
19 with each of those options in turn, starting with
20 Option 1.
21

22 Option 1, repeal would involve the deletion of Article
23 40.3.3 from the Constitution. The text would be
24 deleted in full from the Constitution and at our last
25 meeting, at the last weekend meeting, Brian Murray,
26 Senior Counsel, outlined the potential consequences of
27 repeal and in advance of this meeting, we encouraged
28 the members to re-read Brian's paper and a copy of it
29 has been included in the briefing packs and you now

1 have the correct paper, but in any event the important
2 point is that it cannot be said with certainty which
3 consequence would prevail if Article 40.3.3 was simply
4 repealed and Brian identified three possible
5 consequences and indeed, I think it is fair to say
6 there could be more and they were first, that the form
7 of abortion legislation would exclusively be a matter
8 for the Oireachtas.

9
10 The second, that pre 1983 Constitutional, the pre 1983
11 Constitutional position would revive, including any
12 implied rights of the unborn under the Constitution
13 before 1983 and thirdly, that the rights of a pregnant
14 woman to privacy, to bodily integrity and to autonomy
15 would prevail over many countervailing circumstances,
16 including any rights of the unborn. They are three
17 possible consequences that were identified and Brian
18 indicated that in his opinion a consequence which would
19 be most likely to prevail was the first consequence.
20 That legislation would be exclusively a matter for the
21 Oireachtas but what we feel should be brought to your
22 attention is that the position is not absolutely
23 certain. So there would be implications of a
24 recommendation from the Assembly for a simple repeal of
25 Article 40.3.3 would be uncertain.

26
27 If Option 1 is selected, the citizens would then go on
28 to vote on Ballot 4A. Ballot 4A would provide
29 recommendations of the Assembly to the Oireachtas about

1 the reasons, if any, for which termination of pregnancy
2 should be lawful in Ireland as well as any gestational
3 limits that should apply. So, the Assembly would be
4 giving their views to the Oireachtas. It's as simple
5 as that. The information would be supplied under
6 Article or sorry, under 5.4A.

7
8 Now, going on to Option 2 and that's to replace or
9 amend. It would be open the potential for the
10 Constitution to continue to address the right to life
11 of the unborn and/or termination of pregnancy, either
12 exclusively or in conjunction with legislation. This
13 type of change could be done in a number of different
14 ways. For example, an entirely new provision could
15 replace what is already there. That is Article 40.3.3
16 or alternatively, an amendment could change the wording
17 of the existing text. The text of a replacement
18 provision or amendment could be drafted in a multitude
19 of ways to provide for a range of circumstances and
20 issues. The citizens must recall that it is not the
21 role of the Assembly to draft or suggest replacement
22 provision but rather to provide recommendations.

23
24 At this point we are considering the substance or text
25 of a replacement, sorry, at this point we are not
26 considering the substance or text of a replacement
27 provision or amendment. A replacement provision or
28 amendment to the Constitution could only be
29 subsequently amended, that is to say altered or

1 changed, by the people in a Referendum. It is
2 important to note that voting for either Option 1 or
3 Option 2 in Draft Ballot 2 may result in an outcome
4 that allows for either liberalisation of the current
5 legal regulation of termination of pregnancies in
6 Ireland or alternatively, an outcome which results in
7 the rights of the unborn being given greater
8 protection. So, both scenarios are possible and this
9 is because both legislation enacted in consequence of
10 repeal or, and I want to stress this, depending on its
11 terms, a provision replacing or amending Article 40.3.3
12 in the Constitution could have either effect.

13
14 Now, the third option, the final voting option, that's
15 "*prefer not to state an opinion*". This is on the Draft
16 Ballot Paper, as it is important that those who voted
17 in favour of retention of Article 40.3.3 in Ballot 1
18 are not forced by the Ballot Paper into specifying how
19 the change will be implemented. They are, of course,
20 free to do so regardless of how they voted in Ballot 1
21 but they are not required to do so nor to abstain from
22 to avoid doing so. Instead they can select the option
23 "*prefer not to state an opinion*". This option might
24 also be selected for a variety of reasons by citizens
25 who voted against the retention of Article 40.3.3 in
26 its current form in Ballot 1.

27
28 Now, I'm just going to briefly refer to the
29 presentation of the results. A sample results sheet

1 for this Ballot is provided on the screen behind me.
2 Once again it will specify the number of citizens
3 eligible to vote and the number of citizens who voted.
4 The results will provide details of the number of votes
5 cast in respect of Option 1, Option 2 and Prefer not to
6 State an Option. However, for the avoidance of doubt,
7 a majority would be determined by reference to the
8 total votes cast in favour of both Option 1 and Option
9 2.

10
11 Before we go on to the next step, I just want to
12 mention one thing arising from the results of Ballot 1.
13 You will recollect that the members present who voted
14 numbered 91 and I'm told that another member will be
15 here in the afternoon and will want to vote on the
16 remaining ballots and what I propose at this stage is
17 asking the members whether they have any objection to
18 that and if they have no objection I would like to --
19 in other words no objection to the member who is not
20 here at the moment joining in. If they have no
21 objection I'd like them to put up their hands now. So
22 you have no objection. Very good, very good.

23
24 All right, we're now going to go into private session
25 and this will last for 20 minutes, until ten past one
26 and then we'll have the feedback. So bear in mind what
27 I said this morning in the private session about the
28 round table discussion and all of that and if you have
29 questions write them down and make them available to

1 the Secretariat as soon as possible. Very good. Ten
2 past one we'll resume.

3
4 **PRIVATE SESSION**

5
6 **FEEDBACK AND Q&A FROM MEMBER DISCUSSION**

7
8 **CHAIRPERSON:** As you can see, the stage is occupied.
9 We have our three lawyers once again to assist you in
10 the questions you have and we have Dr. Liz Dunn who is
11 coming up now and I'm going to take the questions. Put
12 up your hands if you have a question. I'll take the
13 question from Table 5 and I presume a copy of it has
14 been given already.

15
16 5 Q. **TABLE 5 - SPEAKER:** So our question is, it's going to
17 sound long but we'll get to the point as quickly as
18 possible. What is the specific difference in the
19 outcome, if anybody chooses Option 1, that leads to
20 Ballot 4A, which will lead to recommendations?

21 **CHAIRPERSON:** Yes.

22 6 Q. **TABLE 5 - SPEAKER:** That's the outcome. If we chose
23 Option 2, that leads to Ballot 3, and then if we chose
24 Option 1 leads to 4B, which leads to recommendations.
25 Our question is, what is essentially the difference
26 between that, Option 1 and Option 2. In other words
27 what grey areas within Option 1 which would lead to
28 Ballot 4A, what grey area does that leave us in or does
29 it leave us in a grey area?

1 A. **DR. DOYLE:** So on everything you say is correct, your
2 understanding of it up until the question and obviously
3 it is a question but just to clarify that yes, you
4 understand the structure correctly. The difference
5 between 4A and 4B is that you get to 4A if the Citizens
6 Assembly votes for repeal but because it is uncertain
7 what the consequences of repeal might be, it's not
8 clear that the Oireachtas would be able to legislate to
9 give effect to all of those options on 4A. However, if
10 you move on to Ballot 3 and vote for Option 1 there,
11 then it is clear that the Oireachtas has the power to
12 legislate and the options that you're voting for within
13 4B are things that the Oireachtas will be able to
14 legislate for. Does that make sense?

15 7 Q. **TABLE 5 - SPEAKER:** Very good, yes.

16
17 **CHAIRPERSON:** And other questions. I see Table 13,
18 yes?

19
20 8 Q. **TABLE 13 - FACILITATOR:** I'm the Facilitator for Table
21 13 and the citizens on this table have one question for
22 the legal panel. If Article 43.3.3 is repealed and not
23 replaced, what then is the position regarding the 2013
24 Act?

25 A. **DR. WALSH:** So, the position in the first instance is
26 that repeal wouldn't effect the validity or continued
27 effect of the 2013 Act. It would continue without
28 further action to be the law but following from a
29 decision for repeal, either the retention or the repeal

1 of the 2013 Act could potentially if it was challenged
2 in the courts, be found to be unconstitutional
3 depending on the judicial view that was taken as to the
4 consequences of repeal and that then brings us back to
5 the points that the Judge made about the potential
6 consequences of repeal. So, the position is the Act
7 will stay in place but what the Oireachtas could do in
8 relation to changing the Act might potentially be
9 effected by the consequences of repeal as interpreted
10 by the courts.
11

12 **CHAIRPERSON:** Yes, Table 1 please?
13

14 9 Q. **TABLE 1 - FACILITATOR:** Thank you, Judge. I'm the
15 Facilitator for Table 1 and it's a question addressed
16 to the panel on behalf of citizens at this table. What
17 happens to the Constitution if Article 40.3.3 is
18 repealed?

19 A. **DR. DOYLE:** So, repeal basically means deleted and not
20 replaced. So at the moment there is an Article 40.3.2.
21 There's 40.3.3 and then you move on to 40.4 and just
22 40.3.3 would disappear. It would not longer be there.
23 I won't go over the discussions about what the
24 consequences of that might be but in terms of the
25 narrow question of what happens to the Constitution,
26 just all of those provisions would effectively be
27 deleted.

28 A. **CHAIRPERSON:** You may remember that at the very first
29 weekend you were given just a summary of Article 40

1 which contains the fundamental rights and if you look
2 at that, it will be among your papers, you will see the
3 various parts of Article 40 and all that would happen
4 is Article 40.3.3 would come out. It just wouldn't be
5 there anymore. It wouldn't be part of our
6 Constitutional Law.

7
8 **CHAIRPERSON:** Table 14?

9
10 Q. **TABLE 14 - CITIZEN:** I'm a Citizen from Table 14. I
11 just had a query with relation to Option 1. According
12 to Brian Murray's paper in paragraph 13, he suggested
13 that a potential consequence of a repeal would be that
14 the Constitution would not protect any right to choose
15 on the part of women and I just was wondering how that
16 -- because it is not particularly referenced in Article
17 40.3.3, how does repealing that Article impact on a
18 woman's right to choose in that instance?

