



**MEMORANDUM OF OPINION ON THE POWER OF CHARTER COUNTIES  
TO ADOPT INSTANT RUNOFF VOTING IN HAWAII**

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To: Rob Richie, FairVote Executive Director  
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By request of Hawaii Senator Les Ihara, Jr., the Legislative Reference Bureau of the State of Hawaii on March 14, 2002, drafted a research memo to address the legality of charter counties adopting instant runoff voting for the election of their county officials. At the time, researcher Mark Rosen, concluded that the answer was no, given that Article II, Section 4 of the Hawaii Constitution requires the legislature to prescribe the method of voting at all elections and that the legislature has prescribed the method of voting at all elections under the elections law, as codified in chapter 11, Hawaii Revised Statutes (HRS), which does not provide for instant runoff elections.

For the reasons described herein, I believe this conclusion was incorrect and hastily made. In fact, both the Hawaii Constitution (hereinafter "constitution") and the HRS clearly indicate that adopting the instant runoff voting method (hereinafter "IRV") for charter county elections would not run afoul of either body of law.

Yes, the constitution says that the legislature prescribes the method of election, and yes the state election code does not affirmatively discuss or authorize IRV, *but* the constitution also says that: "Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body. ***Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.***" HRS Const. Art. VIII, § 2 (2005). [emphasis added]

Note here that the constitution explicitly states that charter powers over legislative structure specifically trump statutory provisions. Additionally, the state code at HRS § 46-1.5 (2005) says that:

Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

(1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office

Hence the state constitution says that local governments can establish charters and that charter provisions relating to legislative structure are superior to statutory provisions, while the state code defines legislative structure to include method of election. In fact, HRS 46-1.5 specifically allows charter counties to establish the method of election of their officials.

I think this is the better reading of the state law, since Section 11.3 doesn't affirmatively prohibit IRV, but requires certain other election procedures, and the language of Section 46-1.5 allows IRV (or other election methods, for that matter). Under general principles of statutory interpretation, seemingly conflicting provisions must be read to minimize conflict, and if a reasonable interpretation exists that eliminates such conflict, it stands.

Hence, the only reasonable construction of Hawaii's constitution and code is that charter counties were indeed intended to have the power to prescribe their method of election, including by adopting the instant runoff voting method of election.