CALABRESI, *Circuit Judge*, concurring:

I add a few words to make clear my understanding of the state of our circuit's law in this interesting area.

As we hold today, where there is no original federal jurisdiction, there can be no supplemental jurisdiction. This is true both when the district court correctly finds that it lacks original jurisdiction but then (incorrectly) proceeds to decide related state-law issues on the merits, and when the district court incorrectly finds that it has original jurisdiction and then proceeds to address the merits of the parties' claims.

When the district court incorrectly determines that it *lacks* subject-matter jurisdiction over all federal claims, and therefore dismisses those claims pursuant to Rule 12(b)(1), we ask whether dismissal pursuant to Rule 12(b)(6) would have been appropriate instead. *See, e.g.*, *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1190 (2d Cir. 1996). If the answer is yes, then we interpret the district court's dismissal of the federal claims as a dismissal pursuant to 12(b)(6), and ask whether the district court abused its discretion in deciding whether to exercise supplemental jurisdiction over related state-law claims. *Id*. at 1191.

It is important to emphasize that when appellate courts review district courts' decisions to exercise supplemental jurisdiction after all federal claims have been dismissed, the default rule is that federal courts should not decide related state-law claims unless there is good reason for doing so. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.") (internal footnotes omitted). There are many reasons why supplemental jurisdiction may appropriately be retained, however, and the presence of such reasons may on occasion justify the exercise of supplemental jurisdiction even when the district court dismisses the federal claims. *See Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (listing "judicial economy, convenience, fairness, and comity" as "factors to be considered under the [supplemental] jurisdiction doctrine"); *Nowak*, 81 F.3d at 1187 (determining that the district court did not abuse its discretion in exercising supplemental jurisdiction over state-law claims because the federal claim was dismissed close

to the trial date and after the court and parties had invested significant energy preparing for trial); *Raucci v. Town of Rotterdam*, 902 F.2d 1050, 1055 (2d Cir. 1990) (same).

In general, however, our circuit takes a very strong position that state issues should be decided by state courts. Our circuit is probably the circuit that most frequently certifies questions to state courts. The same underlying policy suggests that federal courts most often ought to leave state issues to state courts as readily and as early in a proceeding as possible. This means that when a request for remand has been made after all federal claims have been dismissed, a district court must have truly strong reasons to exercise supplemental jurisdiction over any state-law claims.

The question becomes more complicated, though, when neither party asks the federal district court to decline to exercise supplemental jurisdiction over related state-law claims. In effect, in such a situation, the party seeking remand on appeal may properly be said to have forfeited the issue. But even in such cases, where the federal district court has not expended a significant amount of time on the case, and where the state-law issues are complex and uncertain, we have held it to be an abuse of discretion for the district court to exercise

supplemental jurisdiction over purely state-law claims. *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 305 (2d Cir. 2003) (collecting cases). In this situation, the complexity of the state-law issues suffices to make the district court focus on the default rule, even in the absence of a request by any of the parties. Having done so, a district court ought not to exercise supplemental jurisdiction over purely state-law claims unless there are strong reasons for doing otherwise. In such cases we, in reviewing district court decisions, can, in effect, choose to overlook the parties' forfeiture, and order dismissal of the state-law claims. *See also Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (finding that the district court's stated justification for its decision to exercise supplemental jurisdiction over state-law claims rested on "an error of law," and therefore was an abuse of discretion, without considering whether either party ever asked the district court to remand the state-law claims).

Let me be clear, this is not the only situation in which the appellate court may opt to overlook the forfeiture and order such dismissal of the state claims. But where neither party has asked the district court to decline to exercise supplemental jurisdiction, and where there is no reason to think that the court focused, or ought to have focused, on the question, we may not require the

district court to consider explicitly whether it should exercise supplemental jurisdiction.

This does not mean that we do not believe that it would be *desirable* for the district court to decline to exercise supplemental jurisdiction over state-law questions even in such situations. A district court judge would be well-advised, if the propriety of exercising supplemental jurisdiction is noticed early enough in a case, to say, "I decline to decide the state-law issues, however simple they may be." But we may not in every instance demand that district courts go out of their way to consider the question if it is not, in one way or another, called to their attention. To do otherwise would be to ask unnecessary and additional work of district courts that already have quite enough do to. And that explains the many cases in which we have summarily affirmed the exercise of supplemental jurisdiction over trivial state-law issues even after 12(b)(6) dismissal of all federal claims.