19 A. **DR. DOYLE:** So thanks for the question. So, what Mr.
20 Murray was saying was setting out the three possible
21 consequences of repeal and the first consequence being
22 one in which the Oireachtas would have a wide latitude
23 to make laws in relation to the termination of
24 pregnancy and what he was setting out at paragraphs 30
25 and 31 was explaining how that might come about and he
26 was saying that on the one hand the explicit protection
27 of the right to life of the unborn would be taken away
28 and on the other hand, the Constitution doesn't
29 anywhere else protect a right to choose. So, given

1 that there would now be no right to life of the unborn
2 protected explicitly in 40.3.3 and no right to choose
3 protected explicitly anywhere else, there wouldn't be
4 any rights constraining what the Oireachtas could do.
5 So, he wasn't saying directly that the removal, repeal
6 of 40.3.3 was taking away any right to choose. It's
7 taking away the right to life of the unborn explicitly
8 from the Constitution on the fact that there isn't an
9 explicit right to choose anywhere else. The net effect
10 of both of those factors would leave the Oireachtas
11 free to legislate. Does that answer the question?

12 11 Q. **TABLE 14 - CITIZEN:** Very good.

13
14 **CHAIRPERSON:** Yes, we're on Table 4 now, yes.

15
16 12 Q. **TABLE 4 - FACILITATOR:** I am the Facilitator for Table
17 4. A question arises from one of the members. I
18 should say that the question was handed up but was
19 subsequently reworded but the substance of the question
20 remains the same. Are replace and amend the same
21 thing. If not, why are they conflated on the ballot
22 paper?

23 A. **DR. DOYLE:** Yes, so they are effectively the same
24 thing. So it is not replace or amend. It is trying to
25 say there is two alternatives here. It is one
26 conceptual category where you'd change the
27 Constitutional text in some way, either by amending the
28 language that is already there or taking the provision
29 out and putting a new one but structurally they'd be

1 the same thing. They need text in the Constitution
2 addressing these issues but the text that is in the
3 Constitution would be in some way different from what's
4 currently in the Constitution. So that's why we've
5 dealt with them as one category.

6 A. **CHAIRPERSON:** If I may put it much more succinctly.
7 Replace, you would take out the whole thing. Amend,
8 take a few words here and there.

9 A. **DR. DOYLE:** Except that replace wouldn't just take out
10 the whole thing. It would then put back in --

11 A. **CHAIRPERSON:** Oh yes, yes.

12
13 13 Q. **TABLE 11 - FACILITATOR:** Facilitator for Table 11. The
14 citizens at this table have just one question. Just to
15 clarify. Would option 1 result in the removal also of
16 the right to information and to travel as inserted by
17 the 13th and 14th amendments?

18 A. **DR. DOYLE:** Yes. The way that Article 40.3.3 is
19 amended or is worded, is that the two later provisions
20 about information on travel both refer back to the
21 earlier parts of 40.3.3. So even if you left them in
22 they would become meaningless because the thing that
23 they are relating to has been taken out and that was
24 one of the reasons the Judge referred to earlier, that
25 we decided to deal with 40.3.3 as a whole.

26 A. **CHAIRPERSON:** And I have no doubt that that really is
27 what the Oireachtas intended. They intended us to deal
28 with 40.3.3 as a whole, not just the Eighth Amendment
29 and not to ignore the 13th and 14th Amendments. That

1 has to be the case.

2 A. **DR. WALSH:** Just for your information, in addition
3 outside of Article 40.3.3, generally there is a
4 recognised Constitutional right to travel for all
5 people in all instances and there would, in connection
6 to freedom of expression, be rights in relation to
7 information and not just information outside the
8 context of Article 40.3.3

9

10 **CHAIRPERSON:** Any other questions?

11

12 14 Q. **TABLE 8 - FACILITATOR:** Thank you, Judge. I'm the
13 Facilitator for Table 8 and a question arose from one
14 of our members as to the struggle between the
15 Constitution and the Oireachtas and the member was
16 wondering if the legal panel could briefly comment on
17 other countries in terms of how many other countries
18 deal with this issue in their Constitution?

19 A. **CHAIRPERSON:** Yes. That question I think came from
20 Table 3 as well did it?

21 **TABLE 3 - SPEAKER:** Yes.

22 A. **CHAIRPERSON:** well to be honest, none of us know the
23 answer to that and I'm not even sure that it's that
24 answerable because we have a written Constitution. The
25 United Kingdom doesn't have a written Constitution.
26 There are various forms of regulation in various
27 countries. So, I don't know whether it is possible to
28 ascertain that but we don't have that information. I
29 think it would be very, very difficult to ascertain it.

1 Do you agree I wonder?

2 A. **DR. WALSH:** Yes. And I'm just looking at your
3 questions as they were handed up and I would agree with
4 the Judge, to give a full account of how this was dealt
5 with in other countries, beyond what you've already
6 received, wouldn't be within our expertise and remit
7 today and I think the other two questions that you pose
8 about whether the Constitution is the place for this
9 kind of personal medical issue to be dealt with and
10 whether it should be in the hands of the Oireachtas to
11 be dealt with politically rather than in the
12 Constitution, I think those are very much matters of
13 substance about the issue that we've been thinking
14 about over the last number of weekends, rather than
15 strictly legal questions that we can answer for you
16 because it's a judgement ultimately, so in essence what
17 you're voting on.

18 A. **CHAIRPERSON:** Exactly, it is, yes.

19

20 15 Q. **TABLE 7 - FACILITATOR:** Judge, I'm the Facilitator at
21 Table 7 and one of the citizens would like to ask the
22 following question from the legal team. If a court
23 case was taken to the Supreme Court regarding the
24 Constitutionality of any abortion legislation by the
25 Oireachtas, would the Supreme Court be forced to
26 consider the woman's rights alongside the implied
27 rights of the unborn, as this has been the approach in
28 other jurisdictions?

29 A. **DR. DOYLE:** We need some clarification on that. Do you

1 mean under the current law as things stand or if the
2 Assembly were to vote for one of the options that's
3 before you for Ballot 2?

4 16 Q. **TABLE 7 - FACILITATOR:** No, it would be after a
5 Referendum to repeal?

6 A. **CHAIRPERSON:** But it would depend on the terms of the
7 Constitution. I mean that question isn't answerable.

8 A. **DR. WALSH:** Are you suggesting if there's repeal, if
9 there was a Referendum that voted for repeal what would
10 the scenario be?

11 17 Q. **TABLE 7 - FACILITATOR:** Correct, yes.

12 A. **DR. DOYLE:** So again I have to refer you back to Brian
13 Murray's paper. So, it depends on what the courts
14 ultimately think the consequences of the repeal are and
15 there is legal uncertainty on this as the Judge has
16 referred to, that on one view the Oireachtas would have
17 a wide power to make laws in respect of termination of
18 pregnancy and if the courts take that view, the Supreme
19 Court takes that view, it is likely to say well there
20 either aren't Constitutional rights here or there is
21 sort of weak Constitutional rights and we're going to
22 defer to the judgement made by the Oireachtas. We're
23 going to be very slow to get involved. If the courts
24 take the second view canvassed by Mr Murray, which is
25 that the pre 1983 position revives. So you'll remember
26 that there were judicial statements but no binding
27 decisions before 1983, which said that the right to
28 life of the unborn wasn't visibly protected, if the
29 court takes that view and therefore that implicit right

1 to life of the unborn is sort of resurrected after the
2 repeal of the Eighth Amendment, then the courts would
3 have to have regard to that implicit Constitutional
4 right, perhaps alongside rights on behalf of the Mother
5 and then the third view as to what the consequences of
6 repeal might be is that the courts could come to the
7 conclusion that all protection for the unborn had been
8 removed from the Constitution but that there was a sort
9 of autonomy or freedom of choice right for people in
10 general but women in particular that was implicit in
11 other parts of the Constitution and they might consider
12 that right which would lead to terminations of
13 pregnancy being more easily available if a woman were
14 to choose that but it does and there is this level of
15 uncertainty and it is just an unfortunate state of
16 affairs that that uncertainty is there but we cannot be
17 sure what the consequences of repeal might be. So it
18 depends on which the view the court ultimately takes
19 and unfortunately we can't give any more guidance than
20 that.

21
22 **CHAIRPERSON:** Any other questions? Very good. Did you
23 get any other questions in writing. So there are no
24 more questions. So what we've to do now is we have to
25 come to an agreement hopefully on Ballot 2. There is a
26 draft and are you happy with it as a Ballot and if you
27 are would you indicate by putting up your hands. So,
28 everybody is happy with that. You're not looking for
29 any change or anything to it. Very good. Well then

1 I'm noting that there is agreement to the draft. So
2 that is Ballot 2 and we can vote. It is 1.30. Yes,
3 hopefully we might be able to start again at 2.30.

4 **MS. FINEGAN:** If you carry out your votes now and this
5 will be done in public as before until all of the votes
6 have been cast and then the counting as before will
7 happen in private.

8
9 **VOTING ON BALLOT 2**

10
11 **LUNCHEON ADJOURNMENT**

12
13 **ANNOUNCEMENT OF RESULTS OF BALLOT 2**

14
15 **CHAIRPERSON:** Now, I'm going to announce the result of
16 Ballot 2 and it will go up on screen behind me. The
17 number of eligible voters 91. The number of votes cast
18 91, invalid votes, again this time zero. Total valid
19 poll 91. Then the manner in which the votes were cast.

20
21 Option 1, Article 40.3.3 should be repealed, i.e.
22 deleted and not replaced. 39 voted for Option 1.
23 That's equivalent to 44%.

24
25 Option 2, Article 40.3.3 should be replaced or amended.
26 50 votes for Option 2. Equivalent 56% of the vote.

27
28 So, then the third voting option, "prefer not to state
29 an opinion", the number who voted for that is two. So,

1 the majority has voted in favour of Option 2, Article
2 40.3.3 should be replaced or amended. So that means
3 that we now move on to Ballot 3. Yes, and I think I
4 made this clear in the explanation. In relation to
5 Ballot 2 the majority is in favour of Option 2 because
6 the majority is determined by reference to the total
7 votes cast on both Option 1 and Option 2.

8
9 **EXPLANATION OF WORDING ON DRAFT BALLOT 3**

10
11 **CHAIRPERSON:** Now, we'll move on to Ballot 3. So, as
12 I've just announced, in Ballot 2, the members of the
13 Assembly voted by a majority that Article 40.3.3 should
14 be replaced or amended.

15
16 Moving on to Ballot 3 now. This will allow the
17 citizens to formulate recommendations on how Article
18 40.3.3 should be replaced or amended. Again, this
19 draft ballot has been prepared by myself, the
20 Secretariat, with the assistance of the Expert Advisory
21 Group and with the input of the Steering Group. The
22 text is displayed now on the screen. The top of the
23 paper outlines how we have reached this ballot.

