People with disabilities face discrimination every day. Some times even governmental entities can discriminate against people with disabilities, such as when a program or service is not accessible to or usable by people with disabilities. For years in Wichita, the bus system was not accessible to people with disabilities. The buses typically did not have ramps, Braille wasn’t available, and in general the system was not accessible. The actions of the bus system discriminated against people with disabilities because it did not allow people with disabilities to be free to move about their community the same way anyone else would.

In late August 2004, the United States Court of Appeals for the Tenth Circuit supported the right of people with disabilities to enforce the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The Court upheld this right after hearing an appeal regarding several plaintiffs with disabilities who were “testers” (advocates who test access and other potential violations of the law) of access to the City of Wichita’s public transit system.

The original case, *Tandy v. City of Wichita*, started when Mike Oxford, Executive Director of the Topeka Independent Living Resource Center (TILRC), received several complaints about the Wichita Transit fixed route bus service. As the leader of Kansas ADAPT, Oxford organized and mobilized 63 advocates from across the state to test the Wichita transit system.

In the spring of 2001 the advocates tested the Wichita Transit for access, services, Braille, and communication. The transit system failed terribly, leaving advocates stranded all over the community. Braille was not available, people were not secured, stops were not called, lifts were not on buses, and when lifts were on buses, drivers refused to deploy them.

Ten of the advocates filed a lawsuit in federal court against Wichita Transit on these accessibility issues, originally assisted by an attorney of TILRC. In District Court, Judge Thomas Marten issued a permanent injunction against Wichita for its long-standing policy and practice of refusing to deploy lifts on routes they designated as “not accessible.” This forced Wichita to transform its bus system and make the routes and buses accessible.

Judge Marten, however, also ruled that only three of the advocates were entitled to a trial, but dismissed the other seven for lack of “standing.” The judge ruled that they didn’t have standing to be able to file a complaint because they were not residents of Wichita. Those seven advocates appealed to the United States Court of Appeals for the Tenth Circuit. The case then came to the Disability Rights Center of Kansas (DRC). DRC litigated the case from that point forward. The issue at the heart of the appeal was the legal standing of the “testers.” Several of the plaintiffs were not from Wichita, but went to the city as “testers” to examine the accessibility
of the fixed-route bus system. The City of Wichita argued that they did not have standing. The lower court agreed with the City and dismissed 7 of the 10 plaintiffs in the case, which made them ineligible for damages or a court order to stop the discriminatory policies. This was a very bad ruling for people with disabilities. Often times “testers” are the people who have the most knowledge of about accessible services and disability rights.

DRC attorneys appealed the lower Court’s decision to the Tenth Circuit Court of Appeals, which is just one step below the US Supreme Court. A three-judge panel at the Ten Circuit Court of Appeals ruled that even one-time users who will return and use the transit system have the right to both a court order for access and to damages for violation of the ADA and Rehabilitation Act. This decision has a large systemic impact for people with disabilities, because it requires all courts in the 10th Circuit, (Kansas, Oklahoma, Colorado, Wyoming, New Mexico, and Utah), to apply the new standard set forth in this decision regarding the rights of testers to hold systems accountable.

This is a significant win for people with disabilities who will now have more power as testers to hold cities accountable for violations of the ADA for accessibility. People with disabilities have a civil right to access public transportation services. This decision gives individuals with disabilities throughout Kansas the power to enforce that right.