24
25 In Ballot 1, the Citizens Assembly voted by a majority
26 that Article 40.3.3 should not be retained in full. In
27 Ballot 2, which the results have just been announced,
28 the Assembly voted that Article 40.3.3 should be
29 replaced or amended. The proposed wording of the

1 question on this ballot is and you can see it there

2
3 *"How do you think Article 40.3.3 should be changed?"*

4
5 On the premise that Article 40.3.3 should be replaced
6 or amended we have identified two possible types of
7 change and thus the ballot provides for two options.

8
9 Option 1 is that Article 40.3.3 should be replaced by a
10 new Constitutional provision that explicitly authorises
11 the Oireachtas to legislate, to address both
12 termination of pregnancy and any rights of the unborn.
13 This Constitutional provision will grant the Oireachtas
14 the exclusive power to make the law on these issues and
15 I want to repeat that. This Constitutional provision
16 would grant the Oireachtas the exclusive power to make
17 law on these issues.

18
19 In other words, the Constitutional amendment here would
20 serve to clarify that it is the will of the people that
21 the Oireachtas has full control over these matters. It
22 will then be a matter for the Oireachtas to decide how
23 to regulate these issues.

24
25 Going on to Option 2. Option 2 is that Article 40.3.3
26 should be replaced or amended with a new Constitutional
27 provision that directly addresses both termination of
28 pregnancy and any rights of the unborn. This
29 Constitutional provision as interpreted by the courts,

1 would limit the law making powers of the Oireachtas.
2 So, that is the difference between the two options.
3 The first option is that the Oireachtas has exclusive
4 power to make law. The Option 2 is that the provision
5 would be in the Constitution. It would be a
6 Constitutional provision and it would limit the law
7 making power of the Oireachtas.

8
9 This would, sorry, this could be implemented primarily,
10 this is Option 2 now, by a Constitutional provision
11 whether by way of replacement or amendment of Article
12 40.3.3 in conjunction with legislation or in certain
13 circumstances via legislation only.

14
15 You will also see there is a third voting option, as
16 there was on the last ballot, that can be selected.
17 "*Prefer not to state an opinion.*" Once again this is
18 included on the ballot paper to accommodate members who
19 may not wish to express a view on how change should be
20 effected.

21
22 Now, in relation to the presentation of the results. I
23 just want to again briefly refer to that. A sample
24 result sheet is now on the screen. Once again it will
25 specify the number of citizens eligible to vote and the
26 number of citizens who voted. The results will provide
27 details of the number of votes cast in respect of
28 Option 1, Option 2 and the third voting option, prefer
29 not to state an option. However -- that should be

1 "prefer not to state an opinion". Sorry about that.

2
3 However, for the avoidance of doubt, the majority would
4 be determined by reference to the total votes cast in
5 favour of Option 1 and Option 2. Now, the next steps
6 basically are that we would go into private session to
7 allow the members to discuss the draft ballot amongst
8 themselves and then do the discussion in round table
9 format and we will resume at 3.30, at which point we
10 will have a questions and answers session. Thank you
11 very much.

12
13 **FEEDBACK FROM MEMBERS AND Q&A**

14
15 **CHAIRPERSON:** would every one please take a seat
16 please. Just before we go on to the Q&A Session, it
17 was suggested to me by the Expert Advisory Group that
18 it would be no harm if I read into this ballot what I
19 stated in relation to Ballot 2 because it also applies
20 in relation to Ballot 3 and this is just to remind you.

21
22 It is important to note that voting for either Option 1
23 or Option 3 in Draft Ballot 3 may result in an outcome
24 that allows for the liberalisation of the current legal
25 regulation of termination of pregnancies or
26 alternatively, an outcome which results in the rights
27 of the unborn being given greater protection. This is
28 because both the legislation enacted in consequence of
29 a repeal or in consequence in Option 1 of the

1 Constitution allowing the Oireachtas to legislate,
2 giving it free rein in relation to legislation or, and
3 again I am going to emphasise, depending on its terms,
4 a provision replacing or amending Article 40.3.3 in the
5 Constitution could have either effect.

6
7 So, in either scenario the effect, the outcome could be
8 either, depending on the legislation or the amendment
9 made, the outcome could be either liberalisation or
10 greater protection for the unborn. So just to remind
11 you of that. Now, we'll start with the questions.

12
13 18 Q. **TABLE 6 - DAVE:** In relation to Option 2 if it was
14 selected, could you just clarify maybe how the law
15 making powers of the Oireachtas would be limited. It
16 says, like you know the actual wording and the
17 introduction to it says "as interpreted by the courts"
18 but could you specify exactly how that would work, how
19 it is limited please?

20 A. **PROFESSOR MADDEN:** So I'll take that question. So if
21 Option 2 is selected which indicates that there will be
22 a new Constitutional provision addressing the issue, so
23 the question is how would the power of the Oireachtas
24 be limited in that context. So I suppose this depends
25 on how you decide to vote in Ballot 4C and the extent
26 to which the Oireachtas adopts those recommendations
27 and the extent to which that's subsequently passed by a
28 Referendum of the people. So, you are given various
29 options in Ballot 4C to indicate your preference. So,

1 for example, if the Assembly were to vote in favour of
2 Option 2, as you've suggested and later in favour of
3 recommending, for example, to look at one of the
4 examples in 4C, if you voted in favour of recommending
5 that termination of pregnancy should be allowed in
6 cases where there's a serious risk to the health of the
7 woman, then if this was subsequently put to the people
8 in a Referendum and passed by the people in a
9 Referendum, then the Oireachtas would be constrained by
10 that and they couldn't pass legislation contrary to
11 that new Constitutional provision. Does that answer
12 your question?
13

14 **CHAIRPERSON:** Yes. Table 1, sorry, there's a mic over
15 here on Table 4.
16

17 19 Q. **TABLE 4 - FIONNUALA:** Good afternoon, Fionnuala from
18 Table 4. Just first of all on behalf of my table we'd
19 like to make a proposal that the ballot paper is
20 amended to say Option 1 would be "*Article 43.3.3 should*
21 *be replaced with a Constitutional provision that*
22 *explicitly authorises the Oireachtas to legislate, to*
23 *address the termination of pregnancy, any rights of the*
24 *unborn and any rights of the Mother.*" Option 2 would
25 be amended to say "*Article 40.3.3 should be replaced or*
26 *amended with a new Constitutional provision that*
27 *directly addresses termination of pregnancy, any rights*
28 *of the unborn and the rights of the Mother.*" we feel
29 that it's a bit worrying that the rights of the Mother

1 weren't included?

2 A. **CHAIRPERSON:** So you're taking out both?

3 20 Q. **TABLE 4 - FIONNUALA:** Taking out both and including the
4 rights of the Mother.

5 A. **CHAIRPERSON:** Including the rights of the Mother.

6 21 Q. **TABLE 4 - FIONNUALA:** Then not representing my table
7 but representing myself, I just wanted to say that it
8 is important to note that the options presented on this
9 ballot funnel us into voting on abortion and the rights
10 of the unborn only. Article 40.3.3 does not mention
11 termination or abortion and crucially it does have
12 effects outside of this area. This is disappointing.

13 A. **CHAIRPERSON:** sorry, would you remind repeating that.
14 I didn't quite get it?

15 22 Q. **TABLE 4 - FIONNUALA:** It is important to note that the
16 options presented in this ballot funnel us into voting
17 on abortion and the rights of the unborn only. Article
18 40.3.3 does not mention termination of pregnancy or
19 abortion and crucially it does have effects outside of
20 this area. This is a disappointment. I just want this
21 on the record?

22 A. **CHAIRPERSON:** Oh yes, I understand what you're saying,
23 yes. We'll deal with that suggestion variation.

24 A. **DR. DOYLE:** I see no problem with it, difficulty in
25 terms of how it would effect other votes. So, I've no
26 difficulty with it being put to the floor. Presumably,
27 there's logistical difficulties but that's not a reason
28 not to change it all.

29 A. **CHAIRPERSON:** Yes, yes.

1 A. **MS. FINEGAN:** Maybe put it to the vote. I think
2 probably the thing to do is if that's a recommendation,
3 I suppose it is conceivable that there are other
4 proposed amendments. So maybe we'll hold off on voting
5 on any amendments to the wording until the end of the
6 session.

7 A. **CHAIRPERSON:** I just have one question and that is
8 whether "and any rights of the woman" would be more
9 appropriate than the Mother because of the terminology
10 in the 2013 Act and all of that.

11
12 **SPEAKER:** Sorry, we took the Mother from the original
13 Article 40.3.3

14 **CHAIRPERSON:** All right, very good. We'll come back to
15 that and don't let me forget it please.

16 **MS. FINEGAN:** Table 10?
17

18 23 Q. **TABLE 10 - SPEAKER:** Good afternoon. Just a small
19 question regarding Option 2. In the case of Article
20 40.3.3 being replaced with a Constitutional provision
21 that addresses the rights of the unborn, who would be
22 the author or authors of that provision and would they
23 be expected to fully consider the recommendations and
24 findings of the Citizens Assembly also in drafting that
25 provision?

26 A. **DR. WALSH:** So, it's suggested in the first instance
27 this would be a recommendation in your report which
28 then goes to the Oireachtas Committee as I understand
29 it. So the first question would be where it would go

1 from there but if it got to the stage of drafting, then
2 my understanding is that drafting would be done through
3 the Departments and facilities in Government that are
4 responsible for drafting Constitutional Referenda. So
5 what you would be giving in your 4 Ballot would be an
6 indication as to the reasons and circumstances in which
7 you think the Constitution should be amended in the
8 various ways but it would then be a matter of drawing
9 up wording for a proposed Referendum, a matter for the
10 drafters attached to working with your office committee
11 and the public generally. I don't know if the Chair
12 has any other thoughts on that?

13 A. **CHAIRPERSON:** No, no, I mean that is the case. We are
14 putting this in very general terms. We'll look at it
15 in more depth in Ballot 4, whichever Ballot 4 we go to.
16

17 24 Q. **TABLE 1 - FACILITATOR:** Thank you, Judge. I'm the
18 Facilitator for Table 1 and the citizens at this table
19 have two questions for the panel. The first question
20 is if Option 1 is carried, does this create an explicit
21 mandate for the Oireachtas to create legislation and if
22 so, is there an explicit timeframe between passing a
23 Referendum and devising the legislation and the second
24 question is if Option 2 is carried does this mean that
25 the specific reasons for termination would go into the
26 Constitution. Thank you?

27 A. **DR. DOYLE:** Okay. So I'll take those questions. First
28 of all, obviously what comes out of here is
29 recommendations to the Oireachtas for the Oireachtas to

1 consider, okay but if we take the question as if Option
2 1 is carried, in terms of if there were to be a
3 Referendum carried in terms of Option 1, that wouldn't
4 create any obligation on the Oireachtas to create new
5 legislation. The existing legislation for the 2013 Act
6 would continue in force but the Oireachtas would be
7 free to change that legislation at any time it wanted,
8 in any way that it wanted because the Oireachtas would
9 have full power to regulate issues around termination
10 of pregnancy and so on and I think it follows on from
11 that that there's no question of a timeframe between
12 the Referendum having to pass legislation. In response
13 to question 2, as if Option 2 was carried. Again, does
14 this mean that the specific reasons for termination go
15 into the Constitution, yes.

16
17 25 Q. **TABLE 14 - JORDAN:** Jordan from Table 14. I just
18 wanted to ask a question of clarification I suppose on
19 the wording of Option 1 and 2. Clarification regarding
20 the distinction between the termination of pregnancy
21 versus the word abortion because on a number of
22 occasions the Assembly received information from both
23 advocates and professionals drawing distinctions
24 between either phrase, most memorably Dr Angelo
25 Libertino, a staunch anti-abortion advocate, said that
26 he had no issue with termination of pregnancy because
27 the unborn might survive outside of the womb. I
28 suppose termination of pregnancy also allows for the
29 2013 Protection of Life during Pregnancy Act, so it is

1 not unconstitutional because it's a termination of
2 pregnancy and not an abortion. So, I was wondering
3 could there be some, I suppose, legal clarification on
4 the difference between the words and/or medical
5 clarification or input. Thank you?

6 A. **DR. WALSH:** Thanks very much. I'll take that question
7 for you. I suppose just to give you a sense of where
8 we arrived at the choice of terminology for the draft
9 wording. We were influenced by the fact that the 2013
10 Act uses the phrase Termination of Pregnancy and also
11 in consultation with our medical colleagues on the
12 panel, that in medical practice the word abortion is
13 generally not used and in terms of your question about
14 the constitutionality of the 2013 Act, I suppose it's
15 important to note that neither the 2013 Act itself nor
16 the case on which it's based, the X case, expressly
17 deals with the issue of gestational limits. So it's
18 not to say that there isn't the possibility that those
19 might be implicit but it has never been expressly dealt
20 with, either on the face of the legislation or in the
21 case but as you'll see when you move on to looking at
22 the next draft ballots, there is scope for
23 differentiation in terms of gestational limits on the
24 different grounds that are being put to you. So, I
25 think we definitely see the point that's being made
26 about the potential for confusion in terms of the use
27 of terminology. So, what I'd be suggesting if it was
28 something that would be satisfactory for that table and
29 anyone else in the room who shares the view, would be

1 that we on the group would have a look at that wording
2 overnight and before we would come to ballot 4, be able
3 to come back to you with some discussion on whether
4 that wording works appropriately or not. For the
5 purposes of Ballot 3, we're using the word 'Termination
6 of Pregnancies, that phrase in quite general terms to
7 cover the issue more broadly. So, I don't think it is
8 of crucial importance at this stage but certainly I
9 think we do need to look at it before Stage 4. I think
10 it's an important point that has been raised. Liz, do
11 you want to add anything on that?

12 A. **DR. DUNN:** No.

13

14 26 Q. **TABLE 7 - FACILITATOR:** Judge, I'm the Facilitator for
15 Table 7 and I have two questions from two of the
16 members of the table. The first one is if Option 1 is
17 chosen by the majority, would this mean Article 40.3.3
18 could be taken out of the Constitution and the second
19 question is, in Option 1 it states "addresses
20 termination". Does this mean that the Oireachtas could
21 choose retain the status quo and not liberalise it any
22 further?

23 A. **DR. WALSH:** Could you just repeat the first part of the
24 question please?

25 27 Q. **TABLE 7 - FACILITATOR:** The first question or the
26 second question?

27 A. **DR. WALSH:** The first question?

28 28 Q. **TABLE 7 - FACILITATOR:** If Option 1 is chosen by the
29 majority would this mean Article 40.3.3 could be taken

1 out of the Constitution?

2 A. **DR. WALSH:** So, the answer is yes. Okay, so what
3 Option 1 does is to propose the replacement of Article
4 40.3.3 with an entirely new Constitutional provision.
5 So, the current text comes out and a new provision goes
6 in to the effect as you see there set out in the
7 ballot, that the Oireachtas is expressly authorised to
8 legislate to address termination of pregnancy and
9 rights of the unborn and subject to a possible
10 amendment that is being proposed, the rights of the
11 woman as well. So you would have heard and remember
12 probably from Brian Murray's paper and presentation,
13 that canvassed as one of the options that could be used
14 to address some of the uncertainties around the
15 consequences of repeal, that one way around that would
16 be to insert this kind of provision expressly into the
17 constitution but yes, the short answer is this would
18 result in 40.3.3 as is coming out of the Constitution.

19 A. **PROFESSOR MADDEN:** And I'll answer your second question
20 which was looking at the word addresses in Ballot 1, in
21 Option 1, sorry. So in Option 1 where it says "*it*
22 *authorises the Oireachtas to legislate to address*
23 *termination of pregnancy and any rights of the unborn*",
24 I think your question was does this mean the Oireachtas
25 could choose to retain the status quo and not to
26 liberalise it any further and the answer is yes,
27 because you're giving the Oireachtas the power. So
28 they could either retain the status quo as is in, for
29 example, the 2013 Act or they could change the status

1 quo by changing the 2013 Act or repealing the 2013 Act.
2 The Oireachtas may be guided by or influenced by the
3 recommendations that you make in answer to question 4B
4 but that would be a matter to go into your final report
5 and the extent to which the Oireachtas would be
6 influenced by those recommendations in drawing up any
7 subsequent legislation.
8

9 29 Q. **TABLE 5 - FACILITATOR:** I'm the Facilitator for Table 5
10 and there's two questions here from the table. The
11 first one is can a Referendum Ballot Paper have
12 numerous options in relation to one topic. The second
13 question and point of clarification will be asked by a
14 member, by a citizen but I would like to state that
15 during the round table discussions there was mixed
16 views expressed.

17 A. **CHAIRPERSON:** There was what?

18 30 Q. **TABLE 5 - FACILITATOR:** There was mixed views expressed
19 by all the members but one member would like to ask a
20 question and get some clarification?

21 A. **CHAIRPERSON:** well let us perhaps deal with the first
22 question first about the content of a Referendum.

23 A. **DR. WALSH:** So just to clarify what you're asking.
24 It's the position that you could have a number of
25 distinct issues on one ballot paper but not a breakdown
26 of multiple options within one issue. Does that answer
27 your question?

28 31 Q. **TABLE 5 - FACILITATOR:** Yes.

29 32 Q. **TABLE 5 - CITIZEN:** Hello there, I'm a citizen from

1 Table 5. A comment on Option 2 and a query on Option
2 1. Now, most of the people here at the table agreed
3 Option 2 is fine as it is as it provides an option for
4 those of us who wish to retain Article 40.3.3 and the
5 Constitution and retain in somewhat or to provide small
6 changes in a few circumstances while still giving
7 rights to the unborn. So, we've no problem with Option
8 2. However, some of us have a query on Option 1, is
9 that what we should recommending is a Constitutional
10 change should be very straightforward in its wording
11 but it should be formed to give total power to the
12 Oireachtas to legislate in all circumstances on the
13 matter of terminations. Now, some of us fear that
14 putting in too much wording will bring us back to
15 40.3.3 or maybe back to Option 2. So, the question is,
16 is it necessary to have in Option 1, to have the words
17 *"and any rights to the unborn"* included in this option.
18 Now, so I'm just asking why were they put in, so as to
19 differentiate it from Option 2, why were these words
20 put in. Should these words be retained. Why should
21 they be retained and if the Assembly so wishes can they
22 be removed?

23 A. **DR. WALSH:** I'll answer your question. I think the
24 first thing to say is that the wording refers to any
25 rights of the unborn. Okay, so our reasoning behind
26 using the word "any" in that space as opposed to the
27 words "the rights of the unborn" was to capture the
28 fact that you're alluding to, which is that legislative
29 change, coming on from that might be to the effect that

1 there would be no rights for the unborn and that might
2 be the intention of citizens in voting for such a
3 provision. So, the use of the word "any" was intended
4 to capture the fact that you're not presupposing that
5 those rights are there and you go on in Ballot 4 to be
6 able to indicate through your choices in Ballot 4
7 whether you think those rights should be there at all
8 or in any circumstances. So that was the reasoning
9 behind having the use of the word "any" and certainly
10 as the Judge alluded to, Option 1 can capture
11 legislation, can capture giving authority to the
12 Oireachtas resulting in legislation that would either
13 liberalise or restrict the current abortion regime but
14 it is a conferral of authority on the Oireachtas to
15 deal with those issues.

16 33 Q. **TABLE 5 - CITIZEN:** So can I make a recommendation that
17 we just -- I put it to the Assembly that we drop the
18 wording "*and any rights to the unborn*" from Option 1.
19 Is that possible?

20 A. **DR. WALSH:** I would suggest that probably it's related.
21 We need to consider the two proposed amendments in
22 conjunction because I think they may, in terms of how
23 they'd be best giving effect to be linked. So it might
24 be appropriate to consider those together.

25 A. **CHAIRPERSON:** Maybe we'll, as they say in the courts,
26 rise for a minute or two. In fact it will be a little
27 bit perhaps longer than a minute or two. When we take
28 all the questions and then we'll rise and we'll discuss
29 it. We'll discuss both of those. Any other question?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

34 Q. **TABLE 10 - FACILITATOR:** Hi, I'm the Facilitator here for Table 10 and I've been asked to ask the following question. If the majority vote is for Option 2 with a new Constitutional provision that directly addresses both termination of pregnancy and any rights of the unborn with reference to the ballot of 4C, Part 2, are the recommendations 1 and 2 not at odds with each other?

A. **CHAIRPERSON:** Say that again.

35 Q. **TABLE 10 - FACILITATOR:** Are the recommendations 1 and 2 not at odds with each other?

A. **CHAIRPERSON:** That's (i) and (ii)?

A. **MS. FINEGAN:** Can I just confirm do you mean the recommendations from Ballot 1 and Ballot 2, is that what you mean?

A. **CHAIRPERSON:** No, part (ii) of Ballot 4C is what I think he's talking about.

36 Q. **TABLE 10 - FACILITATOR:** It's Ballot 4C, part (ii)?

A. **CHAIRPERSON:** And you think there's an inconsistency between those two, is that your point?

A. **DR. DOYLE:** I can address this question I think. The question really then is what's the difference between 1 and 2 within part (ii) of Ballot 4C. What it does is the reason it has been structured like that is to allow the Citizens Assembly in Ballot 4, if it wishes to empower the Oireachtas more in some areas than others. So there's eight things at present that you will be asked to vote on in whichever of the Ballot 4's we get

1 to but let us assume it is Ballot 4C for present
2 purposes and it may be that in some of those citizens
3 want to retain clear provisions in the Constitution and
4 put quite a bit of detail in the Constitution but in
5 respect of others that they might want to give more
6 scope to the Oireachtas to make the rules. So it is a
7 good point to raise now because it is then obviously
8 relevant to your choice in Ballot 3, as to whether you
9 choose between Option 1 and Option 2. In choosing
10 Option 2 you would be allowing yourself in Ballot 4C
11 the possibility on some issues to make a very clear
12 statement in the Constitution and on other issues to
13 give more power to the Oireachtas.

14 A. **CHAIRPERSON:** To legislate.

15 A. **DR. DOYLE:** To legislate, yes.

16 A. **CHAIRPERSON:** Does that answer your question, yes,
17 thank you. Any other questions?

18
19 37 Q. **TABLE 11 - FACILITATOR:** I'm the Facilitator for Table
20 11. A citizen at this table has asked me to ask the
21 following question. Which option is more likely to
22 result in a more liberalised situation than currently
23 exists?

24 A. **CHAIRPERSON:** That's a matter of policy, isn't it
25 really.

26 A. **DR. DOYLE:** I think we can answer it, although it may
27 not be a satisfactory answer. In principle, they are
28 all equally open to either approach and beyond that
29 it's a matter for your own political judgement as to

1 which you think is more likely to happen to give the
2 result that you wanted to give and obviously different
3 members will have different views on that.

4
5 **CHAIRPERSON:** Any other questions. All right, we'll
6 sit again here at ten past four and we'll consider
7 those two questions.

8
9 **BRIEF ADJOURNMENT**

10
11 **CHAIRPERSON:** Very good. We took a little longer than
12 expected but I'm going to ask Oran to deal with the two
13 issues together.

14 **DR. DOYLE:** Thanks, Judge. So maybe to explain first
15 again the rationale for Ballot 3 and why it is there.
16 So the purpose of Ballot 3 is to get at the question of
17 where issues of termination of pregnancy, the rights of
18 the unborn and the rights of women in that context
19 should be regulated. Should they be done in the
20 Constitution or should they be left to the Oireachtas
21 and one of the reasons that Ballot 3 is there is the
22 uncertainty over what the consequences of repeal might
23 be because we are aware and from feedback from the
24 members, that many of the reasons why people have
25 advocated for repeal are to do with giving power back
26 to the Oireachtas.

27
28 Given that the legal advice to the Assembly has been
29 that it's not clear that repeal would achieve that end,

1 it seemed important to us to come up with a ballot that
2 would give the members of the Assembly the option of
3 voting for something which very clearly would give the
4 power to the Oireachtas to deal with these sorts of
5 issues. So that's why Ballot 3 is there and in
6 choosing the precise wording of Option 1 and by
7 extension Option 2, but I think focus on Option 1 is
8 easier, we wanted to be sure that it was as clear as
9 possible that the Oireachtas would, if it were voted
10 for, have a full power over these sorts of issues. So,
11 we wanted to include things within the grant of power.

12
13 So, going back -- well first of all then, addressing
14 the second proposal that was made about removing the
15 phrase "*any rights of the unborn*" we think that that
16 would undermine the clarity of the choice between
17 Option 1 and 2 because if you leave out the phrase "*any*
18 *rights of the unborn*" from Option 1, what you are
19 saying is that the Oireachtas wouldn't have authority
20 to legislate to address those rights of the unborn and
21 you leave open the possibility that a court might in
22 future decide that rights of the unborn are protected
23 in another provision of the Constitution implicitly and
24 that that might be used to constrain the power of the
25 Oireachtas. So in a sense in response to a question
26 coming from this table, including the phrase "*any*
27 *rights of the unborn*", is done not to presuppose that
28 there are rights of the unborn that should be protected
29 but to make it clear that if Option 1 is voted for and

1 accepted by the Oireachtas, the Oireachtas would have
2 the power to either restrict or protect the rights of
3 the unborn as it sees fit but it is to make it clear
4 that the Oireachtas has power over that issue.

5
6 So, I think the view, having discussed it and I'll hand
7 over to the Judge in a minute or two, is that it's
8 better to leave that within both Option 1 and Option 2.
9 That said, we do think that the options read better and
10 are more balanced and also are clearer about the fact
11 that the choices between giving a lot of power to the
12 Oireachtas to regulate these issues are not if we were
13 to accept the first proposal that was made to include
14 the phrase "*and any rights of the woman*". So, I think
15 the proposal but as with all issues on the Ballot
16 Paper, it's a matter for the Citizens Assembly to
17 decide whether you're happy with the proposal or not
18 but the proposal is that Option 1 and Option 2 would be
19 amended along the lines suggested from Table 4 I think,
20 so that it would be Article 40.3.3 should be replaced,
21 it's up there now, should be replaced with a
22 Constitutional provision that explicitly authorises the
23 Oireachtas to legislate to address termination of
24 pregnancy, any rights of the unborn and any rights of
25 the woman.

26
27 **DR. WALSH:** And maybe just to add to that in light of
28 the comments from Table 4, a benefit, as we see it of
29 this approach and with effect not taking the proposal

1 from this approach, to take any rights of the unborn
2 out, is that it does keep the wording of the provision
3 broader than simply confined to termination of
4 pregnancy. So, it does have greater breath than an
5 amendment that would simply be focused on the
6 termination issue. So, we think that marrying the two
7 proposals together in this way provides, as Oran said,
8 balance but also keeps greater breath in light of the
9 comment that was raised from over here as well.

10
11 **CHAIRPERSON:** And consistency I think as well, which is
12 very important. I mentioned it earlier. Are members
13 clear about what we've just said. Would anybody like
14 to ask a question?

15
16
17 38 Q. **TABLE 4 - FACILITATOR:** Hi, I'm the Facilitator from
18 Table 4. There's just a quick question from one of the
19 members. There was a discussion earlier about Mother
20 or woman, which word would be used, which word was
21 settled on in the end?

22 A. **CHAIRPERSON:** We're thinking of woman.

23
24 39 Q. **TABLE 14 - SPEAKER:** I just want to clarify, if any
25 rights of the woman is included in that instance, does
26 that mean -- I mean I'm just saying is this just with
27 regards to pregnancy or is this women's rights in
28 general are now in the option, the Oireachtas would
29 have the power to legislate on any aspect of a woman's

1 life and would not have to refer to the Constitution,
2 like other provisions within the Constitution, is that
3 right or no?

4 A. **DR. DOYLE:** I think that's a good point. Obviously
5 we're not drafting what the constitutional provision
6 might be but I think in terms of guidance to the
7 Oireachtas as to what we're thinking, perhaps the words
8 in this context.

9 40 Q. **TABLE 14 - SPEAKER:** Sorry, one of my fellow members
10 here has said that maybe changing it to "*the rights of*
11 *the woman*" maybe would just kind of --

12 A. **CHAIRPERSON:** Sorry, would you repeat that again
13 please?

14 41 Q. **TABLE 14 - SPEAKER:** Just that if it was changed to the
15 rights of the woman maybe that would resolve that. If
16 that's an issue, I don't know?

17 A. **DR. WALSH:** I suppose again that would probably have a
18 generality. I think the problem that you're raising
19 about generality here is an important one given the
20 breath of other rights outside of this context that are
21 dealt with in the Constitution. So, I think you're
22 right. We probably need to come up with some wording
23 to contextualise what we're talking about here in terms
24 of the rights of the woman. So we can do that.

25 A. **CHAIRPERSON:** I would have assumed that it would be
26 interpreted as the words, the rights of the woman would
27 be interpreted in the context of termination of
28 pregnancy and any rights of the unborn but we could put
29 in the words "in the context". That would be my

1 feeling about it but there could be a different view on
2 it of course.

3
4 42 Q. **TABLE 4 - CITIZEN:** That's why I think it's the
5 difference between the words "rights of the woman" and
6 as in the Constitution the rights of the Mother because
7 if we're taking it purely under the Article 40.3.3 what
8 it says is "*the unborn and the rights of the Mother*".
9 So when you change it to woman it could be interpreted,
10 as somebody else in the room has said, woman as a
11 standalone word and entity whereas when we're talking
12 about in conjunction with the unborn and the Mother is
13 where I think the clarity comes?

14 A. **DR. WALSH:** Yes, the pregnant woman.

15
16 **MS. FINEGAN:** Sorry, can we just have quiet, we've
17 another question, thanks.

18
19 43 Q. **TABLE 5 - CITIZEN:** Sorry, it's just a point of
20 confusion over the previous round of questions. I just
21 wanted to ask a question of Mr. Doyle. There was --
22 another table asked a question in relation to if we
23 were to go to with Option 2, would it mean that the
24 Constitution would then have to contain a list of the
25 different circumstances under which abortion might take
26 place and you answered the question yes. To me that
27 sounded like that that would be -- all the details
28 would have to be contained within the Constitution but
29 if you vote for Option 2, it says down at the bottom of

1 the page that you go to Ballot 4C and part 2 of 4C
2 indicates that you can have all those options in
3 legislation only, which seems to be a contradiction?

4 A. So, the way -- so, Ballot 4C, Part 2, (ii) you would
5 still need a provision which would say, and we can look
6 at it in more detail when we come on to Ballot 4C, if
7 that's the one we get to tomorrow, but you would still
8 need a provision in the Constitution that would say
9 something like there should be an exception, just take
10 that purely random example, hypothetically for
11 pregnancy as a result of rape, the Oireachtas must
12 enact the laws in relation to this. So, you'll still
13 need something in the Constitution to identify that the
14 Oireachtas had the power to enact all of the laws in
15 relation to that exception.

16 44 Q. **TABLE 5 - CITIZEN:** But references then to those
17 individual circumstances would have to be listed in the
18 Constitution and then in turn dealt with in legislation
19 as well?

20 A. **DR. DOYLE:** Yes.

21 A. **DR. WALSH:** I think the key phrase in that ballot, 42,
22 part 2, is implementation. So, what you're concerned
23 in (i) and (ii) in Ballot 4C is the implementation, the
24 working out in substance as to how these different
25 grounds would be dealt with and the question is whether
26 you want a significant amount of that done at
27 constitutional level or wholly in legislation. That's
28 what is being asked in that part.

29 45 Q. **TABLE 5 - CITIZEN:** Then you get into the scenario of

1 toing and froing, constantly changing the Constitution
2 with these details in it. Could a generic wording be
3 put in and then that row of legislation, option 2's,
4 would bear fruit in terms of legislation in different
5 circumstances. I don't understand the level of detail
6 that's required to be put into the Constitution?

7 A. **DR. WALSH:** well it would have to signal, if you were
8 going the route of having particular reasons for
9 abortion as opposed to generally giving the power to
10 the Oireachtas, those reasons would have to be
11 indicated at Constitutional level and how those would
12 be given effect to could be dealt with in legislation
13 as opposed to in the Constitution.

14 46 Q. **TABLE 5 - CITIZEN:** why? why would you have to put
15 those in the Constitution, I'm sorry, I don't
16 understand?

17 A. **DR. WALSH:** well I suppose it comes back to the fact
18 that the two options that you're looking at in Ballot 3
19 are whether you're explicitly granting the power to
20 deal with this to the Oireachtas or you're holding back
21 at a Constitutional level certain powers to limit how
22 the Oireachtas can deal with the issue of termination.
23 So, in doing so the purpose of Option 2 is to indicate
24 at a Constitutional level where those instances of
25 constraint on legislative power should be.

26 A. **MS. FINEGAN:** And if I could just add, I mean part of
27 the reason why this is here is based on the feedback
28 from the members at the last meeting, where we saw from
29 the feedback form that we got, that in some cases

1 members said you know that they may want to allow the
2 legislature to have power over certain instances but
3 there were certain things that certain members wanted
4 to see constrained in the Constitution. So that was
5 the specific feedback that we got and so that's what
6 this ballot provides for. So, it's not to say that, as
7 you say rightly somebody, if you get to Ballot 4C,
8 somebody could tick legislation only in all cases but
9 others may wish to select that the Constitution in some
10 cases may have a constraint in those certain
11 circumstances. That's the reason why it's there. It's
12 because based on some of the feedback that we got it's
13 to provide --

14 47 Q. **TABLE 5 - CITIZEN:** But the crux of what I was getting
15 at is to try and avoid the situation where there's a
16 high level of detail going into the Constitution and
17 there's a lot of hassle then as a result of trying to
18 govern the whole thing?

19 A. **DR. DOYLE:** If that's what you want to achieve and
20 obviously people can have arguments about that on both
21 sides but that's what Option 1 allows for because it
22 doesn't have -- the detail would be just saying pass
23 the job over to the Oireachtas.

24 48 Q. **TABLE 5 - CITIZEN:** Okay, thank you.

25
26 49 Q. **TABLE 4 - CITIZEN:** Hi, I know this was passed into yo
27 inside and I've been asked by -- on my last count, 13
28 members across the room, to raise the fact that there's
29 a concern over the influence that Brian Murray's paper

1 has had on Ballot 2, in particular, now apologies, let
2 me grab my notes, in particular basically the fact that
3 there was too much emphasis on the uncertainty if we
4 were to vote for repeal and that Brian Murray's paper
5 was emphasised immediately proceeding the Ballot and
6 that it was emphasised without alternate opinions. As
7 an example, one of my colleagues has provided me with
8 another legal scholar, Mairead Enright, who published a
9 piece. It said

10
11 *"after repeal the court would likely find that the*
12 *State is entitled to protect foetal life but that this*
13 *entitlement must now be balanced against pregnant*
14 *women's rights, not only to life but also health and*
15 *autonomy."*

16
17 There is a query as to whether or not Brian Murray's
18 paper influenced the vote and if a break had been taken
19 and sufficient time to reflect had been given, would a
20 different result have been reached. I've been asked to
21 raise that on behalf of -- in and around 10% of the
22 members of the Assembly and that's just the ones I've
23 spoken to. So I wanted to put that to Expert Advisory
24 Group and the Secretariat please?

25
26 **CHAIRPERSON:** I'll hear another question.

27
28 50 Q. **TABLE 5 - CITIZEN:** Sorry, the citizen on Table 5 here
29 that put the original recommendation to delete any

1 rights to the unborn. Now, we're here for five months
2 debating the Eighth Amendment to the Constitution in
3 Article 40.3.3. We've already voted to delete Article
4 40.3.3 from the Constitution and now we've ended up
5 with another way of wording in Option 1, to vindicate
6 the rights of life of the unborn with equal right to
7 life of the Mother, in just another wording. So, I
8 still think we should delete the last eleven words of
9 Option 1 and that if people believe that the right to
10 life of the unborn should be vindicated and with the
11 equal right to life of the Mother they should vote for
12 Option 2 and I still propose that we delete the last
13 eleven words of Option 1 because it seems to bring us
14 back to square one, where we started four or five
15 months ago with exactly the same wording, going forward
16 to Dáil Committee for recommendation?

17 A. **DR. DOYLE:** well I take your point, okay. With respect
18 I disagree that that's the effect of the wording of
19 Option 1 as proposed. If we did, if I understand what
20 you're suggesting is, excusing me for not counting the
21 words, but that you end after the words "to legislate".
22 Is that right, so *"Article 40.3.3 should be replaced*
23 *with a Constitutional provision that explicitly*
24 *authorises the Oireachtas to legislate."*

25 51 Q. **TABLE 5 - CITIZEN:** From *"any rights to the unborn and*
26 *any rights to the Mother"*?

27 A. **CHAIRPERSON:** Oh yes, you're leaving in termination of
28 pregnancy.

29 A. **DR. DOYLE:** I think it isn't the same as the existing

1 40.3.3 because it doesn't talk about vindicating the
2 rights of the unborn or protecting the rights of the
3 unborn. What it does is it makes it clear that the
4 Oireachtas can address the rights of the unborn, sorry,
5 address any rights of the unborn which could include
6 restricting those rights or protecting them further and
7 if you don't include that, my view is that there is a
8 risk from your perspective I think because you are
9 somebody, if I understand you correctly, you want the
10 Oireachtas to have a broad power on these issues but it
11 does open up a risk that the Oireachtas would find
12 itself constrained because it hasn't explicitly been
13 given the power to address the rights of the unborn and
14 there is an argument that there are rights of the
15 unborn implicitly protected by Article 40.3.3.1 and so
16 you might not achieve what it is that I think you are
17 trying to achieve. I don't have any view on what you
18 should be trying to achieve but from what I understand
19 you are trying to achieve, I think you can achieve that
20 better by leaving in the phrase "*any rights of the*
21 *unborn*".

22 A. **DR. WALSH:** I might just add on that, for the
23 Assembly's consideration obviously in all of these
24 proposals, just to reiterate that taking out those last
25 eleven words would bring you to a situation where the
26 proposed amendment that you would be putting forward in
27 the recommendation only deals with termination of
28 pregnancy and not any other issues that might be
29 related to the Eighth Amendment as it currently stands.

1 It would be a very specific terminology that would be
2 used and its limits would be clear in that respect.

3
4 52 Q. **TABLE 6 - SPEAKER:** The way I look at it, with the two
5 options that we have, Option 1 is basically to give --
6 maybe if you call it unlimited power to the Oireachtas
7 they'll come up with legislation. Option 2 is to limit
8 that. To get caught up now at this stage with commas
9 and ands and rights and this woman with mother and I'm
10 not being flippant and I'm not demeaning anybody or
11 anything, is kind of losing the point because the next
12 question that will be asked after this debate on this
13 section will be do we have to go through that again now
14 tomorrow with 4B and 4C. Are those words okay?

15 A. **CHAIRPERSON:** Are those words?

16 53 Q. **TABLE 6 - SPEAKER:** with the way that words are being
17 added or changed or whatever and these two ballots,
18 will they now effect 4B and 4C tomorrow or have we to
19 go through the same thing again. I mean ultimately
20 we're coming up with recommendations when we're
21 finished but to get bogged down here and now, all this
22 is going to do is move us on to the next stage of the
23 process and we have all our options then in 4B and 4C,
24 which include the word 'woman' and 'unborn' and
25 everything else. So, I think we're getting bogged down
26 here on this and potentially to get bogged down on this
27 then could bog us down then tomorrow because we have to
28 go through the whole thing again. Is this word right,
29 is this comma right. So, I think we should just move

1 on from this. Choose our Option 1 and Option 2 and
2 then tomorrow, which will be further down the line of
3 where we need to be as regards putting recommendations
4 to the Government, we'll have a better choice because
5 there is more options given to us when we're voting.
6 That it will be better placed to actually decide what
7 to choose. Just an opinion.

8 A. **CHAIRPERSON:** Yes. Any other question?

9
10 54 Q. **TABLE 11 - FACILITATOR:** I'm the Facilitator for Table
11 11. Just two comments. First, in clarifying the
12 implications of Option 2, the table have looked at how
13 divorce is handled. Page 164 of the Constitution, the
14 issue of divorce as covered in the Constitution is made
15 up of general principles and then lists specific
16 circumstances and also has a catch all provision at
17 (iv). Just it was submitted by this table that that
18 might assist any other citizens who were wondering how
19 Option 2 might work in practice and then another
20 citizen would like to me to comment. *"I know I am
21 trying to achieve but I am now so confused I don't know
22 how to get there through the remaining ballots."*

23
24 A. **TABLE 7 - FRANK:** Hi, it's Frank here from Table 7.
25 I'd just like to address the issues raised at Table 4
26 and the huddle that took place with regards to the
27 influence of the legal information we had before the
28 last ballot and that that had in somehow hoodwinked us
29 or confused us into voting the way we did. We have sat

1 here for five and six weeks. we're intelligent people.
2 I've heard the same groups argue in different times and
3 different places that we don't need to be condescended
4 to in some way. We voted the way we voted. I didn't
5 like the way the first vote went but I've stayed and
6 voted for the second vote and we voted the way we voted
7 and if people would want to claim that we were misled
8 in some way I just think it's a farce. I'm sorry but
9 I'm angry by that. I'm angry by a forum of influence
10 taking place just prior to a vote.

11

12 **CHAIRPERSON:** Very good. Anybody else, any other
13 observations?

14

15 55 Q. **TABLE 8 - CITIZEN:** I would just like to second Frank
16 there. That there was quite a bit of lobbying going on
17 and I object to that because everybody came here
18 through innocence and to have their own views and there
19 has been quite a lot of lobbying going on, particularly
20 before this vote that is going to happen now.

21

22 56 Q. **TABLE 12 - CITIZEN:** Member from Table 12. I propose
23 that we move on with the ballot as presented in the
24 draft for paper 3.

25 A. **CHAIRPERSON:** And sorry, your last observation?

26 57 Q. **TABLE 12 - CITIZEN:** That we proceed with the vote on
27 Ballot 3 with the draft as originally proposed to us?

28 A. **CHAIRPERSON:** As originally proposed. I just wanted to
29 be quite clear, that that's what you were saying. All

1 right.

2

3 58 Q. **TABLE 5 - CITIZEN:** Hi, a member from Table 5. Just to
4 comment on the lobbying comment. I asked a question
5 earlier to clarify what was the difference between
6 having a -- sorry, voting on Ballot 2, what was the
7 specific difference between choosing Option 1 which
8 would lead us to Ballot Paper 4A and Option 2 which
9 would lead us to Ballot 3, Option 1. I'm sorry, this
10 is longwinded. My understanding was that the only
11 difference between those two options were that Option 2
12 was stronger legally. That the legislation that the
13 Oireachtas could put through could not be subject to
14 constitutional argument at the Supreme Court level and
15 that it would be stronger legislation as a result of
16 having the provision in the Constitution that
17 specifically said we're taking out 40.3.3 and we're
18 replacing that with a statement saying we're giving the
19 Oireachtas the power to legislate for this. Is that
20 true?

21 A. **CHAIRPERSON:** we're talking about Ballot 3 not Ballot
22 2.

23 59 Q. **TABLE 5 - CITIZEN:** I know but I want to address what
24 the member over here on Table 4 said and about the
25 huddle that happened here because I have spoken to a
26 couple of people myself who were confused after they
27 made the vote on Ballot 2, they seem to feel that now
28 on Ballot 3 we're not where we thought we were going to
29 be. That's what I'm trying to say?

1 A. **CHAIRPERSON:** I'm not sure I understand what you're
2 saying. I understood you to be talking about Ballot 2
3 first of all but you are really talking about Ballot 3
4 are you?

5 60 Q. **TABLE 5 - CITIZEN:** Originally, sorry, originally I
6 stood up and asked this question before we had Ballot
7 2. Okay and my understanding was that the main
8 difference between the two options that I've outlined
9 were that the choosing Option 2 which led us to Ballot
10 3 left us in a stronger position than the Oireachtas
11 had more power in terms of legislating in this area and
12 I'm just slightly concerned now that we seem to be in
13 an area where it feels like that they might actually
14 have less power or that it could be -- sorry, they have
15 more power but it could mean that there's no change.
16 That's my theory is concerned now. That I've got
17 myself into a situation where I've voted a certain way
18 because I felt that legally that was the advice I was
19 getting and that now maybe I'm not where I thought I
20 was going to be. Apologies for sounding stupid?

21 A. **DR. WALSH:** So if I can just make sure I'm
22 understanding your point first of all and then give you
23 my response to it. Your concern is that in voting for
24 option 2, replace or amend as opposed to repeal, your
25 aim in doing that was to get yourself into Ballot 3 and
26 in that give the Oireachtas a firm legislative mandate
27 that wouldn't be susceptible to any legal uncertainty
28 or challenges. To deal freely with these issues
29 without any restriction as to grounds or reasons et

1 cetera. Is that correct in my understanding?

2 61 Q. TABLE 5 - CITIZEN: Yes.

3 A. **DR. WALSH:** So the aim of Option 1 in Ballot 3 is to do
4 exactly as you are suggesting. It is to, reading the
5 wording to you again, "*explicitly authorise the*
6 *Oireachtas to legislate to address these issues.*"

7 Okay, and the purpose there is to deal with the fact
8 that you've heard that there is legal uncertainty
9 around the implications of repeal and you've heard that
10 from Brian Murray and the advice that he gave to the
11 Assembly but you've also heard it, if I can just refer
12 back to the advice that was read out by Table 4. The
13 advice that was read out said "likely to be the case"
14 because nobody can say with certainty what the impacts
15 are. There's lots of different interpretations.
16 Different people have views as to which are more
17 plausible or likely than the other and Brian Murray
18 gave his view as to the most plausible outcome but
19 there's uncertainty there. So the aim in framing
20 Ballot 3 in the way that we did, was to get around that
21 concern and have an option on the ballot that
22 regardless of the view that's taken as to the
23 interpretation that would be taken at repeal, there was
24 an option for the citizens to vote for that would give
25 a secure footing to the Oireachtas to legislate on
26 these issues.

27
28 So, that's the aim of Ballot 3 and we are tinkering
29 with the wording now in trying to get that right but

1 that was the framing, the intention in framing that the
2 way we did and sequencing the way we did. Does that
3 answer?

4 62 Q. **TABLE 5 - CITIZEN:** Yes, that was my understanding. I
5 just got confused momentarily. Thank you.

6
7 **CHAIRPERSON:** All right. Well I suppose I should deal
8 and give my view on what was stated by Fionnuala in
9 relation to the information we have given in relation
10 to Ballot 2 and in particular 1 in Ballot 2. I mean
11 this is live streamed. It will be available on line
12 but not only that, we have a Stenographer here and we
13 will have a transcript of what was said but just
14 looking at the notes from which I read, what I said was
15 the important point is that it cannot be said with
16 certainty, just with certainty, which consequence would
17 prevail if Article 40.3.3 was simply repealed. Then I
18 referred to Mr. Murray's three views and I did in
19 there, there could be more, you may remember that and
20 his three views on what the consequences of repeal
21 would be and then I itemised them one, two and three
22 and then I said, number one was that the form of
23 abortion legislation would be exclusively be a matter
24 for the Oireachtas. That was number one.

25
26 Then I said that he indicated that his opinion was that
27 the first consequence would prevail but as I'd already
28 mentioned, this cannot be said with certainty. That's
29 all I said and I don't think that could have been

1 misunderstood and I mean as I say the transcript will
2 be there and I also at that point I think reiterated
3 point one. That's my recollection. That I reiterated
4 what point one was. That the form of abortion
5 legislation would exclusively be a matter for the
6 Oireachtas and that was Mr. Murray's opinion as the
7 consequence which would ensue but I did add then I
8 think that the implications of a recommendation from
9 the Assembly for a simple repeal would be uncertain. I
10 said that in my notes and I'm sure I read it out. So
11 that's what I said. I said there's uncertainty here
12 but on the advice we have got the likelihood is that
13 repeal simpliciter would be construed if the matter
14 became a legal issue in a court, would be construed as
15 that the form of abortion would be exclusively a matter
16 for the Oireachtas.

17
18 So, I don't think there is anything misleading in that
19 and as I say the transcript is available, the live
20 streaming is available and you can access what was
21 actually said and check it out but I have a clear
22 recollection on that and as I say I'm reading from my
23 notes but I would have added a word here and there as
24 one does in those circumstances but I don't think there
25 was any confusion about what I said and I don't think
26 it should have given rise to confusion. So, I mean on
27 that basis I could see no basis for re balloting on
28 Ballot 2. I don't think there was anything misleading,
29 but as I say the material is there and it is accessible

1 but I genuinely believe that was what I said.
2
3
4

5 **AGREEMENT OF BALLOT 3 INCLUDING EXPLANATION OF ANY**
6 **AGREED AMENDMENTS:**
7

8 **CHAIRPERSON:** Now, so where are we are we at this
9 stage. It's a question of going on to Ballot 3 and
10 it's a question of whether at this stage, whether we go
11 forward with the draft ballot in its draft form, which
12 is before you there or had that been -- oh no, that has
13 been added on. Go back to the original.

14
15 I was of the view and I think I expressed it earlier
16 this afternoon, that Fionnuala's suggestion about
17 adding any rights of when we said the woman, we could
18 say pregnant woman, I thought there was merit in that I
19 have to say but I think there is no merit in ending
20 Option 1 after the words "*to address termination of*
21 *pregnancy.*"

22 **MS. FINEGAN:** Do the Expert Group want to say anything?

23 **CHAIRPERSON:** Do you want to make any observation on
24 that?

25 **DR. WALSH:** I mean I would agree as a matter of opinion
26 but I suppose it would be perhaps advisable to get
27 consensus.

28 **CHAIRPERSON:** Oh definitely we have to have a vote.
29 Definitely. I suppose maybe -- I mean we are now in

1 three possibilities. The possibility of ending Option
2 1 with the words "*to address termination of pregnancy*"
3 and making no amendment to Option 2. That's the first
4 and that's what has been suggested, am I right in that,
5 yes, thank you.

6
7 Then the second possibility is what Fionnuala
8 suggested, to take out the both and so that the three
9 factors are governed in both Option 1 and Option 2 and
10 I think that's important from a consistency perspective
11 and the three factors are to legislate. First of all,
12 to address termination of pregnancy. Secondly, to
13 address any rights of the unborn and thirdly to address
14 any rights of we'll say the pregnant woman because that
15 is the terminology that is used in the 2013 Act. A
16 pregnant woman, yes, is used in the 2013 Act. I've
17 checked it. So that's the second option and then the
18 third option is to go back to the draft we put before
19 you.

20 **DR. WALSH:** Sorry, Judge, I think the proposal would be
21 to end at termination of pregnancy, under both Option 1
22 and Option 2, so they'd mirror each other?

23 **CHAIRPERSON:** No, that's not right. It's only in
24 Option 1, I'm quite clear about that. I am absolutely
25 correct in that. So, do we do it -- will I put each of
26 those matters to you.

27
28 **SPEAKER - JORDAN:** I suppose just if we change the
29 details of the end of either Option 1 without changing

1 the details of Option 2, it seems to polarise or make
2 partisan either option, so that Option 1 would allow
3 the Oireachtas to legislate, to address termination of
4 pregnancy and any rights of the unborn. If we ended it
5 at termination of pregnancy it would make it different
6 than Option 2, having that dealt with just under the
7 Constitution. So, it seems to make the details of what
8 is being dealt with different as opposed to whether the
9 Constitution allows the Oireachtas to do it explicitly
10 or whether the Constitution deals with it itself
11 explicitly and I suppose that's the issue that I'd have
12 with just changing the details of one option.

13 **CHAIRPERSON:** what precisely is your problem, the
14 problem you perceive?

15 **SPEAKER - JORDAN:** well I suppose Option 1 boils down
16 to explicitly authorising the Oireachtas within the
17 Constitution and Option 2 boils down to explicit or
18 having the details dealt with explicitly within the
19 Constitution. So, if we change the details of what the
20 Oireachtas can do in the ballot for Option 1 but we
21 don't change what can be dealt with in the Constitution
22 equally, do you know what I mean. It's not balanced?

23 **DR. WALSH:** So, the question is should the two not be
24 the same wording, so they would be consistent. Option
25 1 and Option 2 should be consistent.

26 **SPEAKER - JORDAN:** So one is the Constitution, so as my
27 colleague said, one is explicitly for the Oireachtas to
28 legislate and one is explicitly dealt with in the
29 Constitution. So that they are both consistent in what

1 they deal with, whether through the Oireachtas or in
2 the Constitution.

3 **DR. WALSH:** So I think the issue is, there's two
4 aspects to the issue. The first is whether in setting
5 Option 1 and Option 2 against each other as
6 propositions to you, you want more or less the same
7 question to be at play in both of them. So the
8 question at play in both of them now is do you want the
9 power on this issue to be dealt with by the Oireachtas
10 or do you want at least some power on this issue to
11 remain in the Constitution as to the same issues. If
12 the change is implemented in the manner suggested by
13 Table 5, there then becomes not a difference between
14 the two options in terms of allocation of power but a
15 substantive difference between the two options as well.
16 So, I agree with that point that has just been made
17 from the table and that would need to be taken on board
18 I think if the citizens were to go that route.

19 **CHAIRPERSON:** Yes. All right. Yes, is there any
20 other?

21
22 63 Q. **TABLE 8 - CITIZEN:** Am I right in believing that people
23 are confusing the words up there with what's actually
24 going into the Constitution and that this is just a
25 vote. Tomorrow we specify the recommendations. So, I
26 think there is too much time being taken up with the
27 wording there. That isn't the exact words that are
28 going in the Constitution. Am I right?

29 A. **MS. FINEGAN:** I mean it would be a matter for the

1 Oireachtas first of all to consider the recommendations
2 of the Assembly and then second of all if the
3 Oireachtas and the Government decide to act on that, it
4 would be a matter then for the Office of the
5 Parliamentary Council to draft the text.
6

7 64 Q. **TABLE 4 - WILLIAM O'HALLORAN:** I just have an
8 observation and a concern about this change to remove
9 the words "and any rights of the unborn" from both. I
10 think this is and I just want to say I think this is
11 changing and has huge implications for what we will be
12 considering tomorrow. So, I mean we won't have a
13 decision to take tomorrow on any rights or the amount
14 of rights of the unborn versus the amount of rights of
15 the Mother if we remove these words "and any rights of
16 the unborn" and I think we'll get ourselves into
17 trouble here.

18
19 **CHAIRPERSON:** I think that what we should do at this
20 stage is to put you before you on voting on our draft
21 in its unchanged form. I don't have a difficulty with
22 the suggestions by Fionnuala of the amendment to both
23 Option 1 and Option 2 and I would allow you vote on
24 that but I do think there is very considerable
25 difficulty with the suggestion that Option 1 ends at
26 "to legislate to address termination of pregnancy" and
27 I'm not going to put that as a proposition. So, first
28 of all I would ask you to indicate by a show of hands
29 and we may have to do a count on this, by a show of

1 hands, how many people are in favour of going ahead on
2 Ballot 3 with the formula which was put before you by
3 us. In other words Ballot 3 as it now appears on the
4 screen behind you.

5 **MS. FINEGAN:** So, in other words, there are two choices
6 we're putting before you. One is this, it's the
7 original text and the second is the revision and I
8 think there would be a revision to this which I might
9 just put up on screen now to say that it's the rights
10 of the pregnant woman. Just a point of clarity for
11 that issue that was raised. All right, they're the two
12 options.

13 **CHAIRPERSON:** And the first choice is the draft in its
14 original form. I'd like to see a show of hands in
15 relation to that?

16
17 **(SHOW OF HANDS BY ASSEMBLY MEMBERS)**

18
19 **CHAIRPERSON:** And then the amended draft?

20
21 **(SHOW OF HANDS BY ASSEMBLY MEMBERS)**

22
23 **MS. FINEGAN:** I've already gotten to 40. So I think we
24 can take it that the revised version carries.

25 **CHAIRPERSON:** Does anybody have any issue in relation
26 to doing it by a show of hands and doing the count in
27 that way?

28 **MS. FINEGAN:** Okay, well what we'll do then is proceed
29 with the ballot, with the vote at this stage but

1 obviously in light of this change you'll just have to
2 bear with us to print new ballot papers and we'll be
3 with you momentarily.
4

5 **BRIEF ADJOURNMENT**
6

7 **MS. FINEGAN:** The ballot, there's a missing word in it.
8 So, just in Option 2, the revision, the word
9 Constitutional from Option 2 was removed. It was just
10 an accidental I'd say, just slipping in the running of
11 it. So if everybody could just return, anybody who
12 hasn't filled in a ballot just return their ballot and
13 I'll ask the Returning Officers to discard the ones
14 that have been cast already and we'll start again with
15 the revised ballot. So, I'm sorry.

16 **MS. FINEGAN:** Members, if I could please have your
17 attention. There is just a further matter which has
18 come to our attention just as we were printing it
19 through and properly proof, not that we didn't properly
20 proof it previously. So, you'll see in Option 1 it
21 says Article 40.3.3 should be replaced with a
22 Constitutional provision. In Option 2 it says Article
23 40.3.3 should be repealed or amended with a new
24 Constitutional provision. So, in Option 1 it just says
25 Constitutional provision and then in Option 2 it says a
26 new Constitutional provision. So we're proposing that
27 for consistency that both would say with a
28 Constitutional provision. Just for the consistency.
29 So, I think maybe we'll just do -- if people could

1 actually take their seats just so we could do a show of
2 hands just to be absolutely sure. We promise we will
3 get you out here. I know you're right, Denise. We
4 have to get it right, absolutely. So, can I just ask
5 for a show of hands in favour of removing the word
6 "new" in option 2. Okay, that's unanimous, thank you.

7 **CHAIRPERSON:** The eagle eyes on the Steering Committee,
8 no more than myself, didn't spot it.

9 **MS. FINEGAN:** Okay, for the purposes of clarity, the
10 revised Ballot Paper is now available and citizens are
11 invited to go up to the assigned booth and cast their
12 vote.

13
14 Just to give you a sense, we'll obviously turn, once
15 the voting has been completed we'll turn the count
16 around as quickly as possible but we would want you to
17 come back obviously for the announcement of the results
18 which will happen this evening. We're anticipating
19 maybe six or ten past six. I think what we'll do is
20 we'll give a five minute warning in advance to allow
21 people to gather, so you don't miss it. So, I just
22 want to make that clear just for the avoidance of
23 doubt. You know if you want to hear the result come
24 back for sort of six or ten past.

25
26 **PUBLIC VOTING CONCLUDES**

1 **MS. FINEGAN:** Okay, folks, we have the results, they
2 are in. So, if you want to take your seats we'll have
3 the announcement momentarily.

4
5 **ANNOUNCEMENT OF RESULTS AND OUTLINE OF NEXT STEPS BY**
6 **THE CHAIR**

7
8 **CHAIRPERSON:** Now, I'm going to announce the result of
9 Ballot 3. First of all, the number of eligible voters
10 92. The number of votes cast 92. You will recollect
11 that this morning you did approve of somebody who
12 couldn't be here this morning joining us in the
13 afternoon. So that explains the 92 as distinct from
14 the 91. Once again no invalid votes, zero and the
15 total ballot poll then was 92.

16
17
18 Then the manner of voting on the options. First of
19 all, on option one and that now in the terms that you
20 voted for it is Article 40.3.3 should be replaced --
21 it's the new language on the result document I have.
22 It's Article 40.3.3 should be replaced with a
23 Constitutional provision that explicitly authorises the
24 Oireachtas to legislate, to address the termination of
25 pregnancy, any rights of the unborn and any rights of
26 the pregnant woman.

27
28 The number of votes in favour of that option, 51 which
29 represents 57% of the votes and then Option 2, Article

1 40.3.3 should be replaced or amended with a new
2 Constitutional provision that directly addresses
3 termination of pregnancy, any rights of the unborn and
4 any rights of the pregnant woman and the votes for that
5 option were 38 which represents 43% and "prefer not to
6 state an opinion" just three on this occasion.

7
8 So, the position is that the majority voted for Option
9 1, 57% to 43%. So, we go on tomorrow to Ballot 4B.
10 That's the consequence of that and just before we wind
11 up I just want to say something. We've had a very
12 fraught day and I just want to recall what I said at
13 the private session this morning and I think it's no
14 harm repeating it. I said as we reached the climax of
15 our work I know that members will take their role very
16 seriously and that undoubtedly happened today.

17
18 In so doing, when engaging in discussions this weekend,
19 I would encourage you to be respectful of your fellow
20 citizens and of alternative view points to your own.
21 There were certain remarks this afternoon which were
22 unfortunate I think and some people feel aggrieved but
23 in any event I just think bear that in mind and I also
24 mentioned today, I can't remember whether it was in the
25 private session or the public session, I mentioned
26 collegiality and I hope we will regain collegiality and
27 I hope that tomorrow everything will go ahead in a less
28 fractious manner than this afternoon but just we've had
29 a long hard day. I hope you will all have a pleasant

1 evening and I'll see you all tomorrow at 9.30. Thank
2 you very much.

3
4 **MEETING ADJOURNED**

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29